

# Japan

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## 1 Real Estate Law

**1.1 Please briefly describe the main laws that govern real estate in your jurisdiction. Laws relating to leases of business premises should be listed in response to question 10.1. Those relating to zoning and environmental should be listed in response to question 12.1. Those relating to tax should be listed in response to questions in Section 9.**

In Japan, it is mainly the Civil Code that governs real estate transactions. Real estate property rights are subject to the law of property rights in Book 2 of the Civil Code. This law regulates ownership, joint ownership, assignment and other relevant matters. Real estate contract transactions are subject to the law of contracts in Book 3 of the Civil Code. This law regulates the formation of contracts, the rights and duties of the parties and other relevant matters.

### Other laws relevant to real estate:

#### 1 The Commercial Code

The Commercial Code has several provisions on real estate transactions between companies.

#### 2 The Land Lease and House Lease Law

The Land Lease and House Lease Law governs the relationship between the landlord and the tenant. This law applies to leases of business premises, as well as residential premises.

#### 3 The Law of Real Estate Registration

The Law of Real Estate Registration governs the registration process of real estate.

#### 4 The Law for Condominiums (*Kubunshoyuho*)

The Law for Condominiums governs the relationship between unit owners of a building.

#### 5 The Real Estate Transactions Business Law (*Takuchitatemonorihikigyoho*)

The Real Estate Transactions Business Law governs the brokerage real estate business.

#### 6 The Building Standard Law

The Building Standard Law provides standards concerning the construction of buildings.

#### 7 The City Planning Law

The City Planning Law regulates land development and zonings.

#### 8 Financial Instruments and Exchange Law

The trust beneficial interests under a property trust agreement by which real estate is entrusted to a property trustee are recognised as

securities under the Financial Instruments and Exchange Law and, accordingly, the Financial Instruments and Exchange Law governs the transactions of such trust beneficial interests.

#### 9 Resident Lodging Business Act (*Jutakushukuhakujigyoho*)

The Resident Lodging Business Act regulates residential building rental business during the owner's absence. The act would be enforced by January 2018.

## 1.2 What is the impact (if any) on real estate of local common law in your jurisdiction?

Under the Constitution, local governments are authorised to enact local regulations within the scope of the law, and some of these local regulations substantially affect the use of land.

## 1.3 Are international laws relevant to real estate in your jurisdiction? Please ignore EU legislation enacted locally in EU countries.

There are no international laws relevant to real estate in Japan in any material respect.

## 2 Ownership

### 2.1 Are there legal restrictions on ownership of real estate by particular classes of persons (e.g. non-resident persons)?

In general, there are no legal restrictions on the ownership of real estate by particular classes of persons. However, it should be noted that under the Foreign Exchange and Foreign Trade Law, non-residents in Japan are, in certain cases, required to report real estate transactions to the relevant governmental entity after such non-residents have acquired real estate.

## 3 Real Estate Rights

### 3.1 What are the types of rights over land recognised in your jurisdiction? Are any of them purely contractual between the parties?

#### Ownership

Under Japanese law, land and buildings are considered to be separate and independent real properties and ownership of land

and the building which stands on such land can belong to different persons. Accordingly, if A owns land and B owns a building on the land, it is necessary that B leases the land or obtains the superficies (see below) in order to secure his ownership of the building. If B leases the land, this lease is called a land lease.

Ownership is defined as a right to use, make a profit from and dispose of real estate under the Civil Code. Ownership is categorised as a real right. A “real right” (*bukken*) is a right that a person has over a thing and is distinguished from a “right arising out of obligational relationships” (*saiken*), which arises out of the relationships between persons. Real rights can be claimed against any other persons after their perfection by registration; hence, in this regard, ownership is not purely contractual.

Under Japanese law, ownership can be held by several persons. Such ownership is called joint ownership (*kyoyu*) and is subject to the Civil Code. Unit ownership (*kubunshoyu*) of a building under condominium ownership is subject to the Law for Condominiums, as well as the Civil Code.

#### Other property rights to use another person’s real estate:

##### 1 Superficies (*Chijiyoken*)

Superficies is a property right to use another person’s land for the purpose of the buildings and other structures thereon. Superficies can be created for installations underground or above the land. Superficies is not purely contractual due to its character as a property right.

##### 2 Servitude (*Chiekiken*)

Servitude is defined as a property right to use another person’s land for the convenience and benefit of one’s own land (e.g. right of way). Servitude is not purely contractual due to its character as a property right as well.

#### Leases:

##### 1 Lease with rents (*Chintaishaku*)

A lease is categorised as a contractual right and obligation under the Civil Code. However, under the Land Lease and House Lease Law: (i) a tenant of the land who owns a registered building on the land may assert his right against a new owner of the land; and (ii) a tenant of the building who was given possession of the building may assert his right against a new owner of the building. Hence, in practice, a lease is not purely contractual.

##### 2 Lease without consideration (*Shiyotaishaku*)

The Land Lease and House Lease Law does not apply to leases without consideration. Hence, under a lease without consideration, a lessee can only make claims against the lessor.

### 3.2 Are there any scenarios where the right to a real estate diverges from the right to a building constructed thereon?

As described in question 3.1 above, land and buildings are considered to be separate and independent real properties, and therefore, to be accurate, the right to the plot of land does not diverge from the right to a building constructed thereon. However, it is considered that a lessee who leases a building can use the site as well in such a manner as needed for the normal use of the building without a specific lease or superficies for the site. This right of a lessee of a building originates from the right of the lessor of the building to use the site. In that context, we can say that there is a scenario where the right to the plot of land diverges from the right to a building constructed thereon.

### 3.3 Is there a split between legal title and beneficial title in your jurisdiction and what are the registration consequences of any split?

Legal title and beneficial title of real estate cannot be split directly. However, legal title and beneficial interest can be deemed to be split by entrustment of real estate. If real estate is entrusted to a trustee, the legal title of the real estate is acquired by the trustee, and the trust beneficial interest of the real estate is acquired by the trust beneficiary. The entrustment should be registered after the entrustment, and when the trust beneficiary can be identified.

## 4 System of Registration

### 4.1 Is all land in your jurisdiction required to be registered? What land (or rights) are unregistered?

Almost all land is already registered, except for government property. With regard to buildings, such are required to be registered under the Law of Real Estate Registration but, in practice, some buildings remain unregistered until it becomes necessary to perfect the ownership against a third party (e.g. at the time of the purchase of the building).

### 4.2 Is there a state guarantee of title? What does it guarantee?

There is no state guarantee of title. However, under case law, any interests which are registered are deemed to be true and the burden of proof is imposed on the party who argues that the registered interests are null and void.

### 4.3 What rights in land are compulsorily registrable? What (if any) is the consequence of non-registration?

No rights over land are compulsorily registrable. It should be noted that real estate transactions take effect upon the mutual agreement of the parties and no formalities, including registration, are required. However, the holder of a real estate interest cannot assert its interest in real estate against third parties if such interest is not registered. Therefore, in practice, interests in real estate are likely to be registered.

### 4.4 What rights in land are not required to be registered?

See the answer to question 4.3 above.

### 4.5 Where there are both unregistered and registered land or rights is there a probationary period following first registration or are there perhaps different classes or qualities of title on first registration? Please give details. First registration means the occasion upon which unregistered land or rights are first registered in the registries.

There is no probationary period following first registration and there are no different classes of title on first registration.

#### 4.6 On a land sale, when is title (or ownership) transferred to the buyer?

Ownership is transferred to the buyer in accordance with the contract. In practice, sale and purchase agreements normally provide that ownership is transferred to the buyer once the buyer makes full payment of the purchase price.

#### 4.7 Please briefly describe how some rights obtain priority over other rights. Do earlier rights defeat later rights?

No real estate interest (except for a building lease interest, which can be perfected by delivery, and certain liens) can be perfected without registration. Namely, no real estate interest has priority until it has been registered over any real estate interests created on the real estate. Further, priority among registered real estate encumbrances (e.g., mortgages) is determined, in general, by the order in which they were registered. Earlier registered encumbrances have priority over later registered encumbrances.

### 5 The Registry / Registries

#### 5.1 How many land registries operate in your jurisdiction? If more than one please specify their differing rules and requirements.

One real estate registry, the Legal Affairs Bureau, operates in Japan.

#### 5.2 Does the land registry issue a physical title document to the owners of registered real estate?

Yes, the Land Registry issues a physical title document to the owners of registered real estate.

#### 5.3 Can any transaction relating to registered real estate be completed electronically? What documents need to be provided to the land registry for the registration of ownership right? Can information on ownership of registered real estate be accessed electronically?

Legally, transactions relating to registered real estate can be completed electronically. However, please note that, in reality, in many cases the transaction cannot be completed electronically because many documents necessary for registration have not yet been digitised.

When the ownership of real estate is transferred by sale and purchase, in order to apply for the registration of the transfer of the ownership of the real estate in writing instead of online application, the following are required: (i) information certifying the cause of registration (*toki gennin shomei jouhou*), such as the sale and purchase agreement or the document summarising the necessary information; (ii) information for registration identification (*touki shikibetsu jouhou*) or a title document of the seller; (iii) a certificate of a seal impression of the seller; and (iv) a power of attorney from each of the seller and buyer. When the application for the registration is made electronically (i.e., online application), (iii) can be replaced by the electronic certificates.

Almost all information on ownership of registered real estate can be accessed electronically.

#### 5.4 Can compensation be claimed from the registry/registries if it/they make a mistake?

Under the State Compensation Law, compensation can be claimed from the registry if the relevant officials make a mistake in the course of registration, either negligently or intentionally.

#### 5.5 Are there restrictions on public access to the register? Can a buyer obtain all the information he might reasonably need regarding encumbrances and other rights affecting real estate?

There are no restrictions on public access to the registry. However, it should be noted that one should examine written agreements in order to obtain all of the information one might need because the details of interests over real estate, including leases or mortgages, do not necessarily fall within the scope of registrable matters.

### 6 Real Estate Market

#### 6.1 Which parties (in addition to the buyer and seller and the buyer's finance provider) would normally be involved in a real estate transaction in your jurisdiction? Please briefly describe their roles and/or duties.

##### a) Selling and purchasing agents (or realtors)

The real estate broker, named “*takuchitatemono-torihikigyosha*”, would normally be involved in real estate transactions in Japan. He makes it his business to act as: (i) an intermediary between the seller and buyer; or (ii) an agent of the seller or buyer. Governmental approval is required to engage in such business as a broker. A real estate broker owes a duty of care to his buyer or seller client under the Real Estate Transactions Business Law, including, without limitations, the duty to disclose important information about the subject property. It should be noted that a real estate broker may work for both his buyer client and his seller client simultaneously when he acts as an intermediary and that, in such cases, he may receive fees from both parties.

##### b) Lawyers

Lawyers would normally be involved in real estate transactions which are complicated and sizable in amount.

##### c) Notaries

It is unusual for notaries to be involved in real estate transactions.

##### d) Others

Judicial Scriveners (*shihoushosi*) are involved in almost all real estate transactions. They are professionals of the registry and it is commonly understood that one cannot complete the registration process without their involvement.

#### 6.2 How and on what basis are these persons remunerated?

The upper limit of compensation for a real estate broker is: (i) 6% of the amount of a transaction if he acts as an agent; and (ii) 3% of the amount of a transaction if he acts as an intermediary under the Real Estate Transactions Business Law. In the case of (ii), he can be compensated by both the seller and the buyer if both are his clients, hence compensation may amount to 6%.

With regard to other persons, it depends on the person as to how and on what basis they are remunerated.

**6.3 Do you feel there is a noticeable increase in the availability of capital to finance real estate transactions in your jurisdiction, whether equity or debt? What are the main sources of capital you see active in your market?**

While we feel there continues to be a gradually increasing trend in the availability of debt finance, we feel the availability of equity finance is levelling off. The market share prices of the investment equities of J-REITs (investment corporations under the Act on Investment Trusts and Investment Corporations) show a gradually decreasing trend. The reason is that it has become difficult to acquire commercial real estate under the current circumstances for J-REITs. In addition, the Guidelines for IPOs of J-REITs were revised by the Tokyo Stock Exchange, because the performance of the J-REITs that conducted IPOs last year was poor. Accordingly, the validity of the offering price is to be reviewed strictly, and IPOs have become more difficult than ever before. With regard to loans for real estate made by Japanese banks, a year-to-year comparison of new loans in the same period this year as of March, 2017 were higher than those in the previous fiscal year and the total value of new loans has continued to show a gradually increasing trend. The balance of the loans for the real estate industry became the highest ever at the end of March 2017.

Our information is based on the survey reports with regard to Japanese real estate issued by the Ministry of Land, Infrastructure, Transport and Tourism and other reports issued by the association for real estate securitisation, trust banks, asset management companies and other companies related to real estate businesses.

**6.4 What is the appetite for investors and developers in your region to look beyond primary real estate markets and transact business in secondary or even tertiary markets? Please give examples of significant secondary or tertiary real estate transactions, if relevant.**

Land prices in Tokyo and Nagoya, which are primary real estate markets in Japan, and land prices in secondary real estate markets in Japan (Sapporo, Sendai, Hiroshima and Fukuoka) have shown an upwards trend in residential areas. Land prices in Osaka, which is a primary real estate market in Japan, have not changed compared with last year. Land prices in the primary real estate markets in Japan (Tokyo, Osaka, and Nagoya) and land prices in secondary real estate markets in Japan (Sapporo, Sendai, Hiroshima and Fukuoka) have shown an upwards trend in business areas. In provincial areas, land prices have continued to decrease; however, the rate of such decreases in land prices has slowed, and the range of decrease is the least in 24 years. Recently, the scale of construction and acquisition of hotels and logistics in local areas has been increasing.

**6.5 Have you observed any trends in particular market sub sectors slowing down in your jurisdiction in terms of their attractiveness to investors/developers? Please give examples.**

We believe that there has been no specific trend indicating a slowdown in particular market sub-sectors.

**7 Liabilities of Buyers and Sellers in Real Estate Transactions**

**7.1 What (if any) are the minimum formalities for the sale and purchase of real estate?**

The transfer of real estate takes effect upon the mutual agreement of the parties and no formalities are needed.

**7.2 Is the seller under a duty of disclosure? What matters must be disclosed?**

In general, the seller is not under a duty of disclosure. However, it should be noted that, under the Civil Code, the seller is liable for any latent defects, latent encumbrances and loss of ownership (hereinafter collectively referred to as the “Defects”), even if there are no warranties to cover the Defects. The buyer may seek damages for the Defects and if, as a result of the Defects, the buyer cannot attain the purpose for which he purchased the property, he may also cancel the agreement. In the event that the real estate broker is involved in real estate transactions, such real estate broker shall provide certain material information of real estate in writing to the buyer under the Real Estate Transactions Business Law. From April 1, 2018, the real estate broker is required to provide information concerning whether an inspection of the building was conducted and the inspection report for the building (if any) to its client, if the subject property is an existing building.

**7.3 Can the seller be liable to the buyer for misrepresentation?**

If the seller induces the buyer to enter into a real estate transaction by fraudulent misrepresentation, the buyer may cancel such transaction and/or seek damages under the Civil Code.

**7.4 Do sellers usually give contractual warranties to the buyer? What would be the scope of these? What is the function of warranties (e.g. to apportion risk, to give information)? Are warranties a substitute for the buyer carrying out his own diligence?**

As we mentioned in question 7.2, the seller is liable for the Defects even if there are no warranties to cover the Defects. Hence, in practice, warranties normally cover those matters about which the buyer has special concerns. The seller is liable for any misrepresentation. It depends on the parties as to whether warranties are a substitute for the buyer carrying out his own due diligence.

**7.5 Does the seller warrant its ownership in any way? Please give details.**

As we mentioned in question 7.2, the seller is liable for the Defects or loss of ownership even if this is not expressly provided for in the agreement.

**7.6 What (if any) are the liabilities of the buyer (in addition to paying the sale price)?**

In general, the buyer has no liabilities in addition to paying the sale price.



## 8 Finance and Banking

### 8.1 Please briefly describe any regulations concerning the lending of money to finance real estate. Are the rules different as between resident and non-resident persons and/or between individual persons and corporate entities?

In general, under the Money Lending Business Law (*kashikingyoho*), a grant from the relevant governmental authorities must be obtained in order to engage in the money lending business, including the lending of money to finance real estate. However, there are no regulations concerning the lending of money specifically to finance real estate.

### 8.2 What are the main methods by which a real estate lender seeks to protect itself from default by the borrower?

The main method is a mortgage on the real estate under the Civil Code. The base mortgage (*neteito*) is also a popular method of protecting a lender from default by the borrower. The base mortgage secures the unspecified obligation of the borrower; however, the amount to be secured under the base mortgage is limited to the specified amount (*kyokudogaku*) prescribed under the mortgage agreement.

### 8.3 What are the common proceedings for realisation of mortgaged properties? Are there any options for a mortgagee to realise a mortgaged property without involving court proceedings or the contribution of the mortgagor?

There are two types of proceedings for the realisation of mortgaged properties.

One way is a foreclosure (*keibai*) whereby the mortgagee can collect receivables secured by the mortgage from the proceeds of sale of the mortgaged properties through a legal process involving court proceedings. The contribution of the mortgagor is not necessary for the foreclosure. As those who would like to buy mortgaged properties cannot investigate the property (especially inside the building to ascertain whether there is an unlawful occupant) and have no choice but to depend on a simple report on the properties prepared by a court execution officer, they cannot judge the value of the properties (including the risk associated with them) accurately. Therefore, the sale price at an auction tends to be lower than the actual market price.

The second way is a voluntary sale (*nin-i baikyaku*), whereby a mortgagee can call in the receivable from the proceeds of the sale of the mortgaged properties without involving court proceedings. A mortgagor can sell the properties at a price close to the market price. The contribution of the mortgagor is indispensable for this process. Voluntary sales are more advantageous to both mortgagee and mortgagor than foreclosures in the light of cost, number of days necessary for the realisation and the amount of the proceeds of the sale, and therefore, voluntary sales are commonly used.

Furthermore, without taking the above procedures, mortgagees can collect their receivable by seizing the rental income of the mortgaged properties at very low expense (*butsujo daii*). However, as the mortgagees do not have the right to manage the mortgaged properties, if the mortgagor abandons the administration of the properties, it may be difficult for the mortgagee to collect the rent. There is also another way to execute against earnings from the

property. That is, upon receiving an allegation from the mortgagee, a manager can be appointed by the court to manage the properties under compulsion, and the mortgagee can collect receivables from the earnings (*shu-eki shikkou*). However, this procedure is not used often due to its high cost of management.

### 8.4 What minimum formalities are required for real estate lending?

Theoretically, no formalities are required for real estate lending; however, in practice, a written form is usually used in real estate lending transactions.

### 8.5 How is a real estate lender protected from claims against the borrower or the real estate asset by other creditors?

The main method is a mortgage or base mortgage (*neteito*) on the real estate under the Civil Code. If the mortgage or base mortgage is registered in the registry, the real estate lender as a mortgagee may assert its rights of mortgage or base mortgage against the borrower or other creditors who do not register their mortgage or base mortgage right prior to the real estate lender's registration.

### 8.6 Under what circumstances can security taken by a lender be avoided or rendered unenforceable?

Under circumstances where a security on the subject property is established by the property owner to the prejudice of third parties and a third party exercises its right of avoidance of fraudulent actions, the established security may be rescinded under the Civil Code. Under circumstances where a security on the subject property is established by the property owner after the property owner has become unable to pay debts or a petition for the commencement of bankruptcy proceedings has been filed, the established security may be avoided under the Bankruptcy Act, Civil Rehabilitation Act.

### 8.7 What actions, if any, can a borrower take to frustrate enforcement action by a lender?

Enforcement action under a legal process involving court proceedings is governed by the Civil Execution Act. If the borrower considers that the enforcement action has no grounds, the borrower can object to the enforcement under the Civil Execution Act.

## 9 Tax

### 9.1 Are transfers of real estate subject to a transfer tax? How much? Who is liable?

The seller is an individual:

#### 1 Income tax and individual inhabitant tax

If the seller is an individual, income tax and individual inhabitant tax are levied on the seller. The tax base of the income tax is broken into two categories: the long-term capital gain; and the short-term capital gain. The long-term capital gain is derived from real estate owned for more than five years and the short-term capital gain is any capital gain other than the long-term capital gain. In the case of the long-term capital gain, the tax rate is 20.315% (15% income tax, 0.315% special income tax for reconstruction and 5% individual inhabitant tax). In the case of the short-term capital gain, the tax rate is 39.63%

(30% income tax, 0.63% special income tax for reconstruction and 9% individual inhabitant tax).

## 2 Stamp tax

A stamp tax is levied on the parties to the contract. This tax can be up to 600,000 yen.

## 3 Registration and licence tax

A registration and licence tax is levied on the applicant for registration. This tax rate is 2% of the tax base of the value as recorded in the tax rolls (approximately 70% of the market value if the property is land). It should be noted that a tax rate of 1.5% shall apply to the applicant for registration in relation to a transfer of land which occurs between April 1, 2015 and March 31, 2017.

## 4 Real property acquisition tax

A real property acquisition tax is levied on the person acquiring the subject property. This tax rate is 4% of the tax base of the value as recorded in the tax rolls. It should be noted that a tax rate of 3% shall apply if the subject property is land or housing acquired between April 1, 2006 and March 31, 2018.

### The seller is a corporation:

#### 1 Corporation tax, Corporate inhabitant tax and Enterprise tax

Corporation taxes, corporate inhabitant taxes and enterprise taxes are levied on net income. The total amount of these tax rates is lower than 30% from April 1, 2016.

#### 2 Stamp tax, Registration and licence tax, and Real property acquisition tax

A stamp tax, registration and licence tax, and real property acquisition tax, as we mentioned above, may also apply to the transfer of real estate.

## 9.2 When is the transfer tax paid?

Income taxes and individual inhabitant taxes become due on March 15 of the year following the transfer of the real asset.

Corporation taxes, corporate inhabitant taxes and enterprise taxes become due within two months after the end of the corporation's business year.

The stamp tax is paid by affixing a stamp on the documents. Such stamps are sold in post offices. The registration and licence tax is paid on the occasion of an entry. The real property acquisition tax is paid after the transfer by the date specified by the tax bureau.

## 9.3 Are transfers of real estate by individuals subject to income tax?

See the answer to question 9.1 above.

## 9.4 Are transfers of real estate subject to VAT? How much? Who is liable? Are there any exemptions?

A consumption tax is applied to the transfer of the ownership of a building. The tax rate increased from 5% to 8% (6.3% national consumption tax and 1.7% local consumption tax) on April 1, 2014, and is expected to increase to 10% (7.8% national consumption tax and 2.2% local consumption tax) on October 1, 2019. A taxpayer is an enterprise which transfers taxable assets; however, the tax amount is normally added to the price of the assets and is ultimately borne by consumers. The transfer of land is not taxable and the lease of residential buildings and land is not taxable.

## 9.5 What other tax or taxes (if any) are payable by the seller on the disposal of a property?

As we mentioned in question 9.1, the income tax, individual inhabitant tax, corporation tax, corporate inhabitant tax and enterprise tax may be payable by the seller on the disposal of a property. A registration and licence tax is payable by the seller and the buyer under the law. However, it should be noted that the parties always agree in practice that such tax be borne fully by the buyer.

## 9.6 Is taxation different if ownership of a company (or other entity) owning real estate is transferred?

Theoretically, there is no difference. If the ownership of a company ("Y") owning real estate is transferred by a parent company ("X"), the corporation tax, corporate inhabitant tax and enterprise tax are levied on X on the basis of the capital gain that results from the transfer of ownership. Capital gains that result from the transfer of ownership by X are theoretically equal to the capital gains that result from the transfer of real estate by Y if Y has no assets other than the real estate. Furthermore, there is no difference theoretically if X is an individual, provided that Y has no assets other than the real estate. It should be noted that in the case of a transfer of ownership which satisfies legal requirements under the Special Taxation Measures Law (e.g. approximately 70% of all assets of a company is real estate), a stakeholder may be taxable as if such stakeholder transfers real estate.

## 9.7 Are there any tax issues that a buyer of real estate should always take into consideration/conduct due diligence on?

In general, there are no tax issues that a buyer of real estate should always take into consideration/conduct due diligence on, other than the above.

## 10 Leases of Business Premises

### 10.1 Please briefly describe the main laws that regulate leases of business premises.

The Land Lease and House Lease Law (hereinafter referred to as the "Law" in this section 10 and section 11) and the Civil Code regulate matters concerning the lease of real estate. The Law applies to land leases for owning buildings and building leases, including office buildings and residential buildings. The Civil Code governs the lease of real estate for the purpose of any temporary use to which the Law does not apply, and land leases for purposes other than owning buildings.

### 10.2 What types of business lease exist?

Business premises leases are categorised as follows:

#### Land lease for owning a building

##### 1 Ordinary land lease

The Law specifically regulates matters concerning the period, validity, renewal and legal proceedings related to changes in conditions of the ordinary land lease for owning a building. It should be noted that under the Law, an ordinary land lease for owning a building is automatically renewed and the landlord cannot object to such renewal without a justifiable reason. Such justifiable

reasons are not easily found. Hence, under an ordinary land lease, the landlord's refusal to renew the lease is subject to strict control.

## 2 Fixed-term land lease

A fixed-term land lease for owning a building is not renewable under the Law. The fixed-term land lease was introduced because of concerns that the strict controls over the landlord's refusal to renew the lease could inhibit the effective use of real estate. There are three types of fixed-term land lease: (i) the general fixed-term land lease available for both residential purposes and businesses; (ii) the land lease with a special agreement on building assignments; and (iii) the fixed-term land lease for businesses under the Law.

### Building lease

#### 1 Ordinary building lease

Under the Law, the renewal of an ordinary building lease cannot be rejected by the landlord without a justifiable reason, which is not easily found.

#### 2 Fixed-term building lease

A fixed-term building lease is not renewable under the Law.

### 10.3 What are the typical provisions for leases of business premises in your jurisdiction regarding: (a) length of term; (b) rent increases; (c) tenant's right to sell or sub-lease; (d) insurance; (e) (i) change of control of the tenant; and (ii) transfer of lease as a result of a corporate restructuring (e.g. merger); and (f) repairs?

#### a) Length of term

##### Land lease for owning a building

#### 1 Ordinary land lease

Under the Law, the term of the ordinary land lease for owning a building shall be 30 years, and when a term longer than 30 years has been provided, such term shall be effective.

#### 2 Fixed-term land lease

Under the Law, the term of the general fixed-term land lease for owning a building shall be 50 years or more. With regard to a lease with a special agreement on building assignments, the right to assign the building to the landlord at a reasonable consideration in order to terminate the ordinary lease can be exercised more than 30 years after the commencement of the lease. With regard to the fixed-term land lease for businesses, the term of the lease shall be 10 years or more but less than 50 years.

### Building lease

#### 1 Ordinary building lease

The term of the ordinary building lease depends on the agreement.

#### 2 Fixed-term building lease

The term of the fixed-term building lease depends on the agreement.

#### b) Rent increases

Under the Law, if rent becomes inadequate (especially if it differs significantly from the market rent), the landlord or tenant may request an increase or decrease in the amount of rent. This applies to both land leases for owning buildings and building leases. The right to request an increase can be modified in the lease agreement. It should be noted that the right to request a decrease cannot be excluded from the agreement, except in the case of fixed-term building leases. The provisions with respect to rent increases or decreases are prepared taking into consideration the above legal restrictions.

#### c) The tenant's right to sell or sub-lease

The lease agreement usually prohibits the tenant from assigning the lease or sub-leasing without the consent of the landlord.

#### d) Insurance

In general, there is no provision in relation to insurance in the lease agreement and both the lessor and the lessee purchase insurance at their own expense to cover their properties.

#### e)(i) Change of control of the tenant

The lease agreement usually does not prohibit the change of control of the tenant.

#### (ii) Transfer of lease as a result of a corporate restructuring (e.g. merger)

The lease agreement usually prohibits the transfer of the lease as a result of a corporate restructuring.

#### f) Repairs

The Civil Code provides that the landlord is liable for all repairs necessary for the use of the premises, and some lease agreements provide for this as well. However, if the parties agree in a way that differs from this provision, their agreement prevails over such provision under the Civil Code. Usually, the lease agreement stipulates that the landlord is required to make repairs.

### 10.4 What taxes are payable on rent either by the landlord or tenant of a business lease?

If the landlord is an individual, income tax and individual inhabitant tax are levied on the landlord. The income tax rate of such tax is progressive.

If the landlord is a corporation, corporation taxes, corporate inhabitant taxes and enterprise taxes are levied on the landlord.

A consumption tax is applied to business building leases.

### 10.5 In what circumstances are business leases usually terminated (e.g. at expiry, on default, by either party etc.)? Are there any special provisions allowing a tenant to extend or renew the lease or for either party to be compensated by the other for any reason on termination?

#### Cancellation

Under the Civil Code, in the event that a party breaches a lease agreement, the other party can cancel that lease agreement provided that the party has required the breaching party to cure the breach within a reasonable period, if such cure is possible. However, under case law, the landlord cannot cancel a lease agreement if a tenant can establish the existence of any special circumstance under which there still remains a relationship of mutual trust between the landlord and the tenant even after the breach. It should be noted that under case law, non-payment of rent may entitle a landlord to terminate the lease, because such non-payment may destroy a relationship of mutual trust between the landlord and the tenant.

#### Renewal

As we mentioned in question 10.2, under the Law, a landlord of an ordinary lease cannot object to a renewal without a justifiable reason if such renewal is requested by the tenant. Such justifiable reasons are not easily found. Hence, under an ordinary lease, a landlord's refusal to renew the lease is subject to strict control. It should be noted that an offer of compensation by a landlord may be considered when the court finds that there is a justifiable reason. Hence, in practice, if a landlord desires to reject the renewal of a lease in any way, it is likely that the landlord will make such an offer.

On the contrary, a fixed-term lease is not renewable and terminates upon the expiration of the lease term.

**10.6 Does the landlord and/or the tenant of a business lease cease to be liable for their respective obligations under the lease once they have sold their interest? Can they be responsible after the sale in respect of pre-sale non-compliance?**

No, the landlord and/or the tenant of a business lease do not cease to be liable for their respective obligations under the lease once they have sold their interests, because any obligations arising out of the lease prior to the transfer of the lease cannot be assigned without any specific agreement. They can be responsible in respect of pre-sale non-compliance.

**10.7 Green leases seek to impose obligations on landlords and tenants designed to promote greater sustainable use of buildings and in the reduction of the “environmental footprint” of a building. Please briefly describe any “green obligations” commonly found in leases stating whether these are clearly defined, enforceable legal obligations or something not amounting to enforceable legal obligations (for example aspirational objectives).**

Currently, there are no such “green obligations” commonly found in leases.

However, please note that the Tokyo Metropolitan government requires the owners of certain large greenhouse gas emitters, including office buildings, to reduce greenhouse gas emissions. This local regulation also requires tenants to cooperate with the owners of buildings on the reduction of greenhouse gas emissions. Therefore, the owners of buildings may add certain provisions relating to energy efficiency to the leases to impose some “green obligations” on tenants in the future.

## 11 Leases of Residential Premises

**11.1 Please briefly describe the main laws that regulate leases of residential premises.**

Same as the answer to question 10.1 above.

**11.2 Do the laws differ if the premises are intended for multiple different residential occupiers?**

There is no difference in the laws whether or not the premises are intended for multiple, different, residential occupiers.

**11.3 What would typical provisions for a lease of residential premises be in your jurisdiction regarding: (a) length of term; (b) rent increases/controls; (c) the tenant’s rights to remain in the premises at the end of the term; and (d) the tenant’s contribution/obligation to the property “costs” e.g. insurance and repair?**

**a) Length of term**

**Land lease for owning a building**

Under the Law, the term of the ordinary land lease for owning a building shall be 30 years, and when a term longer than 30 years has been provided, such term shall be effective.

**Building lease**

The same answer as set out for question 10.3 above.

**b) Rent increases/controls**

The same answer as set out for question 10.3 above.

**c) The tenant’s rights to remain in the premises at the end of the term**

**Land lease for owning a building**

**1 Ordinary land lease**

A lessee under an ordinary land lease may renew the lease unless the lessor objects to the renewal with a justifiable reason, which is difficult to establish.

**2 Fixed-term land lease**

A lessee under a fixed-term land lease may not renew the lease.

**Building lease**

**1 Ordinary building lease**

A tenant under an ordinary building lease may renew the lease unless the landlord objects to the renewal with a justifiable reason, which is difficult to establish. Where the building has deteriorated and the earthquake resistance of the building is not adequate, if the building owner offers to pay adequate compensation for the removal of the tenant, a justifiable reason may be established.

**2 Fixed-term building lease**

A tenant under a fixed-term building lease may not renew the lease.

**d) The tenant’s contribution/obligation to the property “costs”, e.g. insurance and repair**

The Civil Code provides that the landlord is liable for all repairs necessary for the use of the premises, and some lease agreements provide for this as well. If the parties agree in a way that differs from this provision, their agreement prevails over the provisions under the Civil Code; however, such an agreement is rare under a lease of residential premises. A tenant would, therefore, not purchase an insurance policy with respect to the property.

**11.4 Would there be rights for a landlord to terminate a residential lease and what steps would be needed to achieve vacant possession if the circumstances existed for the right to be exercised?**

See the answer to question 10.5 and 11.3 (c) above regarding the right for a landlord to terminate a residential lease. In general, if a lessee does not vacate a building, a building lessor may appeal to a court to carry out a compulsory execution, which is executed to release the building from the lessee’s possession and have the lessor acquire the possession of such building.

## 12 Public Law Permits and Obligations

**12.1 What are the main laws which govern zoning/permitting and related matters concerning the use and occupation of land? Please briefly describe them and include environmental laws.**

**Zoning**

The City Planning Law is the main law which governs real property development and zonings. In general, in urbanisation control areas (*shigaikachouseikuiki*), the development of land is subject to strict control. In areas designated for urbanisation (*shigaikakuiki*), development may be allowed if such development satisfies the requirements for development under the City Planning Law. The Building Standard Law regulates the land use of the designated area,



the ratio of the total floor area to the site area (*yosekiritsu*), the ratio of the building area to the site area of the building (*kenpeiritsu*), and other relevant matters.

#### Environmental law

The Soil Contamination Countermeasures Law is the main environmental law concerning land. Under this Law, if the land is designated as contaminated to an extent that may harm the health of inhabitants in the neighbourhood through underground water, etc., the prefectural governor may order the owner of such land to take appropriate measures, including the clean-up of such land.

It should be noted that the owners of buildings are sometimes required to take appropriate measures to remove the health risks to inhabitants of buildings associated with the presence of asbestos.

#### 12.2 Can the state force land owners to sell land to it? If so please briefly describe including price mechanism.

In general, the state may not force land owners to sell land to the state. However, under the Land Expropriation Law, the state is entitled to take land in exercise of the right of eminent domain in specified cases (e.g., such land is located in the area specified for planned public facilities such as roads). The price process is controlled under the Land Expropriation Law, and the relevant governmental authority may determine such price in accordance with the Land Expropriation Law, considering the fair market prices, etc.

#### 12.3 Which bodies control land/building use and/or occupation and environmental regulation? How do buyers obtain reliable information on these matters?

The city, town and village control land/building use and/or occupation, and environmental matters, in accordance with the laws and local regulations. The buyers can obtain information concerning these matters in cities, towns and villages.

#### 12.4 What main permits or licences are required for building works and/or the use of real estate?

In general, confirmations under the Building Standard Law are required for building works and the use of real estate. In the case of land development, permits under the City Planning Law and relevant laws are required. The Agricultural Land Law governs the use of farmland.

#### 12.5 Are building/use permits and licences commonly obtained in your jurisdiction? Can implied permission be obtained in any way (e.g. by long use)?

A building/use confirmation can be obtained if the building/use satisfies the requirements under the relevant law. In cases where one seeks more benefits for the building/use (e.g., a greater ratio of total floor area to site area), special permits are necessary and such permits are not necessarily easily obtained. Implied permission cannot be obtained.

#### 12.6 What is the appropriate cost of building/use permits and the time involved in obtaining them?

It depends on each case. It should be noted that under the Building Standard Law, the building official shall give notice that the building plan conforms to the regulations within a specific period, depending on the nature of the building. In addition, qualified private citizens may give confirmation for the building/use.

#### 12.7 Are there any regulations on the protection of historic monuments in your jurisdiction? If any, when and how are they likely to affect the transfer of rights in real estate?

Yes, there are regulations on the protection of historic monuments in Japan, such as the Act regarding the Protection of Cultural Properties. Under the law, owners of important cultural properties (such as old temples and castles) or registered tangible cultural properties (such as old buildings and monuments) are required to manage and repair them. Even if the owner would like to sell such important cultural properties to a third party for a certain price, they will be required to give a right of first refusal to the Commissioner for Cultural Affairs for the same price. If the Commissioner accepts the offer within 30 days, a sale will be carried out between the seller and the Commissioner. On the other hand, there is no legal restriction on the transfer of the ownership right of registered tangible cultural properties. The seller is only required to deliver the registration certificate of the property initially delivered by the Minister of Education, Culture, Sports, Science and Technology to the buyer.

#### 12.8 How can e.g. a potential buyer obtain reliable information on contamination and pollution of real estate? Is there a public register of contaminated land in your jurisdiction?

Information about designated contaminated areas under the Soil Contamination Countermeasures Law is made public at the offices of prefectural governments. Such information is also available on the website of the Ministry of the Environment or other prefectural governments. Please note that under the Soil Contamination Countermeasures Law, while areas containing amounts of contaminating substances greater than the amount stipulated in the relevant criteria detected as a result of legally compulsory investigations shall be designated as contaminated areas, areas containing amounts of contaminating substances exceeding such criteria found as a result of voluntary investigations will not be designated as such areas without the voluntary application for such designation by the owner, the manager or the occupant of the land. As designated contaminated areas have been found usually due to voluntary investigations and cases where such voluntarily applications were made are limited, such designated contaminated areas are only a part of the contaminated areas in Japan. Therefore, buyers should take their own steps to survey land suspected of being contaminated or have the seller survey the land before they purchase it.

#### 12.9 In what circumstances (if any) is environmental clean-up ever mandatory?

Under the Soil Contamination Countermeasures Law, in the case of: (i) the abolition of manufacturing factories using certain hazardous materials; or (ii) a prefectural governor's order, which may be delivered if the prefectural governor decides that land contamination may injure the health of the inhabitants, land surveys shall be implemented. In addition, under the Soil Contamination Countermeasures Law, if a land owner intends to develop a large area of land (at least 3,000 square metres), the land owner is required to notify the governor of each prefecture of the development at least 30 days before beginning any changes. If the governor determines that the land is possibly contaminated and orders the land owner to investigate, the landowner must comply. If the results of such land surveys do not satisfy the relevant regulations, the prefectural

governor can designate such land as a contaminated area. The prefectural governor can order the land owner to clean up such land if it is located within an area designated as contaminated and if there is a risk to the health of people.

#### **12.10 Please briefly outline any regulatory requirements for the assessment and management of the energy performance of buildings in your jurisdiction.**

The Act on the Improvement of Energy Consumption Performance of Buildings aims to strengthen energy efficiency measures in buildings. When construction clients attempt to undertake new construction/extensions/renovations on buildings at or over a certain size (at least 300 square metres of floor space), they must acquire a certification of conformity with energy efficiency standards, or notify the administrative agency with jurisdiction depending on the use and size and type of the building. Large-scale, non-residential buildings that are not compliant with energy efficiency standards become ineligible for certification of the Building Standards Law.

### **13 Climate Change**

#### **13.1 Please briefly explain the nature and extent of any regulatory measures for reducing carbon dioxide emissions (including any mandatory emissions trading scheme).**

##### **1 Nationwide mandatory emissions trading scheme**

There is no nationwide mandatory emissions trading scheme in Japan.

##### **2 Regional mandatory emissions trading scheme in Tokyo**

The Tokyo Metropolitan government requires the owners of greenhouse gas emitters, including office buildings, which have used more energy than the equivalent of 1,500 kilolitres of oil for the previous three successive years, to reduce greenhouse gas emissions from April 1, 2010. The target for the first compliance period (April 2010 to March 2015) was set at 6% or 8% (according to the type of building) below base emissions and the target for the second compliance period (April 2015 to March 2020) has been set at 15% or 17% (according to the type of building) below the base emissions. The Tokyo metropolitan government plans to set subsequent compliance periods every five years, with targets to reduce emissions during each period. In order for the owners of large buildings to fulfil this requirement, they are mandated not only to reduce greenhouse gas emissions from their respective buildings, but also permitted to trade in certain Tokyo Metropolitan government-sanctioned credits (the "Tokyo Credits"). They cannot use the Kyoto Credits (such as CERs) to accomplish their targets. Where the owners of large buildings cannot meet their obligations for greenhouse gas emission reductions, the Governor of Tokyo may order the owner to obtain additional Tokyo Credits according to a formula that multiplies the amount of the unfulfilled obligation by 1.3. Furthermore, where the owners of large buildings fail to obtain these additional Tokyo Credits, they will be punished. In addition, the Governor of Tokyo may publish the fact that the owner has failed to do so, obtain the credits in place of the owners, and subsequently may charge the owner for the cost of the purchase.

##### **3 Reporting obligation**

The only major legislative preparations that the Japanese government has made with respect to global warming so far are the reporting obligations with respect to the amount of greenhouse gas emissions, pursuant to the Act on Promotion of Global Warming

Countermeasures and the Energy Saving Law. Under these laws, a company that uses more energy than the equivalent of 1,500 kilolitres of oil in a previous year at its combined business buildings and factories located in Japan, and a franchisor that uses more energy than the equivalent of 1,500 kilolitres of oil in the preceding year at its combined business buildings (including the franchisees' business buildings) located in Japan, are obliged to submit reports detailing their greenhouse gas emission amounts.

Owners of buildings in Tokyo where more energy than the equivalent of 1,500 kilolitres of oil in a previous year was used are required to submit regular reports about greenhouse gas emission amounts to the Tokyo Metropolitan Governor.

#### **4 Increase of renewable energy**

From July 1, 2012, the Feed-in Tariff Law, establishing a fixed price buy-back programme for renewable energy, such as solar power, hydraulic power, geothermal power and the like, became effective. Under this programme, electric utilities are obliged to enter into power purchase agreements ("PPAs") and grid connection agreements when they are requested to do so by a renewable electricity producer, unless electric utilities can establish that they have justifiable reasons described in the related regulation. For three years, beginning from the effective date, special consideration to the profitability of producers will be given when prices and terms to be applied to the PPA are determined. In this regard: (a) 40 yen/kWh (excluding consumption tax) and a 20-year term can be applied to a PPA for solar power generation facilities (having an output of 10kW or more), if (i) certification for the facility has been obtained from the Minister of Economy, Trade and Industry by March 31, 2013, and (ii) submission to an electric utility of a written application for a grid connection agreement is completed by the same date; (b) 36 yen/kWh (excluding consumption tax) and a 20-year term can be applied to a PPA for solar power generation facilities (having an output of 10kW or more), if (i) the certification above has been obtained between April 1, 2013, and March 31, 2014, and (ii) the submission above is completed between the same periods; and (c) 32 yen/kWh (excluding consumption tax) and a 20-year term can be applied to a PPA for solar power generation facilities (having an output of 10kW or more), if (i) the certification above has been obtained between April 1, 2014, and March 31, 2015, and (ii) the submission above is completed between the same periods.

After April 1, 2015, the requirement used to determine the prices and terms for a project that has not yet been secured, changed. The prices and terms will be fixed as of the later of: (i) the date the grid connection agreement is executed (or the 270<sup>th</sup> day after the applicable grid connection application is filed if a grid connection agreement could not be executed due to a reason not attributable to the renewable electricity producer); and (ii) the date the amendment to the certification from the Minister of Economy, Trade and Industry (the "METI Certification") is issued, if applicable. The prices and terms that can be applied to a PPA for solar power generation facilities (having an output of 10kW or more) will be: (a) 29 yen/kWh (excluding consumption tax) with a 20-year term, if prices and terms are fixed between April 1, 2015, and June 30, 2015; (b) 27 yen/kWh (excluding consumption tax) with a 20-year term if prices and terms are fixed between July 1, 2015, and March 31 2016; and (c) 24 yen/kWh (excluding consumption tax) with a 20-year term if prices and terms are fixed between April 1, 2016, and March 31, 2017.

On May 25, 2016, an amendment to the Feed-in Tariff Law (the amendment shall hereinafter be referred to as the "Amended Act") was enacted and came into force on April 1, 2017. Under the Amended Act and its operations, it should be noted in particular that: (i) if the project has not executed a grid connection agreement

by no later than April 1, 2017, the METI Certification for the project will generally lapse; and (ii) if the project executes a grid connection agreement on and after August 1, 2016, a mandatory commercial operation commencement date will be set for the project (three years from the issue date of the METI Certification, for projects having an output of 10kW or more). Moreover, renewable electricity producers newly applying for a METI Certification must obtain the METI Certification for their business plans, rather than their facilities. Under the Amended Act, renewable electricity producers have to obtain and also maintain the METI Certification of the business plan, and a renewable electricity producer must satisfy certain requirements under the Amended Act, including the following requirements:

- (i) the business meets certain standards under the applicable rules;
- (ii) the business is likely to be conducted with efficiency and certainty, which includes whether it has obtained the utility's consent to grid connection; and
- (iii) the power generation facility meets certain standards under the applicable rules.

Further, renewable electricity producers which have obtained a METI Certification for their facilities before April 1, 2017, and have secured an interconnection agreement with the relevant utility by the end of March 2017, will be deemed to have received a METI Certification under the Amended Act, and in general, such renewable electricity producers must submit their respective business plans by September 30, 2017. After April 1, 2017, the prices and terms for producers newly applying for a METI Certification will be fixed as of the date the METI Certification is issued. The prices and terms that can be applied to a PPA for solar power generation facilities (having an output of 10kW or more and less than 2,000kW) will be 21 yen/kWh (excluding consumption tax) with a 20-year term,

if prices and terms are fixed between April 1, 2017, and March 31, 2018. Under the Amended Act, there is a bidding system to fix the applicable FIT price for solar power projects (solar power projects with power generation volume of over 2,000 kWh are initially subject to the bidding system) to address the fact that among other sources of renewable electricity there has been too much focus on solar power projects, and to reduce the increasing economic burden of the consumers of electricity.

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### **13.2 Are there any national greenhouse gas emissions reduction targets?**

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On July 17, 2015, the Government of Japan decided to set Japan's Intended Nationally Determined Contribution for greenhouse gas emissions at the level of a reduction of 26.0% by fiscal year 2030 compared to fiscal year 2013 (25.4% compared to fiscal year 2005) (approximately 1.042 billion t-CO<sub>2</sub> eq. as 2030 emissions), and submitted it to the United Nations Framework Convention on Climate Change (UNFCCC) Secretariat.

On May 13, 2016, the Government of Japan decided to set Japan's level of reduction of greenhouse gas emissions at 80.0% by 2050.

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### **13.3 Are there any other regulatory measures (not already mentioned) which aim to improve the sustainability of both newly constructed and existing buildings?**

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The Tokyo Metropolitan government requires owners who intend to construct or refurbish buildings with a total floor space of over 10,000 square metres to take measures to meet certain energy efficiency criteria.

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