

Yesterday. Today. Tomorrow.

Linklaters

Year in review,
Year to come

Japan Law

December 2018



Year in review

Japan Law in 2018

Japanese Law: Year in Review 2018 summarises some key developments in Japan this year. There are also links to further reading, where applicable.



Industrial Competitiveness Enhancement Act:

The amended Industrial Competitiveness Enhancement Act (the “Enhancement Act”) came into force on 9 July 2018. Prior to the amendment, the Enhancement Act had already set out certain exemptions to the requirements under the Companies Act in respect of in-kind contributions, such as the exemption to an investigation by a court appointed-inspector, in the case of a tender offer (or any equivalent in other jurisdictions), using its shares as the consideration to acquire control of a target company if the acquirer obtains authorisation by the competent minister(s). The amendment has further expanded the scope so that the acquirer can use the Enhancement Act in the case of a transfer of shares of the target company. This amendment enables the acquirer to use the Enhancement Act for (a) the acquisition of a non-listed company and (b) an acquisition which does not fall under the category of a tender offer or any equivalent, such as an acquisition by way of a scheme of arrangement in the UK. In relation to this amendment, a relevant tax reform was made in 2018 so that shareholders who sold their shares pursuant to an acquisition made by an acquirer who conducted the acquisition under a special business restructuring plan (tokubetsu jigyou saihen keikaku) authorised by the competent minister(s), can benefit from tax deferral treatment.

Further, the acquisition by using shares as consideration will become available under the Companies Act as well, not just under the Enhancement Act. The Companies Act is expected to be amended to include a new system called “Share Delivery System” (kabushiki kouhu seido), whereby an acquirer can acquire the target shares in exchange for its shares. Under the current Companies Act, there is already a system called “Share-for-Share Exchange (kabushiki koukan)”, but it is only available for the acquisition of 100% shares in a Japanese KK. The new Share Delivery System may be used when the acquirer obtains only a simple majority (rather than all shares) in the target, and the target can be a foreign entity.

Personal Data Transfer between Japan and the EU:

On 5 September 2018, the EU Commission officially launched the procedure for the recognition of the adequate protection of personal data by Japan. On 7 September 2018, the Personal Information Protection Commission (the “PPC”), the independent Japanese data protection authority, published the “Supplementary Rules under the Act on the Protection of Personal Information for the Handling of Personal Data Transferred from the EU based on an Adequacy Decision”, which will become effective when the EU Commission’s adequacy decision becomes effective. These rules introduce additional safeguards when EU data is sent to Japan, which should help overcome certain differences which still exist between both legal systems. This includes enhanced rules on the definition of “sensitive data”, the exercise of individual rights and onward transfers. The Supplementary Rules indicate that these additional safeguards are binding on Japanese companies importing data from the EEA and will be enforceable by the PPC. Once the formal procedures are completed on both sides, personal data will be able to flow safely and freely between the EEA and Japan, without being subject to any further safeguards or derogations.

2018 highlights

The amended Enhancement Act has brought about changes to acquisitions involving share transfers.

2018 highlights

Personal data will flow safely and freely between the EEA and Japan once the formal procedures are completed on both sides.

2018 highlights

The AML Guidelines will have an impact on how financial institutions approach various risks.

Update of Anti-Money Laundering related regulations:

On 6 February 2018, the Financial Services Agency, which regulates financial institutions operating in Japan, published the “Guidelines for Anti-Money Laundering and Combating the Financing of Terrorism” and the updated “Comprehensive Guidelines for Supervision of Major Banks, etc.” (collectively, the “AML Guidelines”). The AML Guidelines change the approach that regulators require financial institutions to take from a “rule-based approach” to a “risk-based approach” – they require taking effective measures reflecting the actual risk of the transactions that financial institutions undertake while allowing simplified measures for low risk transactions. The AML Guidelines set out how financial institutions must appropriately identify and assess the money laundering risks which they face and undertake mitigation measures commensurate with those risks; the AML Guidelines also specifically refer to foreign remittance due to the nature of a transaction and expect the financial institutions to proactively utilise FinTech to comply with those requirements. Financial institutions are expected to evaluate and review their internal risk management system and its effectiveness in order to support compliance with the above requirements.

Electronic Banking Settlements Agency:

An increasing number of financial technology (fintech) companies provide payment services on a global scale. Also, international financial institutions that are proactively enhancing collaboration with fintech companies (so-called open innovation) may seek to provide better solutions for addressing customers’ settlement needs. Under the circumstances, fintech companies have accessed their customers’ bank accounts on their behalf by retaining and using customers’ IDs and passwords (so-called scraping method) and have received an unlimited amount of information related to customers’ bank accounts. However, it should be noted that there might be a greater risk of information leakage, unauthorised access or fraudulent instructions which may cause adverse effects on the stability of banking systems.

[Read more...](#)

Year to come

Japan Law in 2019

Japanese Law: Year to Come 2019 gives an overview of important changes that we anticipate in 2019.



Review of Policy Asset Mix of GPIF:

The Government Pension Investment Fund ("GPIF") of Japan, the world's biggest pension fund with nearly JPY 160 trillion in assets, is expected to reconsider its policy asset mix in 2019. The current policy asset mix was established in 2014 as a part of its third Medium-term Plan and aims to allocate its portfolio assets as follows: 35 per cent (± 10 per cent) to domestic bonds, 25 per cent (± 9 per cent) to domestic equities, 15% ($\pm 4\%$) to foreign bonds and 25 per cent (± 8 per cent) to foreign equities.

The current policy asset mix attracted great attention from both inside and outside Japan as it permitted the GPIF's investments in alternative assets for the first time. While the policy asset mix permits the investments in alternative asset up to 5 per cent of the total portfolio, in reality, the percentage of investments in alternative assets accounts for 0.17 per cent as of the end of Q1 2018.

Since April 2017, the GPIF has selected external asset managers for alternative investments (i.e., global-core infrastructure, Japan-core real estate and global-core real estate) and has been increasing exposure to alternative assets. Also, the "Order for Enforcement of Act on the Government Pension Investment Fund, Independent Administrative Agency" was amended in September 2017 to allow the GPIF to carry out alternative investments through a limited partnership structure, which is frequently used for alternative investments. Reflecting on this circumstance and considering the recent decrease in the percentage of allocation to domestic bonds (27.14 per cent as of the end of Q1 2018), it's worth paying attention to the GPIF's attitude toward alternative investments and its influence on the new policy asset mix to be established

Japan offshore wind:

Japan's offshore wind potential is huge. It has the seventh longest coastline in the world and 1,600GW of potential offshore wind. To meet the Japanese Government's energy mix target, 10GW of offshore wind capacity will need to be installed by 2030. This target is a stepping stone to the government's goal of decarbonising Japan's economy by 2050. However, offshore wind development has been slow given its geography, climate conditions and legal and regulatory issues.

There are great technological challenges to deal with concerning Japan's deep seas (80 per cent of Japan's offshore wind source is in water more than 50m deep), earthquakes and typhoon-prone climate. Floating wind technology is quickly becoming viable, with 13 floating wind projects announced and two in commercial operation globally. Lightning storms have been the single most common cause of Japanese wind farm failures, but insurance has been available since 2015.

Currently, the use of sea areas can only be retained for three-five years, and developers must separately (i) engage with stakeholders, (ii) enter feed-in-tariff auctions and (iii) enter zone auctions. A new piece of legislation is waiting for approval at the Diet that will (i) allow wind farms to use sea areas for up to 30 years and (ii) streamline these separate processes.

Japan's existing grid is not nationally integrated. Grid capacity is seriously constrained in many regions with the greatest offshore wind potential. However, using a Japanese version of "connect and manage", the Japanese Government has freed up 374MW of grid availability since April 2018. There are also plans to increase the cross-regional transmission capacity.

Since 2012, wind projects of 10MW or more have had to undergo environmental impact assessments that have taken at least four years. Since 2016, the Government has enacted numerous policies to reduce this time.

The Government appears to be mobilising all resources to achieve its 2030 target. As historical problems are increasingly solved, it feels like Japanese offshore wind is approaching a tipping point. The political concern is cost. If the cost concern is addressed, there is a possibility that the Government target could, in the end, be exceeded.

2019 highlights

GPIF's new policy asset mix may have a huge impact on the market.

2019 highlights

Japanese offshore wind may be approaching a tipping point.

What now?

Your contacts

We hope that you have found this guide useful.
Please contact your usual Linklaters contact, if you would like to discuss any of these matters further.



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