

# Environment & Climate Regulation

*Contributing editors*

Carlos de Miguel Perales, Uría Menéndez

Per Hemmer, Bech-Bruun



2018

GETTING THE  
DEAL THROUGH

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# Environment & Climate Regulation 2018

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Publisher  
Gideon Robertson  
gideon.roberton@lbresearch.com

Subscriptions  
Sophie Pallier  
subscriptions@gettingthedealthrough.com

Senior business development managers  
Alan Lee  
alan.lee@gettingthedealthrough.com

Adam Sargent  
adam.sargent@gettingthedealthrough.com

Dan White  
dan.white@gettingthedealthrough.com



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Beveridge & Diamond, PC

# Japan

Kiyoshi Honda and Takumi Naito

Nagashima Ohno & Tsunematsu

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## Legislation

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### 1 Main environmental regulations

**What are the main statutes and regulations relating to the environment?**

Environmental law in Japan comprises a diverse set of legal regimes. The main laws, regulations and standards relating to the environment are as follows:

#### Overall environmental policy and related regulations

- The Basic Environmental Law (Law No. 91 of 1993);
- the Basic Environmental Plan (created in 1994 based on the Basic Environmental Law);
- the Nature Conservation Law (Law No. 85 of 1972); and
- the Environmental Impact Assessment Law (Law No. 81 of 1997).

#### Air pollution

- The Air Pollution Control Law (Law No. 97 of 1968);
- the Law Concerning Special Measures for Total Emission Reduction of Nitrogen Oxides from Automobiles in Specified Areas (Law No. 70 of 1992); and
- the Environmental Quality Standard for Air (created based on the Basic Environmental Law and Public Nuisance Countermeasures Law).

#### Water pollution

- The Water Pollution Control Law (Law No. 138 of 1970);
- the Law concerning Special Measures for the Preservation of Lake Water Quality (Law No. 61 of 1984); and
- the Environmental Quality Standard for Water (created based on the Basic Environmental Law and Public Nuisance Countermeasures Law).

#### Soil contamination

- The Soil Contamination Countermeasures Law (Law No. 53 of 2002); and
- the Environmental Quality Standard for Soil (created based on the Basic Environmental Law and Public Nuisance Countermeasures Law).

#### Noise

- The Noise Regulation Law (Law No. 98 of 1968); and
- the Environmental Quality Standard for Noise (created based on the Basic Environmental Law).

#### Vibration

- The Vibration Regulation Law (Law No. 64 of 1976).

#### Offensive odours

- The Offensive Odour Control Law (Law No. 91 of 1971).

#### Ground subsidence

- The Environmental Quality Standard for Groundwater (created based on the Basic Environmental Law).

## Waste and recycling

- The Waste Management and Public Cleansing Law (Law No. 137 of 1970); and
- various laws related to recycling (see question 4).

## Hazardous products and substances

- See question 13.

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## 2 Integrated pollution prevention and control

### Is there a system of integrated control of pollution?

There is no particular system of integrated control of pollution in Japan; however, Japanese law recognises that protection of the environment is the responsibility of all segments of society (national and local governments, industry and businesses, the general public, etc). Japan's general approaches with regard to pollution control and environment protection are set forth in the Basic Environmental Law and Basic Environmental Plan. Furthermore, it is generally recognised that Japan's environmental policy and laws are based on three fundamental principles: the polluter pays, the polluter acts principle, the precautionary principle and the cooperative principle.

Under the polluter pays, the polluter acts principle, the responsible polluter is obligated to bear all pollution prevention costs and undertake corrective and other measures to maintain the environment in an acceptable state. The foregoing includes the obligation to pay restoration costs and victim compensation. This principle is founded on article 8, paragraph 1 and article 37 of the Basic Environment Law, although the specific obligations and measures are set out in other laws.

The precautionary principle addresses pre-emptive measures for the protection of the environment. Under this principle, if a threat of environmental harm exists, preventative measures are to be taken even if the effectiveness of such measures in preventing the threatened harm is uncertain. The application of this principle can be seen in measures addressing chemical substance control, ozone protection, acid rain and global warming.

The objective of the cooperative principle is to promote agreements and relations between states, local governments and other public organisations and other entities through legislative or administrative decisions and undertakings. Although this principle is not expressly recognised under Japanese law, international cooperation, which is recognised in the Basic Environmental Law (article 5) as one of the basic principles for environmental conservation, is one aspect of the cooperative principle. Regimes that are considered to be expressions of the cooperative principle include pollution prevention pacts, hearings involving interested parties to discuss proposed laws, and public participation in the permit approval process.

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## 3 Soil pollution

### What are the main characteristics of the rules applicable to soil pollution?

In line with the polluter pays principle, under the Soil Contamination Countermeasures Law, corrective measures are to be performed by the persons responsible for the soil contamination, and the extent of each such person's responsibility is generally in proportion to the percentage of fault attributable to such person in relation to the

contamination and resulting damages. The foregoing notwithstanding, the Soil Contamination Countermeasures Law provides that an innocent owner, possessor or manager of contaminated property may be ordered to investigate the existence of contamination and remove the contamination or take other measures to address the contamination. Persons affected by soil contamination may assert claims against the polluter including compensation claims under the Soil Contamination Countermeasures Law. The polluter may also face criminal liability for causing or contributing to the soil contamination.

Under the Soil Contamination Countermeasures Law and local ordinances, soil contamination on a site must be disclosed to the relevant local authority. Also, under the Soil Contamination Countermeasures Law, an affirmative obligation to investigate land for contamination arises when a factory using harmful substances is closed, an area of land exceeding 3,000 square metres is to be developed, or when the soil contamination poses a potential threat to human health.

#### 4 Regulation of waste

##### What types of waste are regulated and how?

Japan's Waste Management and Public Cleansing Law recognises three categories of waste: general waste, industrial waste, and general or industrial waste under special control. In general, 'general waste' includes all waste other than industrial waste; 'industrial waste' covers certain categories of commercial waste designated by such law or by cabinet order that is generated from a business activity and waste that is imported into Japan; and 'general or industrial waste under special control' covers types of general waste and industrial waste that are considered harmful to human health and the environment.

Industrial waste must be stored and disposed of in accordance with detailed industrial waste storage and disposal standards. Businesses that generate industrial waste are required by law to confirm that their industrial waste has been disposed of properly even when the waste is transferred to a third party for disposal, and violators may be subject to certain mandatory measures and orders.

General waste is disposed of by municipalities but under certain laws (including those set out below), producers of products that subsequently become waste are obligated to take back and dispose of such products:

- the Containers and Packaging Recycling Law (Law No. 112 of 1995) requires households and businesses to separate certain waste products such as cans, plastic bottles, glass bottles, etc, for separate collection and recycling;
- the Home Appliance Recycling Law (Law No. 97 of 1998) requires retailers of certain types of consumer appliances to receive and transport old appliances returned by consumers to designated places for recycling, and requires manufacturers of such appliances to take responsibility for such recycling;
- the Construction Material Recycling Law (Law No. 104 of 2000) requires contractors at construction works projects to sort certain waste products, such as concrete, asphalt and wood, for recycling; and
- the End-of-Life Vehicle Recycling Law (Law No. 87 of 2002) addresses various obligations relating to the disposal of vehicles and the collection and recycling of, among other things, metal, CFCs, airbags and used vehicle parts.

#### 5 Regulation of air emissions

##### What are the main features of the rules governing air emissions?

Air emissions are regulated by the Air Pollution Control Law. Among other things, the law requires that prior to installation of any specified facilities that generate certain types of emissions, the responsible party is to submit a filing with the appropriate governmental authority which discloses the type and structure details of the specified facility, the emissions processing method and the emissions contamination state and volume. A similar filing is also required when there is to be a structural modification to any of such specified facilities. Further, if the relevant administrative authority determines that the facility's emissions do not or will not comply with the applicable emissions standards, the authority can suspend the facility's construction or order that the facility's construction plans be modified.

With regard to rules concerning the energy efficiency of buildings, the Act on Promotion of Energy Efficient Buildings was enacted on 8 July 2015 in order to promote environmentally friendly buildings. This Act provides for the following measures:

- incentive measures, such as a labelling system in which labels or identifying marks indicating compliance with energy efficiency standards are to be used. These measures have been in force since 1 April 2016; and
- regulatory measures imposing mandatory compliance with energy efficiency standards for large-scale non-residential buildings. These measures have been in force since 1 April 2017.

A developer must obtain a certification of conformity with energy efficiency standards or notify the relevant authority of the relevant facts evidencing compliance with energy efficiency standards. Following the implementation of these regulatory measures, large-scale non-residential buildings that do not comply with energy efficiency standards will be considered ineligible for certification under the Building Standards Act, which is required for every building.

The incentive measures are intended to apply to the construction of all types of buildings. If the plans for construction comply with specific certification standards, the developer may receive certification from the competent authority. By obtaining certification, the developer is eligible to receive certain benefits, such as an exemption from compliance with certain floor area ratio regulations.

#### 6 Protection of fresh water and seawater

##### How are fresh water and seawater, and their associated land, protected?

The main legislation addressing the protection of fresh water and seawater is the Water Pollution Control Law. This law serves to prevent against water pollution in 'public water areas' (including waterways, ponds, rivers, lakes, coastal areas, etc, but excluding public sewers and other areas covered by the Sewerage Law (Law No. 79 of 1958)) by regulating emissions of harmful substances discharged by factories and others. The law also allows victims who suffer health problems caused by the emissions discharged into the water to receive compensation from those responsible for the contamination.

The Japanese government establishes the national effluent standards of permissible concentrations of toxic substances, and local governments may establish more stringent standards when reasonably necessary, for the protection of human health and the environment. Dischargers of wastewater containing toxic substances that exceed the applicable standards will be held liable and punished for such violations.

#### 7 Protection of natural spaces and landscapes

##### What are the main features of the rules protecting natural spaces and landscapes?

The primary laws addressing the protection of natural spaces and landscapes are the Landscape Law (Law No. 110 of 2004) and the Natural Parks Law (Law No. 161 of 1957).

The Landscape Law was implemented in 2004 to 'build a beautiful and dignified land, create an attractive and comfortable living environment and realise vibrant communities with distinct personalities by taking comprehensive measures to develop good urban and rural landscapes such as formulating landscape plans, in order to improve the quality of life of the people of Japan and contribute to the growth of the national economy and sound development of society' (article 1). The Law sets out specific responsibilities of the national government, local governments, businesses and the general public, and, among other things, enforces guidelines and plans addressing landscape promulgated by local governments and communities. In general, each local government establishes its own landscape-related guidelines and plan.

Japan's natural parks (which include national parks, quasi-national parks and prefectural natural parks) are administered pursuant to the Natural Parks Law. The system of natural parks in Japan differs from those of most other countries because not all of the land that comprises natural parks is owned by the national or local governments. Certain privately owned properties are also designated as natural parks and are subject to the Natural Parks Law and other laws and regulations (such

as those imposing restrictions on construction) intended to preserve and protect the natural landscape of such areas.

## 8 Protection of flora and fauna species

### What are the main features of the rules protecting flora and fauna species?

The primary laws addressing the protection of flora and fauna species are the Wildlife Protection and Hunting Management Law (Law No. 88 of 2002) and the Law for the Conservation of Endangered Species of Wild Fauna and Flora (Law No. 75 of 1992). The Wildlife Protection and Hunting Management Law regulates, among other things, the capture or collection of wildlife, game animals, bird eggs, etc, the rearing and selling of wildlife and hunting, and provides for the designation of 'national wildlife protection areas' by the Minister of the Environment. Through the Law for the Conservation of Endangered Species of Wild Fauna and Flora, the Japanese government has adopted the National Guidelines for the Conservation of Endangered Species that addresses the principles by which conservation of endangered species is to be carried out. The Law seeks to protect and regulate the handling of species classified as national endangered species or international endangered species.

## 9 Noise, odours and vibrations

### What are the main features of the rules governing noise, odours and vibrations?

The Noise Regulation Law regulates noise from factories, workplaces and construction sites and sets standards for noise emitted from motor vehicles. The law is applicable to specified areas, such as residential areas, areas neighbouring hospitals and schools and construction sites. Persons who intend to construct certain facilities that emit a certain level of noise are required to submit a notification to the relevant competent authority and must comply with the relevant standards regarding noise. The Vibration Regulation Law regulates certain types of vibrations through measures similar to those of the Noise Regulation Law.

Enacted in 1972, the Offensive Odour Control Law regulates offensive odours, especially those emitted from business activities, for the preservation of the living environment and the general health of the people of Japan. To achieve its objectives, the Law establishes various regulatory measures intended to reduce or eliminate offensive odours emitted through business activities and stipulates certain responsibilities of the national and local governments, businesses, and general public to mitigate emissions of offensive odours.

## 10 Liability for damage to the environment

### Is there a general regime on liability for environmental damage?

There is no general regime on liability for environmental damage. Nevertheless, as mentioned in question 2, the polluter pays principle generally applies when addressing issues of liability for environmental damage. Also, certain environmental laws (such as the Land Contamination Countermeasures Law) address liability for environmental damage (such as environmental damage due to land contamination).

## 11 Environmental taxes

### Is there any type of environmental tax?

Japan introduced the tax for climate change mitigation in 2012. The tax is applied to entities that use fossil fuels such as oil, natural gas and coal, and is charged based on the volume (kilolitre or tonne) of carbon dioxide emissions produced by such entities. Thus, it is consistent with the polluter pays principle. The tax rate has been gradually raised in three phases to ¥289. Revenues from this tax go to support CO<sub>2</sub> emissions control measures and the facilitation of renewable energy.

## Hazardous activities and substances

## 12 Regulation of hazardous activities

### Are there specific rules governing hazardous activities?

There are no specific rules governing hazardous activities. However, certain laws provide that the party who conducts certain hazardous

activities will be held liable for all damages caused thereby, such as damages resulting from emissions, regardless of fault. For example, with respect to the nuclear accident that occurred at the Fukushima Daiichi Nuclear Power Plant, under the Act on Compensation for Nuclear Damage (the Nuclear Compensation Act), the operator of that nuclear power plant is strictly liable (ie, liable regardless of fault, negligence or intention to cause harm) and exclusively liable for the damage caused by the accident and such liability is not limited in amount.

## 13 Regulation of hazardous products and substances

### What are the main features of the rules governing hazardous products and substances?

In Japan, hazardous products and substances are mainly regulated by the following laws and regulations:

- the Law Concerning the Examination and Regulation of Manufacture, etc, of Chemical Substances (Law No. 117 of 1973) (the Chemical Substances Control Law);
- the Poisonous and Deleterious Substances Control Law (Law No. 303 of 1950);
- the Law on Confirmation, etc, on Release Amounts of Specific Chemical Substances in the Environment and Promotion of Improvements to the Management Thereof (Law No. 86 of 1999) and Cabinet Order (establishing the Pollution Release and Transfer Register system);
- the Labour Safety Law (Law No. 57 of 1972);
- the Law Concerning the Protection of the Ozone Layer through the Regulation of Specified Substances and Other Measures (Law No. 53 of 1988); and
- the Law on Special Measures for Promotion of Proper Treatment of PCB Waste (Law No. 65 of 2001).

The Chemical Substances Control Law regulates general industrial chemical products (ie, it does not regulate other chemical products such as pharmaceuticals, cosmetics, food-related products, agriculture-related products and fertilisers), and the chemicals regulated under this law are divided into the following six categories: new chemical substances; general chemicals; class I specified chemical substances; class II specified chemical substances; priority assessment chemical substances; and monitoring chemical substances.

Under the Civil Code of Japan, an owner of a premises may be liable to an injured party for any injuries or illness sustained as a result of the disbursement of hazardous substances (eg, asbestos) located on such premises. Also, under the Air Pollution Control Law, an owner of a building containing asbestos is required to, among other things, file a report with the prefectural governor regarding the implementation of demolition, repair or refurbishment work to be performed to such building. Also, under the Labour Safety Law and its related regulations, an employer is required to protect its employees from asbestos-related harm at the workplace (such as construction sites).

## 14 Industrial accidents

### What are the regulatory requirements regarding the prevention of industrial accidents?

There is no law that specifically stipulates regulatory requirements for the prevention of industrial accidents. Certain laws, however, address such issue. For example, if an industrial accident constitutes a 'public nuisance' as defined under the Basic Environment Law, laws related to compensation for victims of such public nuisance and criminal sanctions against persons responsible therefor (see question 25) are applicable. On the other hand, other laws serve to prevent industrial accidents. For example, some of the laws and regulations mentioned in question 13 seek to prevent industrial accidents involving the release of hazardous substances. Also, the Environmental Impact Assessment Law seeks to prevent industrial accidents by imposing an obligation to conduct an environmental impact assessment in relation to the construction of certain facilities, etc.

## Environmental aspects in transactions and public procurement

### 15 Environmental aspects in M&A transactions

#### What are the main environmental aspects to consider in M&A transactions?

In the case of a purchase of shares in a company which owns contaminated property, emits pollution exceeding regulatory standards or has environmental liability, in general (unless the intent of such purchase is to escape liability arising from the environmental hazard in question), the share purchaser will not incur the legal liability of the company even if it purchases 100 per cent of the company's shares; provided, however, that the competent authority might essentially require such shareholder (the purchaser) to perform or cause the company to undertake certain countermeasures to address or resolve the environmental hazard.

### 16 Environmental aspects in other transactions

#### What are the main environmental aspects to consider in other transactions?

In the case of an asset purchase of contaminated property or property emitting pollution exceeding regulatory standards, in general, the purchaser will incur liability (it will assume the obligation to address the contamination or cease the emission) in relation to such property as the owner of such property pursuant to the applicable environmental law. However, certain liability remains with the seller or person to whom the environmental problem is attributable.

Under the Civil Code, generally, if property with an environmental issue is to be sold and the existence of such environmental issue is incompatible with the buyer's purpose for purchasing such property, the seller has a duty to provide a good faith explanation to the buyer regarding such environmental issue, and the seller will be liable to the buyer for compensatory damages if it fails to fulfil such duty. In this regard, the seller is required to disclose all environmental issues related to the property to the buyer. This duty also arises generally in the context of a share transfer transaction involving shares of a company possessing property with an environmental issue, where the value of the company is substantially tied to the value of the subject property. In addition, it is standard for a land sale agreement to require a seller to disclose the existence of all environmental problems related to the property prior to closing.

In addition, with respect to financing transactions, there is no judicial precedent recognising lender liability for an environmental incident or damages resulting therefrom, and no liability will be imposed against a lender by reason of its lending of funds to the person who causes an environmental incident or damage unless liability for such incident or damage is otherwise clearly attributable to the lender.

### 17 Environmental aspects in public procurement

#### Is environmental protection taken into consideration by public procurement regulations?

Japan enacted the Law on Promotion of Procurement of Eco-Friendly Goods and Services by the Government and Other Entities (Law on Promoting Green Purchasing) (Law No. 100 of 2000) with the objectives of encouraging procurement of eco-friendly goods by the national and local governments, local independent administrative institutions and others, providing information on eco-friendly goods and promoting eco-friendly goods, etc (article 1). Article 6 of the Law provides that the government shall determine the basic policy for the promotion of eco-friendly goods for procurement, etc.

## Environmental assessment

### 18 Activities subject to environmental assessment

#### Which types of activities are subject to environmental assessment?

Under the Environmental Impact Assessment Law (the EIA Law), an environmental impact assessment (EIA) must be conducted in relation to certain designated projects. Projects subject to the EIA Law are categorised as Class-1 Projects, and Class-2 Projects. Chapter 1, article 2, paragraphs 2 and 3 of the EIA Law define the term 'Class-1 Project'

as 'a large-scale project that is designated by government ordinance as likely to have a serious impact on the environment' and that falls under one of the designated categories stated in paragraph 2, and the term 'Class-2 Project' as a project that is generally 'on a scale commensurate with that of a Class-1 Project' but with certain qualifications including the fact that Class-2 Projects require a determination to be made as to whether it will have a serious impact on the environment.

### 19 Environmental assessment process

#### What are the main steps of the environmental assessment process?

If a project falls under the classification of Class-1 Project, then the environmental impact assessment procedures (the EIA procedures) are required without exception. If the project falls under the classification of Class-2 Project, then the government will determine whether the EIA procedures are required for such project on a case-by-case basis. With respect to other projects, EIA procedures are not required.

EIA procedures are divided into six steps as follows:

- primary environmental impact consideration;
- determination of the assessment method;
- implementation of the environmental impact assessment;
- drafting of the environmental impact statement;
- preparation of the final version of the environmental impact statement; and
- impact mitigation reporting.

## Regulatory authorities

### 20 Regulatory authorities

#### Which authorities are responsible for the environment and what is the scope of each regulator's authority?

The principal authorities and bodies responsible for administration and enforcement of Japan's environmental policy are the Ministry of the Environment (MOE) and local governments.

The MOE and local governments are primarily responsible for the enforcement of environmental laws in Japan. The particulars of the authority granted to, as well as the division of authority between, the MOE and local governments, differ depending on the individual law, but generally, in the case of breach of an individual law, the MOE or local government will have the authority to order certain measures under administrative law to be taken, such as suspension of work, licence revocation or variation, or restitution and remuneration.

Broadly speaking, the division of authority between the MOE and local governments is as follows:

- administrative duties relating to such matters as the setting or determination of environmental standards, regulatory standards, and facilities subject to regulations, and the formulation of the total emissions reduction basic policy, and administrative duties relating to regions and items that are subject to total emissions regulations, are executed directly by the national government;
- the making of classifications under environmental standards (water pollution, etc), the setting of total volume regulatory standards, and administrative duties relating to the constant monitoring of air pollution and preparation of measurement plans are statutory administrative duties delegated to the local governments. These duties supplement the environmental standards and regulatory standards discussed above; and
- formulation of pollution prevention plans and other plans; the discretionary adoption of stricter standards, improvement orders and other regulatory enforcement measures; administrative duties relating to report gathering and on-site inspections; making requests for provision of opinions, etc, to related government agencies; and similar administrative duties, are the duties of local governments.

### 21 Investigation

#### What are the typical steps in an investigation?

The steps of investigations of environmental matters vary depending on the nature of the matter and the purpose for the regulation. For example, the Soil Contamination Countermeasures Law provides that an innocent owner, possessor or manager of contaminated property can

### Update and trends

A number of hot topics relating to environmental law in Japan have recently arisen. They include the implementation of certain incentive and regulatory measures under the Act on Promotion of Energy Efficient Buildings (see question 5). In addition, the newly enacted Act for Promotion of Legality Verified Wood Utilization and Distribution (Clean Wood Act) has attracted attention. Under the Act, wood business operators must endeavour to utilise verified timber, etc. The purpose of this Act is to stop the trading of wood sourced through illegal logging.

Furthermore, MLIT (the Ministry of Land, Infrastructure, Transportation and Tourism) published its Green Lease Guide in 2016. The concept of 'green lease' is to promote voluntary collaboration between a building owner and a tenant resulting in agreements with regard to energy saving measures for the building concerned. Each such 'green lease' agreement is to include an agreement on a environmentally friendly refurbishment of the building (eg, the instalment of LED light bulbs), which leads to an increase in rent charges but also results in a reduction of utility costs to be borne by the tenant. By promoting such green leases, MLIT expects that building owners and tenants can establish win-win relationships and the environmental performance of buildings can be improved at the same time.

be ordered to investigate the existence of contamination, remove the contamination or take other measures to address the contamination.

## 22 Administrative decisions

### What is the procedure for making administrative decisions?

Typically, a victim of pollution will file a grievance with the relevant government agency and request a mediation proceeding (involving the polluting company and government agency) to address the claim. If the victim is unsatisfied with the result of such mediation, the victim may file a lawsuit against the government and polluter to seek appropriate redress. In the mediation and lawsuit, parties will have a right to be heard and present evidence to support their claim. Cases involving claims arising from pollution generated by the purported polluter are typically difficult and costly to prove, but there have been several public nuisance cases in which victims have prevailed over parties responsible for pollution that led to serious diseases.

## 23 Sanctions and remedies

### What are the sanctions and remedies that may be imposed by the regulator for violations?

In the event of an environmental permit violation, in addition to possibly having a permit suspended or revoked, the violator may be subjected to a criminal penalty (imprisonment or a fine, or both), ordered to take corrective measures, or ordered to suspend its businesses temporarily or permanently.

Violators of environmental laws or permits may be subject to criminal liability, civil liability, and liability pursuant to administrative laws (due to the failure to comply with regulatory standards and orders).

To establish criminal liability, in general, an intent to commit the violation must be established, and thus if the offender was not aware of the offending incident at the time of the violation, in general, criminal liability will not be found.

To establish civil liability, in general, there must be wilful misconduct or negligence on the part of the offender, and if the claimant cannot establish that the alleged offender could have foreseen the occurrence of the environmental incident, and a causal relationship between the alleged offender's conduct and the environmental incident, then no civil liability will be imposed; provided, however, that certain individual laws hold the responsible party strictly liable for damages arising from an environmental incident in the case of air pollution, water pollution, and nuclear radiation contamination. In cases where a contractual relationship exists between the offender and the claimant, the offender may be sued for breach of contract due to the failure to perform a duty or obligation thereunder. In general, when there is more than one offender, all offenders will be jointly and severally liable for the damage.

## 24 Appeal of regulators' decisions

### To what extent may decisions of the regulators be appealed, and to whom?

In general, a person whose application for environmental permit has been denied or taken under consideration may petition the same administrative authority or its supervising agency for a reconsideration or reversal of that decision. Under Japanese administrative law, in general, a court action to challenge that decision can only be initiated after the aforementioned petition is made.

## Judicial proceedings

## 25 Judicial proceedings

### Are environmental law proceedings in court civil, criminal or both?

Environmental law violation cases can proceed in court as civil or criminal actions, or both. In 1970, the Law on the Punishment of Pollution Offences against Human Health was put into force. Under this law, polluters (ie, the actual offender and the responsible company) who intentionally or negligently discharge substances harmful to human health into the environment in the course of business activities can be held criminally liable for their actions and punished accordingly.

## 26 Powers of courts

### What are the powers of courts in relation to infringements of environmental law?

In cases of violation of environmental laws, the courts of Japan may, with respect to the violators and responsible parties:

- order the payment of civil damages;
- impose civil and criminal penalties and fines;
- order injunctions or specific performance for the prevention or remediation of environmental damage; and
- take such other action or provide such other relief as permitted under the law and deemed appropriate by the court.

## 27 Civil claims

### Are civil claims allowed regarding infringements of environmental law?

Yes, see question 23.

## 28 Defences and indemnities

### What defences or indemnities are available?

The typical defences asserted include lack of intent (in the case of criminal liability) and the failure to establish the necessary elements for civil or criminal liability.

Environmental indemnities can be used to limit exposure for certain actual or potential environmental liabilities (depending on the scope of the indemnity and the ability and willingness of the indemnitor to honour its obligations under the indemnity); however, criminal liability cannot be discharged through an indemnity. In certain cases, directors and officers may be able to obtain indemnity protection through D&O insurance in respect of certain liabilities and costs (excluding criminal liability and liability incurred due to the pursuit of their own self-interests).

## 29 Directors' or officers' defences

### Are there specific defences in the case of directors' or officers' liability?

In general, under the Companies Law, directors and officers of corporations will not incur liability unless they intentionally or as a result of gross negligence fail to properly perform their duties. This principle also applies in relation to environmental liability.

## 30 Appeal process

### What is the appeal process from trials?

Japan's judicial system is composed of five types of courts (the Supreme Court of Japan, high courts, district courts, family courts and summary courts); and, in general, two levels of appeal are possible. For civil and



criminal matters (except for minor cases which are handled by the summary courts and other certain exceptional matters over which the high courts have original jurisdiction), cases are handled by the district courts. A judgment by a district court can be appealed to the High Court, and the judgment of the High Court may be appealed to the Supreme Court. However, unless the appeal satisfies certain conditions, the Supreme Court has discretion to accept or reject appeals.

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#### International treaties and institutions

##### 31 International treaties

###### Is your country a contracting state to any international environmental treaties, or similar agreements?

Japan is a contracting state to various international environmental treaties and agreements including the following:

- the Convention on Biological Diversity 1992;
- the Convention on the International Trade in Endangered Species of Wild Flora and Fauna 1973;
- the Convention on Wetlands of International Importance especially as Waterfowl Habitat 1971;

- the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal 1989;
- the Montreal Protocol on Substances That Deplete the Ozone Layer 1987;
- the United Nations Convention on the Law of the Sea (UNCLOS) 1982;
- the Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter 1972; and
- the 1978 Protocol Relating to the International Convention for the Prevention of Pollution from Ships (MARPOL) 1973.

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##### 32 International treaties and regulatory policy

###### To what extent is regulatory policy affected by these treaties?

Under article 98 of the Constitution of Japan, all treaties concluded by Japan (which include the international agreements mentioned above) are to be faithfully observed. Thus, Japan is obliged to carry out its obligations under such international agreements through the enactment of regulatory policies and otherwise. In this regard, Japan has enacted various national, prefectural and local laws, regulations and policies.

# NAGASHIMA OHNO & TSUNEMATSU

Kiyoshi Honda  
Takumi Naito

kiyoshi\_honda@noandt.com  
takumi\_naito@noandt.com

JP Tower, 2-7-2 Marunouchi  
Chiyoda-ku  
Tokyo 100-7036  
Japan

Tel: +81 3 6889 7000  
Fax: +81 3 6889 8000  
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