



The
LEGAL
500

**COUNTRY
COMPARATIVE
GUIDES 2021**

The Legal 500 Country Comparative Guides

Japan

ENVIRONMENT

Contributing firm

City-Yuwa Partners



Akira Nagasaki

Partner | akira.nagasaki@city-yuwa.com

This country-specific Q&A provides an overview of environment laws and regulations applicable in Japan.

For a full list of jurisdictional Q&As visit legal500.com/guides

JAPAN

ENVIRONMENT



1. What is the environmental framework and the key pieces of environmental legislation in your jurisdiction?

Japan's environmental law framework consists of:

(i) A "basic law" which provides general principles for protecting the environment:

- Basic Act on Environment (1993)

(ii) Individual laws that regulate various polluting activities:

- Air Pollution Control Act (1968)
- Noise Regulation Act (1968)
- Water Pollution Prevention Act (1970)
- Waste Management and Public Cleansing Act (1970)
- Act on the Regulation of Manufacture and Evaluation of Chemical Substances (1973)
- Soil Contamination Countermeasures Act (2002)

(iii) Basic and Individual laws related to recycling:

- Basic Laws:
 - Basic Act on Establishing a Sound Material-Cycle Society (2000)
 - Waste Management and Public Cleansing Act (1970)
 - Act on the Promotion of Effective Utilization of Resources (1991)
- Individual Laws (some examples):
 - Act on the Promotion of Sorted Collection and Recycling of Containers and Packaging (1995)
 - Act on Recycling of Specified Kinds of Home Appliances (1998)
 - Act on Recycling, etc. of End-of-Life Vehicles (2002)
 - Act on Promotion of Recycling and Related Activities for Treatment of Cyclical Food Resources (2009)
 - Construction Material Recycling Act

(2009)

- Regulation for Enforcement of the Act on Promotion of Recycling of Small Waste Electrical and Electronic Equipment (2013)

(iv) Basic and individual laws related to conservation and biodiversity:

- Basic Act on Biodiversity (2008)
- Act on Conservation of Endangered Species of Wild Plants and Animals (1992)
- Act on the Protection and Management of Wild Birds and Mammals and the Proper Administration of their Hunting (2002)
- Natural Parks Act (1957)

Japan's statutes are enacted by the parliament and the executive branch executes the laws. The final authority to interpret laws lies with the courts, however, the executive branch (i.e., the government ministries and agencies) has the power to determine the details of execution through "executive orders". Because most laws are drafted by the executive branch (i.e., the administration), the government (i.e., the ministries and agencies) has, in effect, broad authority to interpret the laws.

2. Who are the primary environmental regulatory authorities in your jurisdiction? To what extent do they enforce environmental requirements?

The primary government office responsible for enforcing environmental regulations is the Ministry of Environment. However, industry-specific statutes are also administered by the ministries or agencies overseeing such industry. In addition, much authority is delegated to the local government, i.e., the 47 prefectures in Japan.

3. What is the framework for the environmental permitting regime in your jurisdiction?

The framework varies greatly. Many if not most are regulations regarding emissions, discharge, etc., while some regulations are based on permits, such as waste management/disposal (i.e., one needs a permit to process and dispose of wastes). A regulation regarding emissions, discharge can work like a permit as facilities need to meet certain levels of emissions, discharge, etc.

4. Can environmental permits be transferred between entities in your jurisdiction? If so, what is the process for transferring?

Permits are in principle non-transferable because they are granted per entity.

5. What rights of appeal are there against regulators with regards to decisions to grant environmental permits?

It depends on the individual statues, but, if a permit is denied, the filing party may appeal to the regulator itself (more precisely, its higher administrative authority) or challenge the denial in court.

6. Are environmental impact assessments (EIAs) for certain projects required in your jurisdiction? If so, what are the main elements of EIAs and to what extent can EIAs be challenged?

Yes, EIAs are required for certain large-scale construction projects in accordance with the Environmental Impact Assessment Act (1997) and the relevant laws regulating various construction projects. Conducting an EIA is one of the conditions for obtaining the project permit. The EIA itself cannot be challenged, but those affected by the project (i.e., residents in the vicinity) may challenge the permit and the EIA will be subject to review in the process.

7. What is the framework for determining and allocating liability for contamination of soil and groundwater in your jurisdiction, and what are the applicable regulatory regimes?

Soil contamination is regulated by the Soil Contamination Countermeasures Act and groundwater by the Water Pollution Prevention Act. The former requires certain landowners to investigate soil contamination and take necessary decontamination measures. The latter prohibits operators of certain facilities (e.g., factories) from contaminating groundwater with certain hazardous substances such as trichloroethylene.

8. Under what circumstances is there a positive obligation to investigate land for potential soil and groundwater contamination? Is there a positive obligation to provide any investigative reports to regulatory authorities?

For soil contamination, obligation to investigate occurs when: (i) operation of contaminant using facilities (e.g., factories) is terminated; (ii) when a person intends to excavate or otherwise change the form/nature of the land; or (iii) when a regulator (for soil contamination, this is the prefectural governor) discovers soil contamination which may cause harm to human health.

For groundwater, the obligation to investigate arises when groundwater contamination has occurred, and health hazards have occurred or there is a risk thereof.

9. If land is found to be contaminated, or pollutants are discovered to be migrating to neighbouring land, is there a duty to report this contamination to relevant authorities?

Yes, and if the contamination exceeds environmental standards, there is an obligation to report and conduct mitigation measures.

10. Does the owner of land that is affected by historical contamination have a private right of action against a previous owner of the land when that previous owner caused the contamination?

Yes, the current landowner is entitled to seek compensation from the person who caused the contamination. However, the decontamination will be conducted by the landowner which bears primary responsibility.

11. What are the key laws and controls governing the regulatory regime for waste in your jurisdiction?

Processing and disposal of waste are regulated by the Waste Management and Public Cleansing Act (1970). The Act requires a permit for vendors who engage in the processing and disposal of waste (both non-industrial and industrial, but for non-industrial waste, local governments are the primary processors/disposers of waste). There are also laws related to recycling, which would be an exception to waste disposal.

12. Do producers of waste retain any liabilities in respect of the waste after having transferred it to another person for treatment or disposal off-site (e.g. if the other person goes bankrupt or does not properly handle or dispose of the waste)?

Yes, this may happen if the processor or disposer of waste was ordered by the authority to clean up unlawfully deposited waste is unable to comply due to lack of sufficient funds (insolvency, bankruptcy, etc.), then the producer of the waste will be required to clean up if it was found that the producer did not pay appropriate compensation for the waste disposal (Art. 19-6(1) of the Waste Management and Public Cleansing Act).

13. To what extent do producers of certain products (e.g. packaging/electronic devices) have obligations regarding the take-back of waste?

Take-back of waste is not required for packaging, although there is a regime for collecting used recyclable packaging and recycling (mainly applying to plastic and glass, Act on the Promotion of Sorted Collection and Recycling of Containers and Packaging (1995)). On the other hand, household electronic appliances are subject to the Act on Recycling of Specified Kinds of Home Appliances (1998), and manufacturers are required to collect used household electronic appliances. There are also regulations which require certain percent of the product to be recyclable.

14. What are the duties of owners/occupiers of premises in relation to asbestos, or other deleterious materials, found on their land and in their buildings?

For asbestos, the person who plans to deconstruct facilities using asbestos-contained materials need to report such deconstruction and abide by certain emission standards (10 asbestos fibers per 1 litre of air at the facility boundary). For other dust ("general dust"), there is no particular emission standard, however, the facility owner needs to follow certain equipment and facility standards designed to keep dust from dispersing in the environment.

15. To what extent are product regulations (e.g. REACH, CLP, TSCA and equivalent regimes) applicable in your jurisdiction? Provide a short, high-level summary of the relevant provisions.

Japan adopts the Pollutant Release and Transfer Register (PRTR) system, where businesses are requested to report the release or transfer of certain chemical substances (including their quantity) from its premises. As of March 2019, 462 substances are subject to this report. Unlike REACH, there is no government authorization involved, and depends mainly on self-governance.

16. What provisions are there in your jurisdiction concerning energy efficiency (e.g. energy efficiency auditing requirements) in your jurisdiction?

The Act on the Rational Use of Energy requires businesses to set goals for conserving energy but this is non-compulsory. Businesses exceeding a certain scale (i.e., businesses using the energy equivalent to oil consumption of 1,500 kiloliters/year or more total per year, freight businesses with 200 or more trucks, and logistics companies handling 30,000,000 tons/km or more) are further required to report energy conservation plans and status on energy consumption. The government sets certain standards that should be met for energy efficiency, and the government ranks businesses according to how the standards are met. It should be noted that there are no penalties in the law, rather the law only incentivizes companies to achieve energy efficiency.

17. What are the key policies, principles, targets, and laws relating to the reduction of greenhouse gas emissions (e.g. emissions trading schemes) and the increase of the use of renewable energy (such as wind power) in your jurisdiction?

For greenhouse gas emissions, the Act on Promotion of Global Warming Countermeasures (1998) requires the government to set goals for the reduction of greenhouse gas. Originally, the plan was set to meet the Kyoto Protocol of 2005 but since Japan did not participate in the second period of the Protocol, the plan ended in 2012, but the government will continue its efforts in reducing greenhouse gas emissions under the Cancun Agreements. The Act also requires businesses emitting large quantities of greenhouse gas (3,000 tons per year or more of CO₂ of equivalent thereto) to report and disclose their greenhouse gas emissions.

For renewable energy, the Act on Special Measures Concerning Procurement of Electricity from Renewable Energy Sources by Electricity Utilities (2011) was introduced after the Fukushima Nuclear Plant accident. The Act introduced the feed-in-tariff (FIT) system for the purchase of renewable energy to promote the use thereof. The Act was amended in 2020 (and its name was changed to the “Act on Special Measures Concerning the Enhancement of Use of Electricity from Renewable Energy Sources”) to add a feed-in-premium (FIP) system.

18. To what extent are environmental, social, and governance (ESG) issues a material consideration in your jurisdiction? Is ESG due diligence for transactions and ESG due diligence in supply chains becoming mandatory or more common? To what extent are companies obliged to report on ESG matters? Has COVID-19 had any impact in relation to companies' approach to ESG in your jurisdiction?

ESG is declared in law (Act concerning the Promotion of Environmentally Friendly Business Activities by Specified Business Operators. through the Promotion of Provision of Environmental Information (2004)), but has no compulsory power. No law in Japan obliges companies to report on ESG matters, but recently, more companies are preparing ESG reports for their investors. However, ESG due diligence is not common in acquisitions. To our knowledge, COVID-19 has not had any noticeable effect concerning companies' approach to ESG.

19. To what extent can the following persons be held liable for breaches of environmental law and/or pollution caused by a company: (a) the company itself; (b) the shareholders of the company; (c) the directors of the company; (d) a parent company; (e) entities (e.g. banks) that have lent money to the company; and (f) any other entities?

Under Japanese law, only the company itself has civil liability for environmental pollution. As for criminal liability, the primary person responsible is the individual who committed the polluting act, and secondary responsibility may also fall upon the company, but this needs to be explicitly provided in the statute.

20. To what extent can: (a) a buyer assume any pre-acquisition environmental liabilities in an asset sale/share sale; and (b) a seller retain any environmental liabilities after an asset sale/share sale in your jurisdiction?

In Japan, this issue is most relevant for soil contamination. Under the statute (the Soil Contamination Countermeasures Act), the landowner (and also those who manage or hold the land) has the primary obligation to survey for contamination and take remedial measures. The landowner can then seek compensation from the person who caused the contamination. In transactions, the risk is contractually allocated between the seller and the buyer of land, which may become a contentious issue if soil contamination risk is substantial.

21. What duties to disclose environmental information does a seller have in a transaction? Is environmental due diligence commonplace in your jurisdiction?

There is no statutory duty to disclose, but it is common for buyers to require disclosure and provide representations and warranties regarding environmental law compliance. Environmental due diligence is also common, especially when buying companies owning factories or purchasing land for development.

22. What environmental risks can be covered by insurance in your jurisdiction, and what types of environmental insurance policy are commonly available? Is environmental insurance regularly obtained in practice?

In Japan, insurance companies sell insurance policies for general environmental contamination liability and also insurance for individual environmental issues (soil contamination, waste disposal, etc.). These types of insurance policies have been existing in the Japanese insurance market for some time, and presumably, it is commonly adopted in companies bearing considerable environmental risks, especially soil contamination (e.g., manufacturing companies which owns factories).

23. To what extent are there public registers of environmental information kept by public authorities in your jurisdiction? If so, what is the process by which parties can access this information?

Information provided by companies to the regulators under the PRTR system and also greenhouse emissions under the said Act on Promotion of Global Warming Countermeasures are made available to citizens on demand (i.e., it is not publicly disclosed, so it is not a public register, but more like a public database). There is a certain fee involved but basically, the information will be disclosed.

24. To what extent is there a requirement on public bodies in your jurisdiction to disclose environmental information to parties that request it?

Same as above.

25. What impact, if any, has COVID-19 had

in relation to environmental regulations and enforcement in your jurisdiction?

There is no apparent impact of COVID-19 concerning environmental regulations and enforcement in Japan except during the first lock-down like measure was taken during April-May, when the government (both local and national) was not operating at full capacity. In general, decreased economic activity due to the pandemic seems to have relaxed the burden on the environment.

26. Have there been any significant updates in environmental law in your jurisdiction in the past three years? Are there any material proposals for significant updates or reforms in the near future?

2019:

July 2019: The Enforcement Order of the Environmental Impact Assessment Act was amended to include solar-cell electronic power plants. Formerly, solar cell plants were not subject to environmental assessment (at least at the national level). To note, wind power was added in 2012.

2020:

July 16: The Waste Management and Public Cleansing Act was amended to allow process and disposal of disaster-derived wastes as industrial wastes (formerly, these were classified as "normal waste" and needed involvement of local government for clean-ups). This is a reflection of Japan's natural environment, i.e., we are prone to natural disasters such as typhoons, earthquakes, volcanoes, tsunamis, etc.

Oct 17: The Air Pollution Control Act was amended to regulate all construction materials including asbestos, instead of only sprayed asbestos, as was the case before amendment.

2021 and beyond.

There may be new laws or regulations related to government's plan to become "carbon neutral" by 2050.

Contributors

Akira Nagasaki
Partner

akira.nagasaki@city-yuwa.com

