

Legal 500

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Japan

Environment

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This country-specific Q&A provides an overview of environment laws and regulations applicable in Japan.

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Japan: Environment

1. What is the environmental framework and the key pieces of environmental legislation in your jurisdiction?

At the United Nations Conference on Environment and Development (Earth Summit) in 1992, the Rio Declaration on Environment and Development, a set of principles for action by nations and individuals to maintain a healthy global environment for the 21st century, and an action plan to implement those principles were adopted. In Japan, the Basic Act on the Environment (the "Basic Act") was enacted in 1993 based on these principles and action plan. Most of the environmental laws in Japan belong to a legal framework with the Basic Act at the top level.

Based on the Basic Act, a Basic Environment Plan is formulated by the Japanese Government approximately every six years. This plan mainly specifies an outline of long-term comprehensive policies for environmental conservation.

2. Who are the primary environmental regulatory authorities in your jurisdiction? To what extent do they enforce environmental requirements?

Environmental regulations in Japan can be broadly classified into two categories: those enforced by the national Government based on laws; and those enforced by local Governments based on ordinances. The environmental regulatory authority for the former is the Ministry of the Environment, while the relevant department of each local Government is responsible for the latter. Local Governments are granted the right to enact ordinances, and depending on the content of the ordinance, they are also allowed to broaden the scope of regulation and tighten the standards of regulation compared to those under the law, in accordance with the actual situation of the relevant municipality.

Enforcement usually begins with the issuance of non-legally binding administrative guidance, and a failure to follow this will lead to action, such as the revocation of permits or administrative orders. Although some environmental regulations provide for penalties in the event of non-compliance, in practice, penalties under a certain, limited number of laws frequently apply, mainly to individuals, rather than companies.

3. What is the framework for the environmental permitting regime in your jurisdiction?

Environmental legislation in Japan comprises individual laws, with the Basic Act at the top level. For example, the Air Pollution Control Act regulates air quality, the Act on Promotion of Global Warming Countermeasures regulates global warming, the Water Pollution Prevention Act regulates water quality, the Soil Contamination Countermeasures Act regulates soil quality, the Act on the Regulation of Manufacture and Evaluation of Chemical Substances regulates chemical substances, the Act on Waste Management and Public Cleansing regulates circulation management, the Act on Conservation of Endangered Species of Wild Fauna and Flora regulates nature conservation, and the Landscape Act regulates landscape.

The entity that grants permits and licenses varies for each individual law and for each permit and license. For example, some are granted by prefectural governors, such as a permit for the industrial waste disposal business under the Act on Waste Management and Public Cleansing.

4. Can environmental permits be transferred between entities in your jurisdiction? If so, what is the process for transferring?

Permits and licenses are obtained by each business entity and are basically non-transferable. However, the transfer of permits and licenses sometimes becomes an issue in the event of an M&A transaction. For example, when conducting a corporate split (*shinsetsu bunkatsu* or *kyushu bunkatsu*), one of the following three cases may apply: (i) the succeeding or newly established company is allowed to succeed to the permits and licenses on the condition of obtaining permission/approval from the relevant supervisory authority, as in the case of permission for installation of municipal waste management facilities; (ii) permits and licenses are generally transferred to the succeeding company without obtaining permission/approval, as in the case of a notification for installation of specific facilities under the Noise Regulation Act, or (iii) the succession of permits and licenses is not permitted, for example, in the case of the municipal waste collection and transport service.

5. What rights of appeal are there against regulators with regards to decisions to grant environmental permits?

The general rights of appeal under administrative laws can be used. In other words, an appeal against a decision to grant a permit or license may be filed with a court for relief through an administrative lawsuit under the Administrative Case Litigation Act, or through an administrative complaint review under the Administrative Complaint Review Act.

6. Are environmental impact assessments (EIAs) for certain projects required in your jurisdiction? If so, what are the main elements of EIAs and to what extent can EIAs be challenged?

In Japan, the EIA system under the Environmental Impact Assessment Act is applied. Thirteen types of projects are subject to the Act, such as roads, rivers, railways, and power plants, whose scale is equal to or above a specified baseline are subject to EIAs.

The EIA system goes through the following process: (i) prior survey and forecast of environmental impact before deciding on a development plan, (ii) examination of alternatives, (iii) publication of information on the selection process and providing the public with an opportunity to express their opinions, and (iv) input of these results in the final decision-making.

The Environmental Impact Assessment Act itself does not provide for a specific objection system. However, it is possible that objections may be filed against certain measures in EIAs based on other laws.

7. What is the framework for determining and allocating liability for contamination of soil and groundwater in your jurisdiction, and what are the applicable regulatory regimes?

The determination and allocation of liability for contamination of soil and water is made under the framework of tort (Article 709 of the Civil Code) or joint tort (Article 719 of the Civil Code). If the acts of more than one person are objectively related and joint, and each of those persons independently meet the requirements of a tort, the relevant acts constitute a joint tort and the persons in question are jointly and severally liable for the joint tort.

The Soil Contamination Countermeasures Act applies to

soil contamination countermeasures. When an act is performed that may cause soil contamination, the extent of soil contamination must be investigated and the results must be reported to the prefectural governor. If the extent of soil contamination exceeds certain standards, the contamination must be removed.

The Water Pollution Prevention Act applies to water pollution. Concentration of water pollutants in wastewater discharged from workplaces with specified facilities specified by Cabinet Order must be kept below a certain level. In addition, specified groundwater containing hazardous substances must not be allowed to permeate underground. Special provisions regarding compensation for loss or damage are stipulated, and strict liability is adopted as an exception to the general principle of liability for negligence. In addition to the Water Pollution Prevention Act, the Act concerning Special Measures for Conservation of Water Quality of Lakes and Marshes has been established for the purpose of conserving the water quality of lakes and marshes, and the Water Cycle Basic Act has been established to stipulate the basic principles of water cycle policies.

8. Under what circumstances is there a positive obligation to investigate land for potential soil and groundwater contamination? Is there a positive obligation to provide any investigative reports to regulatory authorities?

Under the Soil Contamination Countermeasures Act, when the use of a specified facility using hazardous substances is discontinued, (i) when the prefectural governor receives a notification of a change in land form where the area is equal to or larger than a specified area and finds that there is a risk of soil contamination, or (ii) the prefectural governor finds that there is a risk of harm to human health due to soil contamination, the owner of the land must arrange for a designated investigation organization to conduct an investigation of the state of soil contamination and must report the results to the prefectural governor.

Under the Water Pollution Control Law, a person that discharges effluent or discharges water which permeates specified groundwater must, as provided for by Order of the Ministry of the Environment, measure the level of pollution of the effluent or the specified groundwater, and record and retain the results.

9. If land is found to be contaminated, or

pollutants are discovered to be migrating to neighbouring land, is there a duty to report this contamination to relevant authorities?

Under the Soil Contamination Countermeasures Act, the prefectural governor is to designate, as a designated area, any land whose soil contamination level does not conform to the specified standards based on the results of the investigation by the designated investigation organization (see question 8) and publicly notify to that fact. The owner of the land must prepare a plan for contamination removal, implement measures in accordance with the plan, and report the results. When the contamination is removed, the designation of the area will be cancelled.

10. Does the owner of land that is affected by historical contamination have a private right of action against a previous owner of the land when that previous owner caused the contamination?

If land is acquired through a sale and purchase and it is found that the type, quality or quantity of the subject matter of the sale and purchase does not conform to the terms of the relevant agreement due to the existence of soil contamination, the purchaser may claim against the seller for non-compliance with the contract (Article 562 of the Civil Code) and may also be entitled to claim damages based on tort (Article 709 of the Civil Code).

Under the Soil Contamination Countermeasures Act, when the owner of the land makes a claim for payment of expenses required for contamination removal from the person who caused the contamination, expenses required for preparing a plan for contamination removal related to the intended measures may also be included.

11. What are the key laws and controls governing the regulatory regime for waste in your jurisdiction?

The Act on Waste Management and Public Cleansing regulates matters concerning waste. The purpose of the Act is to conserve the living environment and enhance public health by controlling the discharge of waste and carrying out management including proper sorting, storage, collection, transport, recycling, disposal of waste, and to keep the living environment clean. The Act regulates matters such as the management of municipal waste and industrial waste, management businesses, management facilities, and export of waste.

12. Do producers of waste retain any liabilities in respect of the waste after having transferred it to another person for treatment or disposal off-site (e.g. if the other person goes bankrupt or does not properly handle or dispose of the waste)?

A business operator is responsible to properly manage waste generated in the course of its business activities. In addition, a business operator is responsible to manage its industrial waste even if the business operator entrusts the management of industrial waste to a waste management business operator, responsibility for management remains with the business operator that generated the industrial waste and it must endeavor to take necessary measures to ensure that the industrial waste is managed properly through a series of management processes from generation of the industrial waste to final disposal. If it is discovered that the waste management is entrusted to a waste management business operator who improperly manages waste, the business operator that generated the industrial waste may also be subject to an order to take measures under the Act on Waste Management and Public Cleansing and it may also pose a compliance risk.

13. To what extent do producers of certain products (e.g. packaging/electronic devices) have obligations regarding the take-back of waste?

Under the Act on the Promotion of Sorted Collection and Recycling of Containers and Packaging, each business operator is obligated to recycle the containers and packaging that are used or manufactured or imported in the course of its business. In practice, it is common for business operators to fulfill this obligation by entrusting the recycling to a designated corporation under the Act and bear the costs.

The Act on Recycling of Specified Kinds of Home Appliances defines air conditioners, televisions, refrigerators/freezers, and washing machines/tumble driers as specified home appliances. The Act imposes on retailers the obligation to take back and deliver to the manufacturers specified home appliances that have become waste, and imposes on manufacturers the obligation to take back those home appliances at designated take-back locations and to implement recycling.

14. What are the duties of owners/occupiers of

premises in relation to asbestos, or other deleterious materials, found on their land and in their buildings?

Even if asbestos dust in a building in which materials containing asbestos have been installed causes damage to the users of the building, the occupant or owner of the building is not necessarily legally liable. However, a judicial precedent exists in which the court found that the owner and lessor company of the building were liable for damages on the grounds of liability for defective structures on land (Article 717 of the Civil Code) based on facts such as that asbestos had been exposed for a long period of time.

15. To what extent are product regulations (e.g. REACH, CLP, TSCA and equivalent regimes) applicable in your jurisdiction? Provide a short, high-level summary of the relevant provisions.

In Japan, the Act on the Regulation of Manufacture and Evaluation of Chemical Substances is established for the purpose of preventing environmental pollution by chemical substances that may endanger human health or impair the habitat and growth of animals and plants.

A person who intends to manufacture or import a new chemical substance that is not listed in the list of existing chemical substance shall give prior notification to the relevant authority. In principle, a person who has given the notification shall not manufacture or import the new chemical substance until the Government has examined its properties and toxicity and that person receives notification as to whether or not it is a regulated chemical substance.

A person who manufactures or imports chemical substances shall give notification to the relevant authority regarding matters such as the actual quantity of manufacture or import in the following fiscal year. In addition, that person must report to the Government if information is obtained to the effect that any of those substances may have hazardous properties. The Government shall use such notified information and existing knowledge to conduct risk assessments, and take regulatory measures if necessary.

For chemical substances designated as a class I specified chemical substance based on the properties of the chemical substances, application for permission to manufacture or import, as well as conformity with handling standards and labeling is required.

16. What provisions are there in your jurisdiction concerning energy efficiency (e.g. energy efficiency auditing requirements) in your jurisdiction?

The Act on Rationalizing Energy Use and the Conversion to Non-fossil Energy has been requires business operators above a certain size to report regularly on matters such as their energy use status and to review their initiatives and formulate plans concerning energy conservation and conversion to non-fossil fuels.

This Act provides standards of judgment for business operators that establish factories, offices and other workplaces, transporters, and consigners when implementing energy conservation initiatives, and also requires business operators above a certain size to report to a relevant minister on the status of use of energy, and if their efforts are insufficient, guidance, advice, and instructions on the preparation of a rationalization plan are provided by such minister.

In addition, as an indirect regulation for energy users, the Act applies to manufacturers and importers of machinery, equipment and other items (including automobiles, home appliances, and building materials) and requires them to achieve energy consumption efficiency targets for machinery, equipment and other items, and recommendations are to be made if efficiency improvements are insufficient.

17. What are the key policies, principles, targets, and laws relating to the reduction of greenhouse gas emissions (e.g. emissions trading schemes) and the increase of the use of renewable energy (such as wind power) in your jurisdiction?

In the "Plan for Global Warming Countermeasures" approved by the Cabinet in October 2021, Japan announced that in the fiscal year 2030 it aims to achieve a 46% reduction in greenhouse gas emissions from the FY2013 level, which is an ambitious goal that is in line with the goal of achieving carbon neutrality by 2050, and that it will continue to strive to achieve the 50% reduction goal. Japan also aims to increase the ratio of renewable energy to total electricity generated from 16.1% in 2017 to 22-24% by 2030.

In October 2023, the Carbon Credit Market was opened on the Tokyo Stock Exchange for the trading of greenhouse gas emission reduction and absorption certified under the emission reduction and absorption certification scheme for global warming countermeasures in Japan ("J-

Credit"). The start of market trading of carbon credits is expected to increase the predictability of decarbonization investments.

18. Does your jurisdiction have an overarching "net zero" or low-carbon target and, if so, what legal measures have been implemented in order to achieve this target.

The Act on Rationalizing Energy Use and the Conversion to Non-fossil Energy is a law that requires business operators above a certain size to report regularly on the status of energy use and promotes the review of efforts and formulation of plans concerning energy conservation and conversion to non-fossil fuels. The 2022 amendments to this Act requires the rationalization of the use of all energy sources, including non-fossil energy sources, and conversion to non-fossil energy sources, as well as encouraging the optimization of demand for electricity. Failure to submit periodic reports, or making false reports may result in a fine of up to 500,000 yen.

19. To what extent does your jurisdiction regulate the ability for products or companies to be referred to as "green", "sustainable" or similar terms? Who are the regulators in relation to greenwashing allegations?

The revised "Comprehensive Guidelines for Supervision of Financial Instruments Business Operators, etc." published by the Financial Services Agency on March 31, 2023 defines the scope of "ESG investment trusts" in order to ensure market credibility and build a sustainable society through the promotion of ESG investment, and also sets out a new section, "Points of Attention with respect to consideration of ESG," which provides specific items to be verified with respect to the disclosure of information by publicly offered investment trusts regarding ESG issues and the establishment of frameworks for investment trust management companies.

In the Supervisory Guidelines, an "ESG investment trust" is defined as a publicly offered investment trust which considers ESG as a key factor in the selection of investments, and describes the detail in the "Objective and Characteristics of the Fund" section of the prospectus. However, the Supervisory Guidelines do not prescribe all details, for example, it does not define ESG (Environmental, Social, and Governance), and whether or not ESG is considered a "key factor" is left to the individual judgment of the asset management company.

To address greenwashing issues, the Supervisory Guidelines set out points requiring attention with regard to disclosure from the viewpoint of prevention of investor misunderstanding, investment strategy, portfolio construction, the reference index, periodic disclosure, and outsourcing. In addition, in terms of framework development, the Supervisory Guidelines requires certain matters such as appropriate monitoring and implementation of due diligence with respect to organizational structure and use of the ESG assessment and data provision periods.

20. Are there any specific arrangements in relation to anti-trust matters and climate change issues?

Under the Antimonopoly Act, making use of a superior bargaining position over the counterparty to set terms and conditions of a transaction to the detriment of the other party unjustly, in light of normal business practices, is prohibited as an abuse of a superior bargaining position. Furthermore, the Japan Fair Trade Commission (the "JFTC") has stated that when energy costs increase, not reflecting such increase in transaction prices could be considered to be abuse of a superior bargaining position under the Antimonopoly Act.

In addition, while initiatives by business operators to realize a green society basically do not pose problems under the Antimonopoly Act in many cases, it poses a problem when such initiatives by business operators have the sole effect of restricting fair and free competition among business operators by limiting the price/volume, customers/sales channels, and technology/equipment of individual business operators. On March 31, 2023, the JFTC published its "Guidelines Concerning the Activities of Enterprises, etc. Toward the Realization of a Green Society Under the Antimonopoly Act," explaining the judgment framework and judgment factors by broadly classifying acts under the Antimonopoly Act as those that do not pose problems, those that pose problems, and those that require assessment in order to not pose problems.

21. Have there been any notable court judgments in relation to climate change litigation over the past three years?

In 2018, the neighbors of a proposed construction site filed a civil lawsuit regarding the construction and operation of a coal-fired power plant, seeking an injunction against construction activities. It is noteworthy that the judgment rendered by the Kobe District Court, (a

court of first instance), on March 20, 2023, dismissed the plaintiff's claim, but did not exclude the legal construction of a claim for an injunction based on the legal basis of a concrete danger of violation of personal rights due to greenhouse gas emissions. On the other hand, the judgment did not acknowledge the right of peaceful existence (the right to enjoy a stable climate) as a protected legal interest on which to base a claim for an injunction.

Since climate change is caused by the effects of greenhouse gas emissions by all entities, it is difficult to identify a reasonable causal relationship between individual emission acts and individual damages. Although such reasonable causation was also denied in this judgment, a 2021 Supreme Court judgment in another case held that, in certain cases, joint tort liability can be found when several persons commit acts that each could cause damage to the victim and it is unclear whether the damage was caused by the act of any one of them, setting a precedent where those persons are jointly and severally liable to compensate for damage.

22. In light of the commitments of your jurisdiction that have been made (whether at international treaty meetings or more generally), do you expect there to be substantial legislative change or reform in the relation to climate change in the near future?

With regard to initiatives to reduce the use of fossil fuels, the Japanese Government has indicated that it will not build new coal-fired power plants that do not have emission reduction measures, but has not clarified when it will discontinue existing power plants. If international criticism increases and Japan may take measures such as phasing out coal-fired power generation. In that case, various changes in laws and regulations may be necessary as a result of the change in energy policy.

23. To what extent can the following persons be held liable for breaches of environmental law and/or pollution caused by a company: (a) the company itself; (b) the shareholders of the company; (c) the directors of the company; (d) a parent company; (e) entities (e.g. banks) that have lent money to the company; and (f) any other entities?

(i) Legal liability

(a) A company may be liable under administrative laws, including being required to suspend its business. With regard to criminal liability, each of the penal provisions set forth in the Penal Code applies to natural persons, and a company is liable only if a special law provides for penalties that apply not only to natural persons but also to legal entities. (b) Although shareholders do not directly bear any liability in principle, it is theoretically possible, for example, that a shareholder who has not been formally appointed as a director, but actually performs duties similar to those of a director, could be subject to liability for negligence of duty to a third party as a "de facto director." (c) Directors may be liable for damages to their company or third parties for negligence in the performance of their duties. (d) With regard to directors of a parent company, since the shares of the subsidiary are assets to the parent company, they are considered to have a duty to the parent company to manage the subsidiary to some extent to maintain the value of such assets and to prevent damage to the parent company. A breach of this duty could give rise to liability. (e) In principle, creditors such as banks do not bear any legal liability.

(ii) Contractual liability

As an example, if a sales contract in respect of real estate has environmental problems such as soil contamination, the seller may be liable to the buyer for contractual nonconformity under the Civil Code.

24. To what extent can: (a) a buyer assume any pre-acquisition environmental liabilities in an asset sale/share sale; and (b) a seller retain any environmental liabilities after an asset sale/share sale in your jurisdiction?

Based on current practice, it is not usual for the buyer to legally assume environment-related legal obligations borne by the seller, while it is legally possible that an agreement provides for assumption of liability by the buyer.

25. What duties to disclose environmental information does a seller have in a transaction? Is environmental due diligence commonplace in your jurisdiction?

In M&A transactions, it is common for due diligence to be conducted on the target company's compliance with environment-related regulations. For example, if the target company operates a factory, since soil

contamination could be an issue based on the classification, it is necessary to confirm high-risk environmental laws and regulations, depending on factors such as the target company's industry. In addition, the practice of identifying ESG matters more generally has become common in recent years. This is to gain an understanding ESG-related risks, including ESG-related issues at the target company, the status of development of its response systems, and plans for improvement.

The results of environmental due diligence that can be quantitatively assessed will be reflected in the acquisition price in most cases, while matters that can only be qualitatively assessed will be reflected in the contract terms, such as representations and warranties and conditions precedent.

26. What environmental risks can be covered by insurance in your jurisdiction, and what types of environmental insurance policy are commonly available? Is environmental insurance regularly obtained in practice?

Insurance exists to cover risks specific to damage caused by environmental pollution, i.e., the cost of remediation, damage due to loss of use, and damage caused by environmental pollution that has spread over a long period of time. Some facilities such as factories and research facilities that have a large environmental impact or that are highly likely to cause environmental pollution take out insurance cover.

27. To what extent are there public registers of environmental information kept by public authorities in your jurisdiction? If so, what is the process by which parties can access this information?

Disclosure of all information held by the Government is regulated by the "Act on Access to Information Held by Administrative Organs," and publication of environment-related information is also conducted in accordance with the procedures of that Act. The steps for the procedures are as follows. In addition, local public entities generally have similar procedures stipulated in their ordinances.

(i) The person requesting disclosure submits a request for disclosure of administrative documents to the

information disclosure contact point of the Ministry of the Environment.

(ii) The authority receiving that request shall decide whether to provide full disclosure, partial disclosure, or not to provide disclosure within 30 days from the day following the date of submission.

(iii) An appeal against a decision to provide partial disclosure or not to provide disclosure, a request for review may be made in writing to the Minister of the Environment.

28. To what extent is there a requirement on public bodies in your jurisdiction to disclose environmental information to parties that request it?

When a disclosure request is made in accordance with the procedures described in 12.1, documents prepared or obtained by an employee of an administrative organ in the course of his/her duties and held by the administrative organ as those used in such organ by its employee shall in principle be disclosed, except for information that falls under types prescribed by laws and regulations as information not suitable for disclosure.

29. Have there been any significant updates in environmental law in your jurisdiction in the past three years? Are there any material proposals for significant updates or reforms in the near future?

(a) The Act on Promotion of Recycling of Plastic Resources, which came into effect in April 2022, requires business operators that emit large quantities of industrial waste of products using plastic exceeding a certain level to set targets for reduction and recycling, and to systematically implement measures to achieve these targets, and if the initiatives are significantly insufficient, the Minister of the Environment may take measures such as making recommendations, public announcements, and orders.

(b) The Ordinance for Enforcement of the Act on the Regulation of Manufacture and Evaluation of Chemical Substances, etc., which will come into effect in 2024 provides that, imports of PFHxS (perfluorohexanesulfonic acid) and its salts, a type of fluorine compound used in foam firefighting agents, metal plating, textiles, cleaning agents, and other products containing such chemical substances will in principle be prohibited.

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