

# Environment

in 22 jurisdictions worldwide

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# 2013



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# Japan

**Akiko Monden, Rieko Sasaki and Sachiko Sugawara**

Atsumi & Sakai

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## Legislation

### 1 Main environmental regulations

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

The main environmental regulations in Japan are:

#### Pollution

The Environmental Basic Act (EBA) sets forth the basic policy for protecting the environment, and is the basis for the Basic Environmental Plan, which sets out the outline for a long-term policy and the Environmental Standards (administrative policy objective for air, water, soil, noise and dioxin). The EBA sets out air, water, soil, noise, vibration, land sinking and odour pollution, which affects a considerable area and causes damage to human health or living environment and which are commonly called the seven typical pollutions. Such matters are regulated by, among other laws, the Air Pollution Control Act (APCA), Water Pollution Control Act (WPCA), Soil Contamination Countermeasures Act (SCA), Noise Regulation Act (NRA), Vibration Regulation Act (VRA), Industrial Water Act (IWA) and Offensive Odour Control Act (OOCA).

#### Waste management/recycling

The Waste Management and Public Cleansing Act (WMA) and laws to promote recycling such as the Act on the Promotion of Sorted Collection and Recycling of Containers and Packaging.

#### Management of chemical agents

See question 14.

#### Global environment

Laws such as the Act for Protection of the Ozone Layer through Regulation of Designated Substances, etc, and the Act on Promotion of Global Warming Countermeasures (GWCA).

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### 2 Integrated pollution prevention and control

Is there a system of integrated control of pollution?

No. However, environment regulation often takes a two-tiered structure where a basic act or plan with administrative policy objectives is first set out, and laws and ordinances based on said plan are then implemented to bind corporations, individuals, etc.

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### 3 Soil pollution

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

Soil pollution is regulated under the SCA. Procedures start with investigation of soil contamination, which must be performed by

the owner, manager or occupant (owner) of a land, when any of the following occur (or may be performed voluntarily):

- use as a specified facility using hazardous substances ceases;
- the prefectural governor (governor) finds a risk of soil pollution upon receiving notification of changes of the land character (eg, excavate and fill the land) with respect to land of 3,000m<sup>2</sup> or over; or
- the governor finds that the land falls under the criteria for threat of health hazard set forth by a Cabinet order.

If the governor finds that the required standard for designated hazardous substance set forth by the Ministry of the Environment (MoE) is not met and that contamination causes, or may cause, damage to human health, the land will be designated as an area requiring action (ARA). If the MoE standard is not met but there is no risk to human health, the land will be designated as an area requiring notice upon change to land character.

As a general principle, the governor will first instruct the owner of the ARA to take necessary measures such as removal of contamination or prevention of dispersion of contamination within a reasonable time frame. When such instructions are not obeyed, the governor may issue an order, and violation of an order is a criminal offence.

There are regulations for removal and transportation of contaminated soil.

In addition, agricultural land is subject to the Agricultural Land Soil Pollution Prevention Act. Additional soil pollution regulations may be imposed by local governments.

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### 4 Regulation of waste

What types of waste are regulated and how?

The WMA defines waste as 'refuse, oversized refuse, combustion residue, sludge, manure, waste oil, waste acid, waste alkali, animal carcass, and other wastes or unwanted matter, whether solid or liquid (excluding radioactive material and substances contaminated with radioactive material)'. In a case in which it was disputed as to whether tofu refuse is industrial waste or not, the Supreme Court has explained that 'unwanted matter' is determined by a comprehensive analysis of the condition of the matter; how it was emitted; how it is normally treated; market value; and subjective views of the possessor. Recent disputes surrounding this definition concern recycling, and courts have been divided in determining whether the purpose to recycle should be considered when considering market value (or the lack thereof, while the resource is not yet recycled and is still in waste form).

The WMA classifies waste generated from business activities and imported waste as industrial waste that must be handled by the emitter or by a paid outsourced third party licensed by the governor. Other waste is called general waste and handled by the municipal governments. Certain waste products that are dangerous to human

health or the living environment (eg, explosive waste) are defined as special management waste and require special management.

When the emitter engages a third party to process industrial waste they must monitor such third party (eg, by handing out a control manifest, which must be handed over to each party involved and returned to the emitter or done electronically).

**5 Regulation of air emissions**

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

The APCA regulates emission of smoke, soot and dust from business activities and demolition of buildings, etc, at factories and business sites. For smoke and soot emissions, any facility that exceeds a certain criteria is designated as a ‘smoke-emitting facility’, and the operator of such facility must notify the construction of or changes to the facility to the governor or head of the municipal city, and also comply with:

- general emissions standards under MoE Ordinance;
- strict special emissions standards for seriously polluted areas specified by the minister of the MoE;
- standards of local ordinance; and
- total emissions standards for designated special areas when the above three criteria are insufficient.

Any operator of a facility that generates dust or designated dust (asbestos) must notify the governor prior to constructing or changing the facility. There are standards for construction, use and management of dust specified for each type of facility, and for the level of concentrations in the air on the borders of the factory or business site, and for processes to follow in work that will cause asbestos emissions.

Any construction or change to facilities that typically emit volatile organic compounds in excess of certain levels must be notified to the governor in advance and emission standards must be observed.

In addition, there are laws that address air pollution by mobile sources, such as the Act Concerning Special Measures for Total Emission Reduction of Nitrogen Oxides and Particulate Matter from Automobiles in Specified Areas.

**6 Climate change**

Are there any specific provisions relating to climate change?

Japan has taken an active role in the international efforts regarding climate change, and has ratified the United Nations Framework Convention on Climate Change in 1993, and has agreed to reduce emission levels to 6 per cent by 2008–2012 in comparison to 1990 by signing the Kyoto Protocol. Japan has expressed that it will not participate in the extension of the Kyoto Protocol from 2013 and will instead seek a better balanced structure to reduce emissions since both Kyoto participants and non-participants include large emitters. Japan, a country that had already performed extensive energy-saving measures prior to the execution of the Kyoto Protocol, was put at an even greater disadvantage. Japan is now seeking to establish a new international platform by 2020 while engaging in efforts to reduce emissions such as the mitigation plans under the Cancun Agreement and proposing a bilateral offset credit system with developing nations to supplement the CDM of the Kyoto Protocol with East Asian nations.

Under the GWCA, businesses that emit a certain amount of greenhouse gases are obligated to measure the amount of emission of greenhouse gases and report it to the relevant minister. The minister in turn reports the data to the ministers of the MoE and Ministry of Economy, Trade and Industry (METI). The two ministers then add up the data and publicise it. Acquisition and transfer of emis-

sion credits under the Kyoto mechanism are done through a registry managed by these two ministers.

There are several cap-and-trade systems:

- national programmes (voluntary schemes) – Japan’s Voluntary Emissions Trading System (JVETS), Japan’s Verified Emission Reduction (J-VER), Domestic Credit System, Trial Emissions Trading Scheme;
- municipal cap-and-trade programmes (independent from the Kyoto Protocol and GWC):
  - Tokyo Emissions Trading System – mandatory programme run by the Tokyo metropolitan government. Office buildings and factories that consume 1,500kl or more of crude oil equivalent energy use per year must reduce by 6 to 8 per cent on average during 2010–2014 (first period) compared to base emission. Allowance allocation is done by grandfathering (emission permitted on the basis of past emission for free) by the following calculation: base year emission (average of past three years) x 1 – 6 or 8 per cent x five years. Violation may lead to publication of violation, payment of fees when the governor acted to reduce emissions and a penal fine up to ¥500,000; and
  - Saitama Prefecture Cap-and-Trade Program with Target – applicable from April 2011. This is similar to Tokyo’s programme, but has no penalty.

**7 Protection of fresh water and seawater**

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

The WPCA requires anyone discharging water from a factory or workplace into a public waterway to file with the governor before setting up a specified facility (essentially any facility that discharges contaminated substances) to protect public water areas and groundwater. Discharge into public waterways from factories or workplaces that have a specified facility not meeting standards set by the MoE is prohibited. Local prefectural ordinances may set stricter standards for specific waterways compared to the MoE’s national standard.

The Act on Special Measures concerning Conservation of Lake Water Quality applies special regulatory measures for lakes or swamps.

The Industrial Water Act on the Regulation of Pumping-up of Groundwater for Use in Buildings regulates the extraction of groundwater.

Seawater is protected by laws such as the Act pertaining to the Prevention of Marine Pollution and Maritime Disaster, and the Act on Liability for Oil Pollution Damage.

**8 Protection of natural spaces and landscapes**

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

The Nature Conservation Act protects natural environments of designated areas by restricting certain activities such as requiring authorisation of cutting down trees and bamboo in special areas. Designated areas may include privately owned land, and thus require reconciliation of interests with landowners (in effect, consent is necessary). When activities of private persons are limited as a result, the state must compensate damages normally incurred.

The Natural Parks Act specifies certain areas as a natural park. Regulation of activities varies among the types of designated areas as well, and privately owned land may be designated, thus requiring the consent of right holders, and they must be compensated for damages normally incurred due to such designation. However, since designation is performed after reconciliation of interests with

landowners, in practice such compensation is normally not paid even if certain activities are not allowed.

The Landscape Act protects landscapes of cities, villages, etc, for example by setting out procedures to set out landscape plans, and letting certain entities (eg, cities) that develop such plans to restrict certain use of land.

## 9 Protection of flora and fauna species

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

The Wildlife Protection and Proper Hunting Act (WPA) prohibits the hunting, collection, trapping, injuring or killing of birds and wild fauna or eggs of birds, with certain exceptions, among other restrictions.

The Act on Conservation of Endangered Species of Wild Fauna and Flora (CESA) was enacted to afford absolute protection for flora and fauna species that are reduced in numbers and in danger of becoming extinct. The list of endangered species of wild flora and fauna includes international endangered species such as the species set out by the Washington Convention and the Migratory Bird Treaty Act and export or import of such species requires approval pursuant to the Foreign Exchange and Foreign Trade Act.

## 10 Noise, odours and vibrations

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

The NRA regulates factories and workplaces with facilities that emit very high volume noise, certain construction work and sound emitted by cars, and the noise standard is set forth by the minister of the MoE. The governor specifies designated areas where noise pollution is regulated, and when the governor finds that the noise level exceeds the standard and causes damage to the nearby living environment, may recommend methods to decrease noise, etc, and issue an order when such recommendation is not observed. With regard to vehicle noise, the head of the municipality must measure the noise and if the head finds the noise in excess of limits within designated areas causing significant damage to the living environment in the area, the head will request the prefectural Public Safety Commission to take necessary measures. There are also local government measures in relation to late-night noise pollution.

OCCA sets forth that if the governor recognises a necessity to prevent odours to protect the living environment of residents, then specific controlled areas are designated, and standards are set to regulate concentrations of specified odour-emitting substances and odour levels for property borders, exhaust outlets and fluid outlets. Heads of municipalities may recommend improvement for violation, and if the recommendation is not observed, may issue an order.

VRA essentially regulates vibration similarly to the way noise is regulated as the source of noise and vibration are often the same.

## 11 Liability for damage to the environment

Is there a general regime on liability for environmental damage?

There is no general regime, and liability is pursued based on a tort claim, in which the complainant must prove the intent or negligence, violation of rights and cause and effect as in any other tort claim as a general principle. However, there are special rules, such as provisions under APCA and WPCA that set out that the perpetrator must compensate for damages causing harm to human life or bodily harm even if faultless; although where a natural disaster or other unavoidable cause also co-existed, the court may consider such situation when determining the liability and the amount thereof (see question 29).

## 12 Environmental taxes

Is there any type of environmental tax?

Environmental tax can be categorised as tax imposed to conserve energy and local environment tax imposed for various reasons. Taxes imposed to conserve energy include gasoline tax, light gas oil tax, oil gas tax, petroleum and coal tax, aircraft fuel tax, car acquisition tax and car weight tax (energy-saving hybrid vehicles receive a tax reduction). The introduction of a global climate change tax will be implemented from 1 October 2012, to be imposed on crude oil/petroleum, gaseous hydrocarbon and coal.

Local environment tax includes forest environment tax, industrial waste tax, water source environment conservation tax and plastic grocery bag tax (taxation for consumers who do not bring bags to grocery stores).

## Hazardous activities and substances

### 13 Regulation of hazardous activities

Are there specific rules governing hazardous activities?

Yes, hazardous activities are regulated under a number of different laws. In addition, the Act on Entrepreneurs' Bearing of the Cost of Public Pollution Control Works obligates businesses to bear all or part of the cost of activities of the national government or local government organisations in order to prevent public pollution (seven typical pollutions, see question 1).

### 14 Regulation of hazardous products and substances

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

The Act on the Evaluation of Chemical Substances and Regulation of Their Manufacture obligates reporting and evaluation of new chemical substances before manufacturing or importing. The manufacture, import or use of a Class I Specified Chemical Substance (low degradability, bioaccumulative and has long term toxicity) is prohibited as a general principle, and a Class II Specified Chemical Substance (less bioaccumulative) must be handled with certain requirements and reported when manufacturing or imported to the minister of METI and ministers of the Ministry of Health, Labor and Welfare (MHLW); METI and MoE regulate such substances. Chemical Substances Subject to Types I-III Monitoring are subject to regulation such as notification obligation of manufacturing or importing.

The Act on Confirmation, etc, of Release Amounts of Specific Chemical Substances in the Environment and Promotion of Improvements to the Management Thereof (PRTR Act) sets out notification of annual emissions and volumes moved, and other obligations of operators in relation to the transportation or moving of Class I Designated Chemical Substances.

Whenever products containing notifiable substances under the Industrial Safety and Health Act (ISHA), poisonous and deleterious substances under the Poisonous and Deleterious Substances Control Act, or products containing a certain level of designated chemical substances under the PRTR Act are transferred or provided, a material safety data sheet, which lists safety data such as precautions for use, must be prepared and submitted to the relevant authority.

Under the Act on Special Measures concerning Promotion of Proper Treatment of PCB Wastes, business operators that dispose it must annually notify the governor of matters concerning storage and disposal among other obligations.

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**Industrial accidents**


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**15 Industrial accidents**

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

ISHA sets out the framework for prevention of industrial accidents. Each workplace with a certain number of employees (100 or more for businesses such as construction, 300 or more for business such as manufacturers and 1,000 or more for other types) must have a general health and safety manager who will be in charge of matters such as prevention of harm to employees' health and implementing trainings for health and safety. Other roles such as safety officer, health officer, safety and health promoter, industrial physician, operations chief, overall safety and health controller, and health and safety committees are also required for certain workplaces.

ISHA also sets out rules for certain activities, such as requirement of authorisation for manufacturing dangerous machines (eg, cranes that lift loads of 3 tonnes or heavier) from the head of the Prefectural Labor Bureau (see also question 14).

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**Environmental aspects in transactions**


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**16 Environmental aspects in M&A transactions**

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

The main aspects to consider are:

- compliance with pollution/emission standards (eg, air or noise pollution) and the costs for remediation in cases of violation, particularly when factories are involved;
- soil and groundwater contamination and costs for remediation when real estate is involved;
- validity of permits, licences, etc, and whether the M&A will effect the validity thereof; and
- compliance with waste disposal regulation.

The emphasis on the above matters may differ between M&A transactions. For example, a purchaser of shares will acquire the target with all of its rights and obligations (liabilities, permits, etc) as a general principle. In contrast, in a business transfer, environment risks may be carved out depending on how it is structured, since this is basically a transfer of specific rights and obligations, but permits, etc, will need to be obtained anew as a general principle. Provided, however, the purchaser in a business transfer may be held liable for risks generated by the seller – for example, the purchaser will assume obligations of the seller if the purchaser succeeds the trade name of the seller, unless the purchaser registers that it will not succeed the debts of the seller or sends such notice to relevant third parties.

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**17 Environmental aspects in other transactions**


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

In financing transactions, lenders will confirm that borrowers have complied with their environmental obligations as part of a wider compliance check. It is also important in an IPO context to confirm whether a business is in compliance with all environment-related legislation that applies to its activities.

In real estate transactions, sellers could bear responsibility of warranty against a defect in relation to soil contamination, so if there is any doubt over possible soil contamination, sale and purchase agreements often contain provisions regarding assessment obligations and the burden of costs in the event that contaminated soil must be removed. A Tokyo Metropolitan Ordinance provides greenhouse gas emissions trading and reduction obligations on

certain large-scale workplaces within Tokyo, so transactions of relevant real estate require consideration of compliance with such Ordinance.

In a corporate restructuring, if an entity that had caused environmental damage goes bankrupt, issues can arise in relation to the question of how best to create a restructuring scheme that offers remedies for victims of the damage.

In a bankruptcy or similar procedure, if the bankrupt estate includes contaminated soil, or PCB waste products, etc, then the trustee in bankruptcy has a social obligation to take appropriate measures to the extent possible, and the question of who bears the cost will become an issue and requires consideration (depending on the circumstances, that responsibility could potentially fall to the bankrupt estate, the government, purchaser, security interest holder or other entities).

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**Environmental assessment**


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**18 Activities subject to environmental assessment**

Which types of activities are subject to environmental assessment?

Projects specified under the Environmental Impact Assessment Act are large-scale projects that the state implements or is involved in by way of granting a licence, approval, etc, and may cause material effect to the environment. The first category of large-scale projects (eg, all bullet train railway tracks, railway tracks 10km or longer) automatically require assessment and the second is not as large (eg, railway tracks between 7.5km and 10km in length) and necessity of assessment determined on a case-by case-basis (screened).

Prefectures also set forth ordinance for assessment, and projects that are not subject to environment impact assessment under the above may be subject to local assessment.

Discussions to widen the assessment to plans, etc, have been ongoing and MoE has issued a guideline, but this is not legislated at the national level. Some prefectures and cities have introduced ordinances to subject plans by prefectures and cities to environment assessment.

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**19 Environmental assessment process**


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What are the main steps of the environmental assessment process?

- Screening (see question 18);
- scoping: the business operator determines items and methods of assessment and publishes the result. The public, head of municipality and governor may state their opinion, and the business operator considers such opinion when determining the method of assessment;
- implementation: the environmental impact assessment is performed and the result is publicised as a preparatory document. The business operator must hold an explanatory meeting. The public may state their opinion, and the business operator must submit its view towards such opinion to the relevant governor and head of municipality. Such head of municipality and governor may state their opinion;
- submission of the environment assessment statement: the business operator considers the public opinion in deciding whether additional assessment and amendment of the document is necessary, and submits the environment impact assessment document to the party that grants the licence, etc, who may state an opinion that may require additional assessment and amendment. The business operator then finalises the document and publicises it. The administrative authority then takes it into account when granting a licence or subsidy;
- follow-up: an environment assessment during construction or use of the facility may be conducted in certain situations where necessary.

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**Regulatory authorities**


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**20 Regulatory authorities**

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

The MoE principally administers environmental laws and regulations, and other ministries may either jointly or independently carry out such law and regulations (eg, the PRTR system is mainly carried out by the MoE and METI, but other ministries which are in charge of handling of chemical substances, such as MHLW, may become involved).

Local authorities are responsible for environmental matters that they have authority to determine (see, eg, questions 5, 12 and 18).

**21 Investigation**

What are the typical steps in an investigation?

When breach of environmental law that is a criminal offence is suspected, investigating authorities (prosecutor, police officials and administrative officials designated under specific law) conduct investigations in accordance with the procedures under the Code of Criminal Procedure and other relevant laws and ordinances.

Investigating authorities have the authority to search and seize if they have a warrant issued by a court if there is suspicion of criminal activity. In addition, in a case where the investigating authorities have a warrant for arrest, detention or subpoena or if there is a basis for arrest without a warrant (eg, in the case of a flagrant offender) there is no need for an additional search warrant.

See question 22.

**22 Powers of regulatory authorities**

What powers of investigation do the regulatory authorities have?

Environmental law such as the WMA may provide authorities (eg, minister of MoE, governor, head of municipality) to conduct on-site inspection, request information, etc, when an administrative authority finds it necessary to implement the relevant law (see also question 24). See question 25 for methods to challenge exercise of power by regulatory authorities.

**23 Administrative decisions**

What is the procedure for making administrative decisions?

The Administrative Procedures Act sets out the procedures for activities by administrative authorities. This Act provides that administrative authorities should make criteria for review standard for granting licences, etc, as specific as possible and transparent, and to indicate the reason when not granting a permit or licence, among other rules. When adverse disposition such as revocation of licence is imposed, as a general principle a hearing, which is a procedure where statement of opinion, submission of evidence and questions to the authority may be performed (for relatively heavy disposition such as revoking business licence), or chance to explain is provided (for lighter disposition such as suspension of licence) to the subject of such disposition.

**24 Sanctions and remedies**

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

Regulators may issue instructions or recommendations for improvement; order the taking of certain measures, ceasing certain activity, removing pollution, revoking of licence, etc; impose criminal

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**Update and trends**


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As Japan continues to suffer the effects of the Great East Japan Earthquake, tsunami and nuclear accident in March 2011, and various environmental issues pertaining to the aftermath continue to be important topics, the trend to seek energy from sources other than nuclear generation has led to increased interest in renewable energy, prompting the implementation of the Special Measure Act on the Procurement of Renewable Energy Electricity by Electrical Power Suppliers on 1 July 2012. This Act obligates electrical power suppliers to purchase renewable energy (solar, wind, hydropower, geothermal and biomass) at fixed costs for a certain length of time, and add a surcharge to electricity rates to recover such costs to promote the use of renewable energy.

sanctions such as imprisonment or a penal fine (criminal sanctions may be applied directly or when an order is not complied with); and impose a non-criminal fine. Many environmental laws have a dual criminal liability provision under which both the perpetrator and the juridical person such perpetrator had done the illegal activity for (if not a juridical person, then the representative or the person for whom the work was done) are both criminally punished.

In practice, regulators tend to start with the exercising of administrative rights and guidance rather than immediately imposing stricter measures such as issuing an order or imposing criminal sanctions.

**25 Appeal of regulators' decisions**

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

The Administrative Appeal Act allows complainants to bring a complaint against a relevant administrative authority (as a general principle, to the immediately superior administrative authority).

Litigation to seek revocation of measures and decisions, confirmation of invalidity, etc, of a disposition, failure to make a disposition, implementation of a measure or injunction of exercise of public power and to bring citizen action to seek correction of a state or public body's illegal acts are governed by the Administrative Case Litigation Act. Suits are brought before a civil court and some large courts have a unit which solely handles these cases.

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**Judicial proceedings**


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**26 Judicial proceedings**

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

Both. It is possible for a person who has suffered damages as a result of environmental pollution to bring a civil suit against the perpetrator for tort. Perpetrators may also have criminal charges brought against them under environment-related legislation that stipulate criminal penalties.

A civil suit seeking state redress for damages caused by the illegal activities by the state, municipality or public officer is governed by the State Redress Act.

**27 Powers of courts**

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

The courts may rule in a civil suit that the perpetrator must pay damages, and in a criminal case impose criminal penalty for failure to comply with environmental standards or to obtain necessary authorisation for certain activities, etc. When infringement causes death, sickness or injury, the Criminal Act may apply, and in

addition, the Act for the Punishment of Environmental Pollution Crimes relating to Human Health, which allows punishment of business activities that cause risk to human health by intent or negligence. This Act has rarely been imposed, but since it can be imposed without actual death, injury or sickness, it could become a strong regulatory measure against environmental pollution.

As a preventive measure, courts may order an injunction in a civil suit, such as to cease building or operating a facility that causes pollution, if an injunction is sought for environmental pollution or damage to health.

## 28 Civil claims

Are civil (contractual and non-contractual) claims allowed regarding breaches and infringements of environmental law?

There are two main non-contractual civil claims. The first is for an injunction to force an operator to cease from going ahead with activities that can be expected to cause damage to the environment or to install facilities for preventing or removing the pollution. The second is a monetary damages claim based on tort where pollution caused by an operator's activities has caused physical, emotional or financial damages, to another party.

If parties incorporate obligations concerning the environmental law in a contract (eg, included representations and warranties that all environmental law are complied with), then a contractual claim for damages, injunction or cancellation of contract may also be possible based on the contract.

## 29 Defences and indemnities

What defences or indemnities are available?

Damages claims in relation to pollution require establishing that there was either negligence or wilful intent of the perpetrator, and the burden of proof lies with the complainant under the Civil Code. However, certain laws such as the Mining Act, the Act on Compensation for Nuclear Damage (CND), APCA and WPCA provide no-fault liability of a polluting party as exceptions. Other requirements for a claim of damage such as violation of rights and cause and effect between the perpetrator's action and effect are often disputed.

The Civil Code stipulates that damages in tort claims will extinguish by prescription after three years from the date on which the victim first became aware of both the damages and the perpetrator's identity, or when 20 years lapse from the time of a

tortious act. Supreme Court precedents indicate that for tort acts that continue for a certain period and thus continue to cause damage, the three-year period starts with each day the result of the tort act emerges, and for the 20-year period, at the time such damage surfaced.

In cases where pollution is caused by the activities of more than one perpetrator and the court recognises a joint tortious act, each perpetrator must jointly and severally be liable to compensate for damages (the perpetrators may claim for recovery from other perpetrators if an amount exceeding their proportionate responsibility is compensated to the victim).

## 30 Directors' or officers' defences

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

No. If the director or officer had been the perpetrator, they can be held personally responsible for environmental crimes (see question 24) or can be subject to claim for damage from third parties if they had knowingly or by gross negligence caused damage through their performance of duty. In the latter case a defence that the damage (if caused) was not intentional or lacked gross negligence can be used.

## 31 Appeal process

What is the appeal process from trials?

In a civil litigation a ruling of the district court may be appealed to the High Court, and further to the Supreme Court.

The basic three tier appeal process also applies to criminal suits and administrative suits (the latter is handled by a civil court).

When the procedure starts with the Summary Court (which can be chosen for claims up to ¥1.4 million but excluding administrative suits, or certain crimes such as crimes where only a penal fine is imposed), the first court of appeals will be the district court. Appeals to the Supreme Court occur when there is a constitutional issue.

## International treaties and institutions

### 32 International treaties

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

Japan is a party to numerous environmental treaties and agreements, such as the Vienna Convention for the Protection of the Ozone



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Layer, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Convention on Biological Diversity, the Convention on Wetlands of International Importance especially as Waterfowl Habitat, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Basel Convention on the Control of the Transboundary Movements of Hazardous Wastes and their Disposal (see questions 6 and 9).

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**33 International treaties and regulatory policy**

To what extent is regulatory policy affected by these treaties?

International treaties and agreements become effective upon agreement. In order to promote the implementation of the treaties, domestic laws and ordinances are often implemented or amended to reflect such agreements, for example, CESA was implemented after agreeing to the Washington Convention, and the GWCA was implemented to correspond to the Kyoto Protocol.



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