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Real Estate Crowdfunding Regulations in Japan

I. Introduction

Crowdfunding is a method of raising money to finance projects and businesses that enables fundraisers to collect money from a large number of people via online platforms. There exists a variety of crowdfunding platforms serving industries like technology, the arts, and social causes, as well as real estate. Although there are several types of crowdfunding for investment in the real estate sector (e.g., donation, lending and others), this article focuses on regulations governing equity-based real estate crowdfunding in Japan, focusing on the Act on Specified Joint Real Estate Venture.

II. What is the Act on Specified Joint Real Estate Venture?

The Act on Specified Joint Real Estate Venture (hereinafter the “ASJREV”) (sometimes also referred to as the “*Futoku-hou*” or “FTK law” from its Japanese abbreviation) was enacted in 1994. As the name suggests, the purpose of the ASJREV was to ensure the sound operation of real estate joint ventures, i.e., businesses in which investors are invited to invest, typically in the form of a partnership or silent partnership (*Tokumei Kumiai*), in the purchase, sale or lease of real estate and to distribute the profits from such investment.

Typically, purchasing real estate for investment requires a large amount of capital and is not easily affordable by general investors. In order to broaden the base of the potential investor class, small-lot real estate products were introduced in the 1980s, in which a piece of real estate is divided into smaller lots and invested in jointly by several investors. By reducing the amount of real estate investment to small lots, general investors may be able to invest in real estate in a casual manner. The government was concerned, however, about the potential bankruptcy of inefficient asset managers, which could result in significant investor losses. In fact, following the bursting of the asset price bubble in the early 1990s in Japan, many investors suffered such losses, increasing the need for appropriate regulation of this type of collective investment scheme. The result was the enactment of the ASJREV in 1994. After the enactment of the ASJREV, it was partially amended in 2013, 2017 and 2023; the 2017 amendment was, among other things, a response to the growing demand for crowdfunding in the real estate industry.

III. Major Regulations under the ASJREV

(i) License Requirements

Under the ASJREV, depending on the type of the real estate business scheme and the principal place of business, permission from the Commissioner of the Financial Services Agency, the Minister of the Ministry of Land, Infrastructure, Transport and Tourism (“MLIT”), or the prefectural governor is required to operate a real estate specified joint enterprise.

(ii) Major Permission Requirements under the ASJREV

- (a) Sufficient capitalization is required depending on the type of real estate specified joint enterprise. Type one businesses require 100 million yen; type two businesses, 10 million yen; type three businesses, 50 million yen; and type four businesses, 10 million yen.
- (b) Adequate net assets and a personnel structure sufficient to properly conduct the business.
- (c) Real estate broker license under the Building Lots and Buildings Transaction Business Act.
- (d) Allocation of business managers per office. Requirement for business manager is more than three years’ experience in the relevant type of real estate specified joint enterprise, or registered certification by authorized institution.

Due to these regulations, the hurdles for entering into a real estate specified joint venture are relatively high. In order to obtain a license, the capitalization and qualifications must be scrutinized by the competent authority, and the company must be recognized as capable of sound management. The ASJREV has a significant role in ensuring that investors can invest in real estate specified joint ventures with peace of mind.

IV. Amendment to the ASJREV

At an early stage, the ASJREV was particularly strictly regulated in order to reduce investor risk. While this ensured the safety of investments, it was accompanied by the risk of investment transactions becoming rigid and unattractive due to the small number of operators qualified to operate them. The ASJREV was later amended, however, to relax regulatory requirements so that real estate joint enterprises could spread while maintaining the investor protection concept.

The key amendments to the ASJREV are as follows:

(i) Amendment in 2013: Introduction of SPC structure

The key amendment in 2013 was the introduction of a qualifying investment structure utilizing a special purpose company (SPC), i.e., a company established for the sole purpose of the real estate specified joint enterprise. As a result of the amendment to the ASJREV, such an SPC can enter into real estate specified joint enterprise without permission from the relevant authority, provided certain notifications are given. This allowed for the GK-TK scheme, a typical real estate investment scheme comprised of a limited liability company (*Godo Kaisha*) and a silent partnership (*Tokumei Kumiai*), to be used without a trust arrangement in practice. This exception was granted on the condition that the SPC outsource its operations to companies with the required license for real estate specified joint enterprise (a company with a license for type three and type four). However, this 2013 amendment to the ASJREV still left high barriers in place due to the setup costs and the license requirements, such as the investors requirement (i.e., that only accredited investors were able to invest in this structure).

(ii) Amendment in 2017: Digitization for crowdfunding

The amendment in 2013 was groundbreaking in that it introduced the possibility of using an SPC, but the results were not as positive as initially anticipated. Therefore, multifaceted legal changes were

made in 2017. The following points summarize the key regulatory impacts of these changes:

- Relax the investors requirements for SPC structure;
- Support for digitization and crowdfunding;
- The introduction of special registration requirements for smaller businesses; and
- The introduction of a special exception for institutional investors.

This has allowed for the formation of various types of real estate specified joint ventures and has created an environment for electronic transactions for crowdfunding.

(iii) Guideline to encourage the real estate crowdfunding

In 2019, MLIT further strengthened support for crowdfunding. The ministry's goal was to make crowdfunding more user-friendly while reducing online risk for investors. Specifically, MLIT prepared guidelines for electronic transaction operations and established multiple rules for businesses to follow, clarifying the amended ASJREV. These rules include proper display of information on the company's website, the establishment of an examination department, and measures to deal with information leaks.

(iv) Amendment in 2023: Regulations for Security Tokens

In response to the amendment to the Financial Instruments and Exchange Act ("FIEA") that introduced security token offering ("STO") regulations, ASJREV has been amended to regulate the real estate specified joint venture business more consistently in 2023.

Specifically, the tokenized collective investment scheme under the ASJREV was included as a "security" under the FIEA (real estate STO). STOs are expected to be utilized as a more cost-efficient form of securities offering, real estate STOs under the ASJREV are expected to be a new digitalized form of real estate securitization.

V. Conclusion

The size of the real estate crowdfunding market is expected to grow over the coming years in Japan and globally. One of the main factors to drive market growth in Japan is favorable regulations for real estate crowdfunding. Although there are still various hurdles such as market volatility, liquidity and complex regulations, the track record of existing players and technological innovation may lead to the continued growth of real estate crowdfunding.

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DISPUTE RESOLUTION / CIVIL AND COMMERCIAL DISPUTES

Digitalization of Civil Litigation Procedures in Japan

I. Introduction

The digitalization of civil litigation procedures in Japan began with the introduction of teleconferencing and video conferencing systems under the 2010 amendment of the Code of Civil Procedure. The use of teleconference had become widely adopted, enabling parties or their representatives located far from the courts to participate in preparatory proceedings to arrange issues and evidence. However, many aspects of civil litigation in Japan have yet to be modernized. For instance:

- as a general requirement, paper documents must be lodged in order to file a lawsuit;
- parties and their representatives are required to physically attend dates for oral arguments; and
- court records are kept in paper form and people who wish to inspect the records are required to visit the courthouse.

These days, where information and communication technology has advanced significantly, the digitalization of civil litigation is being promoted to make civil litigation more efficient and accessible to parties. This article provides an overview of the recent changes relating to the digitalization of civil litigation in Japan that are being introduced through the enactment of further amendments to the Code of Civil Procedure.¹

II. Conducting oral arguments and witness examinations using web conferencing

Previously, teleconferencing systems were commonly used in preparatory proceedings to arrange issues and evidence, but was limited to parties who were domiciled or resided far from the courts. It was also limited by requiring at least one party to appear in court. Under the amended Code of Civil Procedure and changes which came into effect from March 1, 2021, both parties may now attend preparatory proceedings via web or teleconference without appearing in court, regardless of their distance. In addition, since 2020, Japanese courts have introduced Microsoft Teams to hold preparatory proceedings for arranging issues and evidence, with many courts actively using the platform to hold such proceedings.

Furthermore, under the amended Code of Civil Procedure and changes which came into effect from March 1, 2022, if the court finds it to be appropriate, after hearing the opinion of the parties, the court may conduct the proceedings on the date for oral arguments via web conference. Notwithstanding this, the Constitution of Japan still provides that trials shall be conducted and judgments declared publicly. Therefore, even if the parties use web conferencing on those dates for oral arguments, the judge must be present in the courtroom, and observers be given the opportunity to attend oral argument dates by viewing the web conference from the courtroom.

Additionally, while witness examinations are generally required to be conducted in person in court, after the implementation of the amended Code of Civil Procedure by next year, the court may examine witnesses via web conference if the court finds it to be appropriate and neither party objects to the use of web conferencing.

III. Filing of complaints and service of documents online

To file a complaint, it is currently necessary to prepare a written complaint and evidence on paper and submit the documents to the court in person or by mail. Filing fees also have to be paid by purchasing revenue stamps

¹ The amended Code of Civil Procedure has already been promulgated and will come into effect from the date specified by a Cabinet Order, which must occur by May 24, 2026. Certain of these changes have already come into effect, as noted in this article.

and affixing them to the complaint. After the implementation of the amended Code of Civil Procedure by next year, it will be possible to file complaints and pay the relevant filing fees online. For attorneys filing lawsuits on behalf of a plaintiff, the use of online filings will be mandatory, however, a plaintiff may still personally file in paper form even after the amendment is introduced, to ensure everyone has proper access to judicial services.

Under the new amendments, the service of documents (including complaints filed online) will continue to be undertaken in the same manner as complaints that are filed in paper form, by physically serving copies of the documents on the recipient. However, if the recipient to be served has submitted a notification consenting to online service in advance, service may be made online. In that case, service takes effect when the person views or downloads the documents, or one week after notification that documents have been electronically delivered.

IV. Digitalization of court records and inspection of electronic records

Previously, court records stored at the courthouse consisted of paper documents submitted by the parties in person, by mail, or by fax. Therefore, to inspect court records, one had to visit the courthouse and request to inspect the original paper court records. After the amended Code of Civil Procedure comes into effect by next year, court records will be digitally stored on a server maintained by the court. Parties to a case and interested third parties may inspect the court records electronically on their own computers, while other third parties may inspect the electronic records on computers maintained by the court.

V. Conclusion

The implementation of the amended Code of Civil Procedure will significantly digitalize Japan's civil litigation system, enhancing efficiency of civil litigation procedures. However, many aspects of its implementation remain uncertain at this stage, and it is necessary to closely monitor the developments.

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