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# TMT 2022

Japan: Trends & Developments  
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## Trends and Developments

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### Digital Transformation Driven by the Pandemic

In Japan, as in many parts of the world, the COVID-19 pandemic spurred increased demand for digitisation, triggering the rapid expansion of digital transformation (DX).

#### *Increased use of electronic signatures*

Despite there being no mandatory lockdowns in Japan, many companies adopted telecommuting at the government's urging. Some major IT companies have given their employees the freedom to work from anywhere in the country. However, in Japan, the cultural practice of "sealing" documents (not only contracts but also internal requests for approval, etc) with a *hanko* (seal) has been problematic during the pandemic, as employees must be physically at work to seal them, given that, for security reasons, they are not usually allowed to take a *hanko* home.

To avoid this, the Japanese government released Q&As in July and September 2000, in which they indicated that cloud-based electronic signatures could be considered electronic signatures under the Act on Electronic Signatures and Certification Business, as long as certain conditions were met. Such cloud-based signatures may include DocuSign, Adobe Sign, and Cloud Sign, a domestic service provider. As a result, electronic signatures are now widespread in Japan and have quickly replaced the country's long-standing *hanko* culture.

#### *Administrative developments – establishment of the Digital Agency*

Digitisation has also extended to administrative procedures. For example, on 1 September 2021,

the Basic Act on the Formation of a Digital Society was introduced. The Act:

- comprehensively revises various procedures under several acts, such as the Civil Code and the Building Lots and Buildings Transaction Business Act;
- eliminates sealing requirements except for certain procedures; and
- introduces electromagnetic means for document service procedures.

Moreover, the Digital Agency of Japan was established under the Act in September 2021. At the direction of Prime Minister Kishida's new Cabinet, which took office in October 2021, the Digital Agency will examine and implement digital and regulatory reform and comprehensively address cross-cutting administrative reform issues based on a set of "digital principles". In addition, since November 2021, the Digital Agency has held Digital Provisional Administrative Reform Council meetings to implement essential structural reforms required for the "New Capitalism" initiative envisioned by the Kishida Cabinet. The five "digital principles" under consideration are as follows:

- digital completion and automation – under this principle, rules requiring written, in-person, sight and periodic inspections should be based on digital completion and automation;
- ensuring interoperability – according to this principle, system interoperability should be ensured to allow the public and private sectors to use data appropriately;
- use of a common digital infrastructure – this principle urges using a common digital infrastructure, IDs and base registries, rather than

- building proprietary systems separated by sector;
- agile governance – following this principle, digital technology should facilitate flexible and ongoing improvement in governance, rather than a uniform and rigid system of governance;
  - public-private partnership (the G to B to C model) – adopting this principle could lead to the formation of new public-private partnerships that leverage the power of the private sector by, for example, using the UI and UX of private companies as national access points for government services.

Moreover, government-led DX initiatives are expected to continue in 2022, including those led by the Cabinet's Regulatory Reform Promotion Council.

### *Agile governance for Society 5.0*

Furthermore, corporate governance in the DX era is also being discussed. In two reports published in 2020 and 2021, the Ministry of Economy, Trade and Industry (METI) introduced the concept of “agile governance” to realise Society 5.0, a concept proposed by the Japanese government which is a human-centered society where high integration of cyberspace and physical space can promote economic development and solve societal issues (Governance Innovation: Redesigning Law and Architecture for Society 5.0 (2020); Governance Innovation Version 2: Designing and Implementing Agile Governance (2021)).

Agile governance may be achieved by multiple stakeholders, such as the government, companies and individuals/communities. It requires the government to take a goal-based approach, as opposed to a rule-based approach, and defer and facilitate companies to decide how to achieve the established goals. Agile governance also calls for companies to play two main

roles, to “transition from rule-followers to rule-innovators” and “establish governance systems and maintain accountability”.

### **Extraterritorial Application of Japanese Law**

Internet-based services are being provided worldwide, across jurisdictional boundaries, with no physical presence required. Debate is ongoing on whether Japanese administrative law should apply extra-territorially to foreign companies providing such services. Recently, the “equal footing” argument, which states that laws should be applied and enforced uniformly to domestic and foreign companies, has gained popularity. The growing popularity of this argument has implications for foreign companies.

One example is the application of the Telecommunications Business Act (TBA), which regulates the telecommunications business on which digital transformation is based. The TBA has traditionally not been applied to overseas-based foreign companies that provide telecommunications services without telecommunications facilities in Japan, even if they do so to users in Japan. However, to protect domestic users and ensure competitive equality between domestic and overseas-based foreign operators, the amended TBA, which took effect in April 2021, clearly provides that the TBA now applies to such foreign operators. For example, such foreign operators are now required to register or submit notifications as telecommunications carriers and appoint a representative or agent in Japan.

Another example of the potential application of the growing popularity of the equal footing argument involves the Companies Act. This Act requires a foreign company to register as such in Japan, after appointing a resident of Japan as its representative to continue transaction in Japan, regardless of the nature of its business. Failure to register may result in a fine of up to

JPY1 million. To date, such fines have not been strictly enforced. However, they may be in light of the recent equal footing debate.

## Rise of New Regulations on Digital Platforms

Regulating big digital platforms, including GAFA, is highly debated in Japan. In February 2021, the Act on Improving Transparency and Fairness of Digital Platforms came into effect. This Act requires online malls and app stores with sales exceeding a certain amount to disclose the terms and conditions of their digital platforms and take necessary steps to promote mutual understanding between themselves and users who sell products and services on their platforms. Only Amazon, Rakuten and Yahoo have been designated as online mall operators and Apple and Google as app store operators. However, other smaller operators may be designated in the future. There is also debate on whether this Act should apply to digital advertising operators.

In April 2021, the Act for the Protection of Consumers on Digital Platforms was enacted and is expected to come into effect in early 2022. The Act regulates digital platforms with online malls and auction sites, regardless of their sales amounts. In addition to requiring certain measures to protect consumers using such digital platforms, the Act requires disclosure of an overview of such measures and their implementation status.

The Fair Trade Commission (FTC) also monitors digital platform businesses. In this regard, in addition to investigating any existing or potential issues caused in relation to platform transactions, the FTC has intensified its enforcement activities.

## Amendment to Data Protection Law

Under the amended Personal Information Protection Act, operators will be required to exer-

cise greater care in handling personal information. The amended Act will come into effect on 1 April 2022. Many companies will need to revise their privacy policies. New rules will also be introduced regarding cookie information, and the use of cookies or similar technologies for marketing or advertising purposes will be thereby restricted.

Regulations on the provision of personal data from Japan to foreign third parties will also be strengthened. For example, when a Japanese operator obtains an individual's consent to provide personal data to a third party in a foreign country, such individual must be given the following information:

- name of the foreign country to which personal data is transferred;
- the legal systems for the protection of personal information established in the foreign country; and
- the measures for the protection of personal information to be taken by the third party to which the personal data is transferred.

There is also a growing public interest in how companies handle personal information. In March 2021, LINE – a major messaging app operator in Japan – was widely criticised by the public and the media when it was discovered that employees of its Chinese affiliate, to which it outsourced operations, had access to a database of personal information. Subsequently, the Personal Information Protection Commission and the Ministry of Internal Affairs and Communications issued an administrative guidance to LINE.

Fines for violating Japan's Personal Information Protection Act are not significant (compared to the GDPR, for example), but reputational risk is significant. Therefore, operators will need to comply with the Act (including its amendments)

and continue to exercise caution in their privacy decision-making.

### **Other Trends to Watch for in 2022**

#### *AI and facial recognition*

Debate is ongoing on which rules should govern the use of AI. In September 2021, a Japanese railroad company was heavily criticised for using a facial recognition system to check the faces of wanted criminals in a database. The database automatically checked the faces of numerous people on cameras installed and networked at major train stations. METI released its report, AI Governance in Japan Version 1.1, in July 2021, and it is expected to continue discussions on the regulatory framework for AI.

#### *NFTs*

In 2021, “NFT” (non-fungible token) was a buzzword in Japan; it was widely reported that NFTs were trading at exceptionally high prices. The legal status of NFTs remains a subject of debate – while some claim that they are a form of gambling, others question whether financial regulations should apply. In March 2021, the Japan Cryptoasset Business Association, an industry group, published Guidelines on NFT Business. Although there is a degree of emerging consensus on some legal issues regarding NFTs, discussions should be followed closely.

#### *The metaverse*

A metaverse is a term created by combining “meta” with “universe,” which is a network of 3D virtual worlds where people can communicate with each other and/or services provided therein. In light of the ongoing COVID-19 pandemic, a demand for stay-at-home fuelled the widespread use of virtual environments. The merging of virtual spaces and the real/physical world is a significant paradigm shift that promises to change society and industry fundamentally, with virtual spaces already being increasingly used for business. METI also examined the feasibility of virtual spaces, including the “metaverse”, as part of its broader mandate and released a report of its findings in July 2021. In addition, several companies launched the Virtual City Consortium in November 2021 to develop new business models and technologies, based on the knowledge and experience they have gained from the operation of Virtual Shibuya, the virtual town officially certified by Shibuya City, and also formulate guidelines for a virtual city where a real city and virtual space will interact with each other. The ongoing discussions on the metaverse should be followed closely in 2022.

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**Nagashima Ohno & Tsunematsu** is the first integrated full-service law firm in Japan and one of the foremost providers of international and commercial legal services based in Tokyo. The firm's overseas network includes offices in New York, Singapore, Bangkok, Ho Chi Minh City, Hanoi and Shanghai, and collaborative relationships with prominent local law firms throughout Asia and other regions. The firm's TMT practice group is comprised of around 50 lawyers and

legal professionals and represents Japanese major telecom carriers, key TV networks, and many domestic and international internet, social media and gaming companies, not only in transactions but also in disputes, regulatory matters and general corporate matters. Its TMT practice group is well positioned to consistently meet requests from clients to provide advice on business strategies, daily compliance and corporate matters.

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He has extensive experience representing global and local clients on complex business transactions as well as regulatory matters, with a particular focus on

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