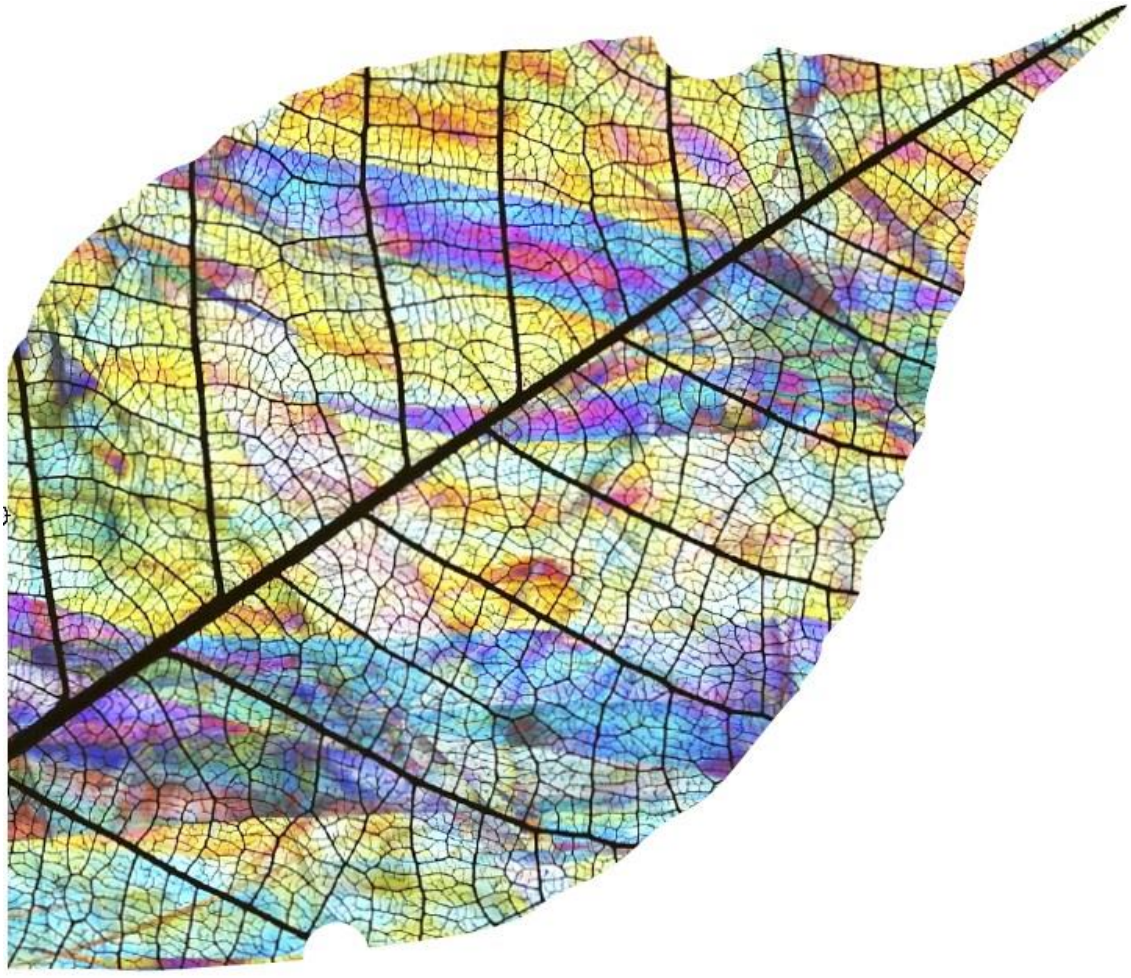
World Universities Comparative Law Project
Legal rating of Japan
carried out by students at the University of Tokyo

A production of the Allen & Overy Global Law Intelligence Unit



March, 2018

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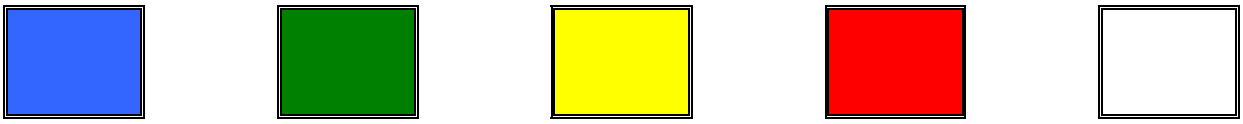


Produced by the Allen & Overy Global Law Intelligence Unit

Preface

I am delighted and honoured to write a few words of warmest appreciation and congratulation to the students, the professors, the lawyers and others who contributed to this excellent contribution to the World Universities Comparative Law Project.

In my view, the judgments made by the students in selecting the ratings showed a first class sense of professional competence which also took into account the position of other jurisdictions. The commentary on each question demonstrated a well-informed and sophisticated understanding of the complex issues raised by this work. This contribution overall will be of great interest to other universities around the world and to the wider public and enhance the project as a whole.

The discussion in this research is of particular fascination because of the unusual role which Japan played in the development of law in the world. As the students perceptively point out in their commentary, Japanese law is a combination and mixture of both the common law and the civil code approaches and the choices which each of these great traditions made to the various issues. It is surely a harbinger of things to come that Japan should so expertly have sought to harmonise the best of these families of law. This project has been led by leading universities in each jurisdiction and I am especially appreciative of the fact that an institution with the status which the University of Tokyo enjoys both in Japan and in the world at large should be willing to participate. I am also grateful to the University of Tokyo for thus demonstrating support for universities and students in countries in different stages of development. This project is symbolic of the fact that the law is an ideology which knows no boundaries and is the foundation of our society and of civilization.

I would express my great thanks to the Dean of the Faculty of Law Professor Masahiko Iwamura, to Professor Keiichi Karatsu, to Mr Tatsu Katayama from Anderson Mori & Tomotsune, to Mr Osamu Ito from Allen & Overy, for their expert assistance and of course to the students who have worked with such energy, enthusiasm and intelligence to produce this survey.

Philip R Wood CBE, QC (Hon)

Head, Allen & Overy Global Law Intelligence Unit
Visiting Professor in International Financial Law, University of Oxford
Yorke Distinguished Visiting Fellow, University of Cambridge
Visiting Professor, Queen Mary University, London

World Universities Comparative Law Project

The World Universities Comparative Law Project is a set of legal ratings of selected jurisdictions in the world carried out by students at leading universities in the relevant jurisdictions. This legal rating of Japan was carried out by students at the University of Tokyo.

The member of the University of Tokyo who assisted the students was

Professor Keiichi Karatsu

The members of the Practitioner Expert Panel with whom the students could discuss the questions in the survey were:

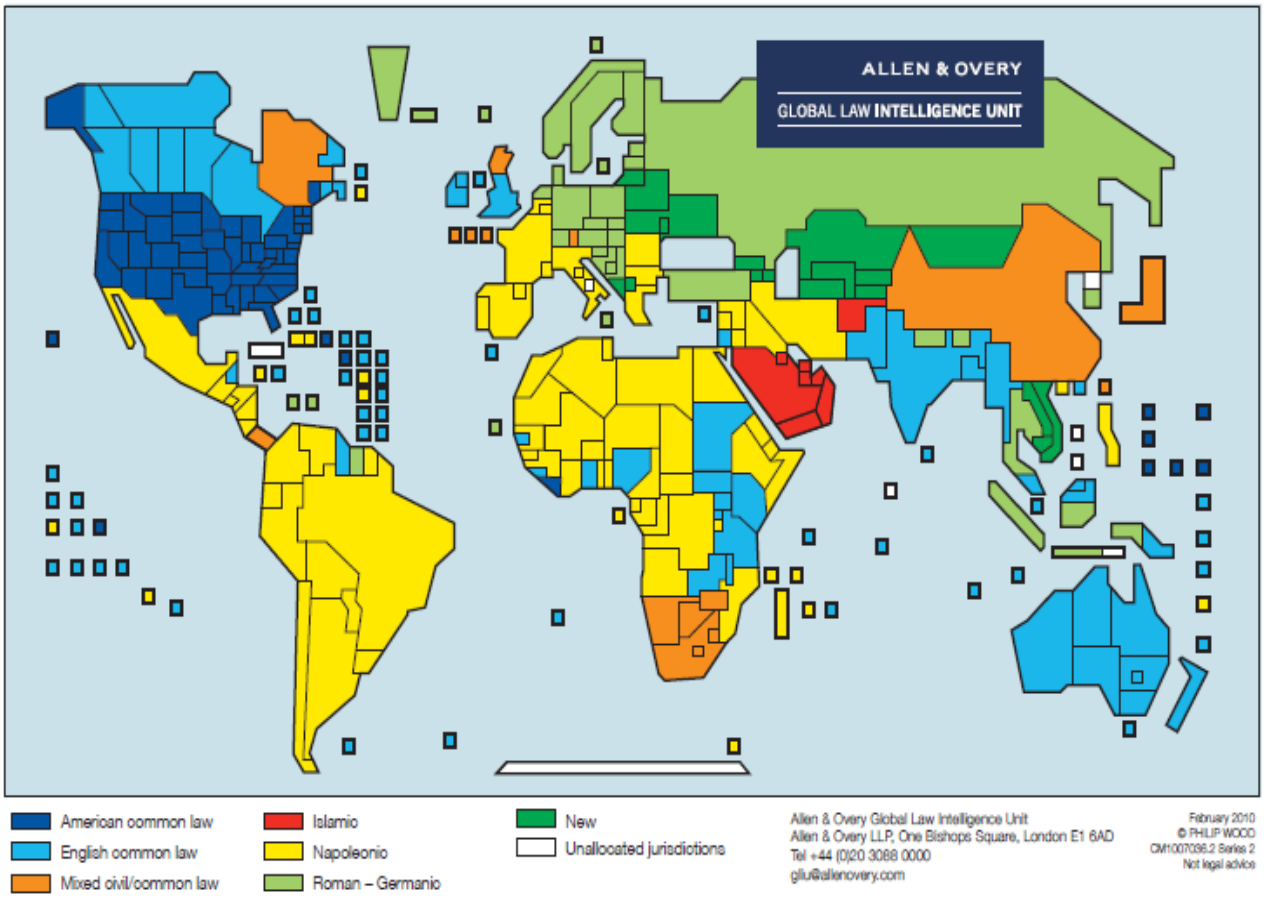
Mr. Tatsu Katayama from Anderson Mori & Tomotsune

Mr. Osamu Ito from Allen & Overy

The Allen & Overy Global Law Intelligence Unit produced this survey and is most grateful to the above for the work they did in bringing the survey to fruition.

All of those involved congratulate the students who carried out the work.

Families of law



Foreword

Ever since opening its doors in 1877, the Faculty of Law has been one of the leading academic departments for studying law and politics in Japan. The alumni of our undergraduate program are appointed to important roles in the legal profession, as well as in the government and the private sector. At the graduate level, the Graduate Schools for Law and Politics and the Law School provide rigorous training for future academics and professionals. Today, we continue to strive for excellence in both teaching and research by contributing to the domestic and international academic community.

Throughout the department's history, our faculty members have conducted their research at the frontiers of knowledge, tackling the most important issues that confront our society. In recent years, advanced countries are challenged with massive social changes engendered by the increasing pace of globalization, the rise of internet technology, the ageing of the population, and the exacerbation of economic inequality. In addition to these emerging challenges, existing transnational problems such as poverty, global warming, terrorism, and refugee problems have been left unresolved. The task of legal scholars and political scientists is to tackle these new problems and devise appropriate solutions. In order to achieve this goal, we should avoid taking a narrow and superficial view of these problems. Instead, we should aim to uncover fundamental causes and to confront them from a wide perspective. Our department is well equipped for pursuing this goal. Our faculty members represent the best minds in their disciplines and come from a wide range of backgrounds. They cover not only the contemporary issues but also the history and the philosophy of law and politics. Furthermore, these academics have been deeply involved in government policymaking, generating a positive feedback in which their practical experiences have been applied to their own research. In our department, research is integral to teaching, and we offer a wide variety of academic training based on the highest level of research for both undergraduate and graduate students.

We encourage our students to actively participate in the courses and seminars offered each semester. Our department has one of the best academic libraries in the country, and we hope that the students would find numerous books and articles that would be useful for enhancing their knowledge of law and politics. We also expect our undergraduate students to utilize the opportunities for studying abroad, and our graduate students to fully utilize the department's academic resources, so that they may acquire the knowledge and expertise necessary for their future careers.

The World Universities Comparative Law Project in perfectly in line with our strategy of expanding students' international and practical experiences, thereby advancing their approach to solving legal issues. Consequently, it is an honour for us to have been selected as a contributor to this project. I profoundly acknowledge the need for focusing on transnational legal issues and enhancing transparency and mutual understanding concerning the many differences among various jurisdictions of the world. Therefore, I am happy to hereby express my full support for this project.

I address my sincere thanks to our undergraduate and graduate students and our international research student who accomplished this highly difficult research and to my colleague Professor Keiichi Karatsu who instructed their work. I address also my great thanks to Mr. Osamu Ito of Allen & Overy Gaikokuho Kyodo Jigyo Horitsu Jimusho and Mr. Tatsu Katayama of Anderson Mori & Tomotsune for their support to our research group.

Dean of the Graduate Schools for Law and Politics and the Faculty of Law,

Masahiko Iwamura

Description of the legal rating method

Introduction

This paper assesses aspects of the law in Japan with a view to rating the law in the relevant areas. The survey is concerned primarily with wholesale financial and corporate law and transactions, not with retail law.

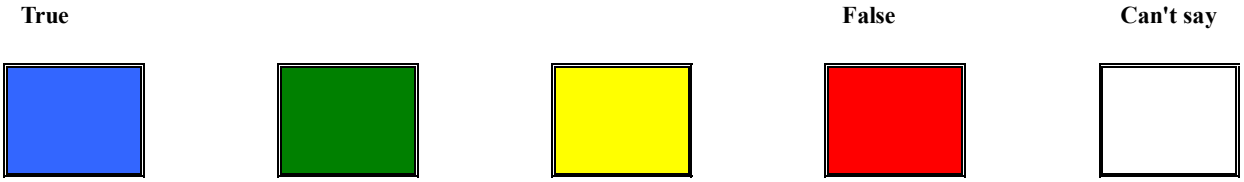
Legal risk has increased globally because of the enormous growth of law; because of its intensity; because many businesses are global but the law is national; because nearly all countries are now part of the world economy; and because the law is considered to play a very significant role in the fortunes of our societies. Liabilities can be very large and reputational losses severe.

The survey was carried out by students at the University of Tokyo. The survey was designed by the Allen & Overy Global Law Intelligence Unit.

The students were requested to express their views freely and in their own way. The views expressed are their views, not necessarily those of the University of Tokyo, the members of the Practitioner Expert Panel or the Global Law Intelligence Unit, the members of Allen & Overy.

Methodology

The survey uses colour-coding as follows:



Blue generally means that the law does not intervene and the parties are free, ie the law is liberal and open.

Red generally means that there is intense legal intervention, usually in the form of a prohibition.

Green and **yellow** are in-between.

The purpose of this colour-coding is to synthesise and distil information in a dramatic way, rather than a legal treatise. The colours correspond to a rating of 1, 2, 3 or 4, or A, B, C or D.

The cross in the relevant box signifies the view of the students carrying out this assessment of the position of Japan. This is followed by a brief comment, e.g. pointing out qualifications or expanding the point. These comments were written by the students.

The colour-coding does not usually express a view about what is good or bad. Whether the law should intervene in a particular arena is a matter of opinion. The scale is from low legal intervention to intense legal intervention or control. This is not a policy or value judgment as to whether or not the law should or should not intervene. Jurisdictions often disagree on whether the law should intervene and how much. So one of the main purposes of this survey is to endeavour to identify some of the points of difference so as to promote fruitful debate.

Black letter law and how it is applied

This survey measures two aspects of law. The first is black letter law, ie what the law says or the written law or law in the books.

The second measure is how the law is applied in practice, regardless of what it says. Thus, the law of Congo Kinshasa and Belgium has similar roots but its application is different.

Although there is a continuum, these two measures have to be kept separate. Otherwise we may end up with just a blur or noise or some bland platitude, eg that the law depends upon GDP per capita.

In fact, only the last two questions deal with legal infrastructure and how the law is applied. All of the others deal with the written law, without regard to enforcement or application.

Key indicators

The survey uses key indicators to carry out the assessment. It is not feasible to measure all the laws or even a tiny fraction of them. The law of most jurisdictions is vast and fills whole libraries.

The key indicators are intended to be symptomatic or symbolic of the general approach of the jurisdiction. To qualify as useful, the indicator must usually be (1) important in economic terms, (2) representative or symbolic and (3) measurable. In addition, the indicators seek to measure topics where jurisdictions are in conflict. There is less need for measuring topics where everybody agrees.

An important question is whether this method is useful or not, and, if it is, whether the indicators are relevant.

Legal families of the world

Most of the 320 jurisdictions in the world, spread just under 200 sovereign states, can be grouped into legal families. The three most important of these are: (1) the common law group, originally championed by England; (2) the Napoleonic group, originally championed by France; and (3) the Roman-Germanic group, originally championed by Germany, with major contributions from other countries.

The balance of jurisdictions is made up of mixed, Islamic, new and unallocated jurisdictions.

Many aspects of private law are determined primarily by the family group, but this is not true of regulatory or economic law.

Excluded topics

This survey does not cover:

- transactions involving individuals
- personal law, such as family law or succession
- competition or antitrust law
- intellectual property
- auditing
- general taxation
- macroeconomic conditions, such as inflation, government debt, credit rating or savings rates
- human development, such as education, public health or life expectancy
- infrastructure, such as roads, ports, water supply, electricity supply
- personal security, such as crime rates, civil disorder or terrorism.

Banking and finance

Introduction

Banks and bondholders (typically also banks, but also insurance companies, pension funds and mutual funds) provide credit or capital. Their main risk is the insolvency of the debtor and therefore the key indicators intended to measure whether the law supports those habitual creditors or debtors, such as large corporations as borrowers, when it matters, ie on bankruptcy. This is when commercial law is at its most ruthless in deciding who survives and who drowns.

This debtor or creditor decision is implemented mainly through the bankruptcy ladder of priorities. A feature of common law systems is the presence of super-priority creditors who are paid before anyone else - creditors with a set-off or a security interest and beneficiaries under a trust. For example, if a bank has universal security over all the assets of a company, the bank is paid before all other creditors, including employees and trade creditors. This regime therefore protects significant creditors who such as banks.

Jurisdictions based on the English common law model give super-priority to all three claimants. Traditional Napoleonic jurisdictions typically do not allow insolvency set-off, have narrower security interests and do not recognise the trust. Their bankruptcy ladder favours greater equality of creditors. Most traditional Roman-Germanic jurisdictions are in-between. They allow insolvency set-off and have quite wide security but most do not recognise the trust. There are wide exceptions to these generalisations.

Insolvency set-off

Generally If set-off of mutual debts is allowed on insolvency, the creditor is paid. If it is not allowed, then effectively the creditor is not paid. Very large amounts are involved in markets for foreign exchange, securities, derivatives, commodities and the like, so that the question of whether exposures should be gross or net is a matter of policy as to who the law should protect.

Q1 In Japan, creditors can set off mutual debts on the insolvency of a debtor if they are incurred before notice of the insolvency.

True			False	Can't say
×				

Comment:

Whether a set-off is allowed becomes an issue in bankruptcy proceedings, corporate reorganization proceedings and rehabilitation proceedings.

In general, a bankruptcy creditor may effect a set-off without going through bankruptcy proceedings (Article 67(1), Bankruptcy Act). However, where, after the commencement of bankruptcy proceedings, the creditor has incurred a debt to the bankruptcy estate or obtained another person's bankruptcy claim, the creditor may not effect a set-off (Article 71(1) and 72(1), Bankruptcy Act). Also, where the creditor has owed a debt or acquired a bankruptcy claim after knowing that a bankrupt entity became unable to pay debts, suspended payments, or petitioned for commencement of bankruptcy, except such assumption or acquisition arises out of, for example, statutory grounds or grounds that occurred before the creditor's such knowledge (Article 71(2) and 72(2), Bankruptcy Act), he may not effect a set-off (Article 71 (1) and 72(2), Bankruptcy Act).

The set-off in corporate reorganization proceedings and rehabilitation proceedings is almost the same as that in bankruptcy proceedings. In corporate reorganization proceedings and rehabilitation proceedings, however, a creditor's claim and debt have to become suitable for a set-off prior to the expiration of the period for filing proofs of claim, and the creditor can effect a set-off only within its period (Article 92(1), Civil Rehabilitation Act, and Article 48(1), Corporate Reorganization Act).

Security interests

Generally Security interests give priority to the creditor with security - typically banks - who are the main providers of credit in most countries.

In traditional common law jurisdictions, a company can create universal security over all its present and future assets to secure all present and future debt owed to a bank. Once registered, the security is valid against all creditors, except that the floating collateral ranks after preferred creditors - typically wages and taxes. The security can be granted to a trustee for creditors. On a default there are no mandatory grace periods and the creditor can enforce out-of-court by appointing a receiver (a type of possessory manager) or by private sale. But in some common law jurisdictions there are freezes on enforcement in the event of a judicial rescue of the debtor. Also, in some of these jurisdictions there are stamp duties.

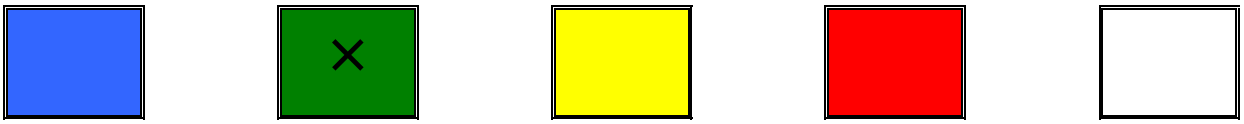
On the other hand, in many traditional Napoleonic jurisdictions, universal security is not possible, neither is security for all future debt. There is no trustee to hold the security. On enforcement, there are grace periods and no receiver. Sale is through the court and a public auction. Preferential creditors rank ahead. Some countries have a freeze on enforcement under a judicial rescue statute.

The main policy issue is therefore whether security should be encouraged or whether the law should intervene to impose greater equality.

The main tests are (1) scope of eligible assets, (2) debt secured, (3) trustee, (4) priority over preferred creditors, (5) private enforcement and receiver, (6) no rescue freezes and (7) low costs.

Q2 In Japan, the law offers a security interest which is highly protective of the secured creditor.

True | **False** | **Can't say**



Comment:

The Supreme Court ruled that security assignments of future claims are allowed as long as the parties identify the claims through, for example, the cause and time of accrual of the claims and their amounts (Judgment of the Supreme Court, January 29, 1999). There is no limitation on the scope of secured debts.

The security can be granted to a trustee since the Trust Act was amended in 2007. The trustee can file a petition for the enforcement of the security interest, and can receive distributions from the proceeds of the sale and other dispositions (Article 55, Trust Act).

In bankruptcy proceedings and rehabilitation proceedings, a person who holds a special statutory lien, pledge or mortgage against property that belongs to the bankruptcy estate can exercise the security interest outside the proceedings (Article 2(9), 10 and 65(1), Bankruptcy Act, and Article 53(1) and 53(2), Civil Rehabilitation Act). This also applies to other security interests such as security interests by way of assignment and retentions of title. In corporate reorganization proceedings, however, security interests cannot be enforced outside of the statutory procedures and can be paid only in accordance with a reorganization plan (Article 47(1), Corporate Reorganization Act).

Generally, it is possible for the creditor to enforce pledges and security assignments out of court. In terms of security assignments of movables, the creditor can seize or dispose of the goods and can liquidate them according to the agreement. In regard to security assignments of rights and pledges of rights, the creditor can directly collect the subject claim from those rights. As for pledges of movables, if claims of pledgees of movables are not performed, as long as there are reasonable grounds, a creditor immediately appropriates the thing pledged to the performance of the claims in accordance with the evaluation of an appraiser (Article 354, Civil Code).

An appeal or an objection against a disposition of execution may be filed against a judicial decision relating to a civil execution procedure (Article 10 and 11, Civil Execution Act). In order to seek non-permission of compulsory execution, an obligor who opposes the presence or contents of the claim pertaining to a title of obligation may file an action to oppose execution, and a third party who has ownership of the subject matter of compulsory execution may file a third party action against execution (Article 35 and 38, Civil Execution Act).

Universal trusts

Under a trust, one person, called the trustee, holds title to the assets of another person, called the beneficiary, on terms that, if the trustee becomes insolvent, the assets go to the beneficiary and are not used to pay the trustee's private creditors. The assets are immune and therefore taken away from the debtor-trustee's bankrupt estate.

The main examples of trusts are custodianship of securities, pension funds, securities settlement systems and trustees of security for bondholders and syndicate banks. The amounts involved are enormous.

All jurisdictions have an effective trust of goods (called bailment or deposit). The common law group has a universal trust for all other assets (land and intangible property). Most members of the civil code group do not have a universal trust, subject to wide exceptions, especially for custodianship of securities. A few countries in this group have a universal trust by statute, e.g. France and China.

Q3 Japan has a universal trust for all assets.

True			False	Can't say
×				

Comment:

Under the Trust Act of Japan, a trust can be created over both movable and immovable property, whether it is tangible or intangible. Creating a trust by declaration become available after an amendment to the Trust Act in 2006. With the amendment, most of the rules were changed to default rules, which the settlor can modify or override by agreement or declaration, and the law will be applied when there is no such agreement or declaration.

Other indicators

Other bankruptcy indicators not measured here include freezes on the termination of contracts, fraudulent preferences, the priority of rescue new money, the presence and intensity of corporate rescue proceedings and recognition of foreign insolvencies. Director liability for deepening the insolvency is dealt with below.

Other financial law topics not covered in this survey include the regulatory regime, especially capital, liquidity, authorisation of financial business, conduct of business, control of prospectuses, control of market abuse and frauds, such as insider dealing, and the insolvency regime for banks. Financial regulation is a very large field.

Corporations

Introduction

Financial law involves competition between debtors and creditors so that jurisdictions can be positioned on a straight line. Corporate law however involves three main competitors: (1) shareholders, (2) creditors and (3) managers - a triangle. If the key indicators show that a jurisdiction strongly favours one or other of the parties at the points of the triangle, whether creditors, shareholders or management, then one can begin to build up a picture of the choices which the jurisdiction habitually makes in resolving the conflicting interests of the parties.

For example, a very tough prohibition on financial assistance (which is protective of creditors against shareholders) tends also to support an attitude to other principles of the maintenance of capital or to support the proposition that mergers by fusion are difficult (because they can prejudice creditors). This would be true of the English regime in 1948. Similarly, a view which easily imposes personal liability on directors for deepening an insolvency might also show a legal approach which is not supportive of the veil of incorporation in other areas, eg shareholder liability and substantive consolidation on insolvency.

The two extreme corporate law models are the Delaware model and the traditional English model, exemplified by the English Companies Act 1948 (now superseded). Napoleonic and Roman-Germanic models are in-between to varying degrees.

The Delaware regime is highly protective of management in the key areas. The traditional English regime favours creditors on most of the key contests and, where creditor interests are not involved, it tends to favour shareholders as opposed to managers.

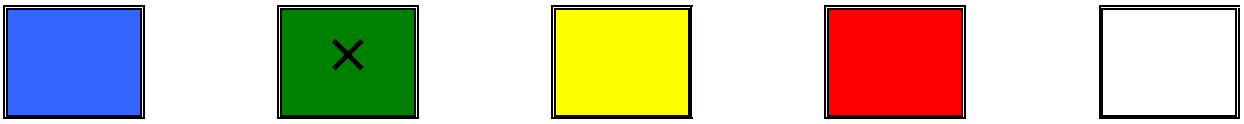
Director liability for deepening an insolvency

Generally If the law imposes personal liability on directors for deepening an insolvency, eg carrying on business and incurring debts where there is no reasonable prospect of paying them, then the regime is hostile to the interests of management. The legal risks of management are increased.

There are basically four regimes internationally: (1) directors are hardly ever liable for deepening the insolvency, eg Delaware and most US jurisdictions, plus some traditional English jurisdictions which only punish fraudulent trading; (2) directors are liable for serious negligence (England, Singapore, Australia, Ireland); (3) directors are liable for mere business misjudgements deepening the insolvency (France); and (4) directors are liable if they fail to file for an insolvency proceeding after the company becomes insolvent (France, Germany and others).

Q4 In Japan the law rarely imposes personal liability on directors for deepening the insolvency and there is no rule that the directors must file for insolvency when the company is insolvent.

True **False** **Can't say**



Comment:

Japanese law does not provide for any obligations or liabilities of directors in an imminently insolvent company. Therefore, there is no requirement for directors to file for insolvency unless they are appointed as liquidators (Article 484(1), Companies Act). In addition, directors generally do not owe personal liability for deepening the insolvency because the courts tend to apply the business judgment rule which protects directors unless they make business decisions without reasonably available material or information, or use a decision-making that can be shown to be extraordinarily unreasonable.

If directors perform their duties with malice or gross negligence, it is possible that they would be held liable for the damage caused by their actions (Article 429, Companies Act). Accordingly, if directors increase the company's debt through loans or purchases knowing that the company would be unable to repay the debt when due and the company did not repay it, such directors would likely be held personally liable to the creditor for damages suffered as a result of their dealings.

Financial assistance to buy own shares

Generally Many jurisdictions prohibit a company from giving financial assistance to buy its own shares. The typical example would be where a bidder finances the acquisition of a target company by a loan and after the takeover arranges for the target to guarantee the loan and charge its assets to secure the guarantee. The commercial effect is similar to the repayment of the share capital of the target before its creditors are paid. Shareholders should be subordinated to creditors.

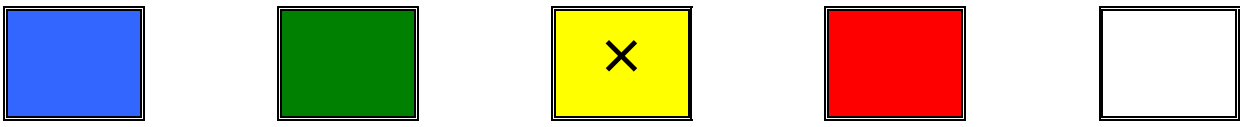
The prohibition therefore favours creditors against shareholders of the target.

The Delaware regime does not prohibit financial assistance. The traditional English regime has a wide prohibition (not England any more). Most Roman-Germanic regimes are against it, with Napoleonic regimes hesitant. The EU has a prohibition against financial assistance by public companies. Some countries allow financial assistance by private companies if solvency is established.

A contravening transaction is usually a criminal offence and void.

Q5 Japan permits a company to grant financial assistance for the purchase of its own shares.

True **False** **Can't say**



Comment:

Although there are no rules that explicitly prohibit financial assistance in Japan, there are some limitations for a company to grant financial assistance for the purchase of its own shares. If the company finances to a third party without a rational reason, it would be against the directors' duty and they will be liable for that financing (Article 423, Companies Act).

Considering the typical example, in which a bidder finances the acquisition of a target company by a loan and after the takeover arranges for the target to guarantee the loan and charge its assets to secure the guarantee, there are no explicit or specific rules that prohibit these transactions. If a public company gives that type of financial assistance, the directors will be accused of harming other shareholders' interests, for those transactions will harm the company's value. Indeed, for public companies, any kinds of financial assistance which diminishes or harms the company's value could be considered illegal and the directors may

be liable for the act. However, as to private companies, including companies which become private after the takeover, they are less likely to face the issue of harming shareholders' interests like public companies; in the typical example, the acquirer or the acquirer group will typically be the sole shareholders when the financial assistance is given.

To sum up, there are no specific rules that prohibit financial assistance in Japan, but for a public company, those types of transactions may be unlawful.

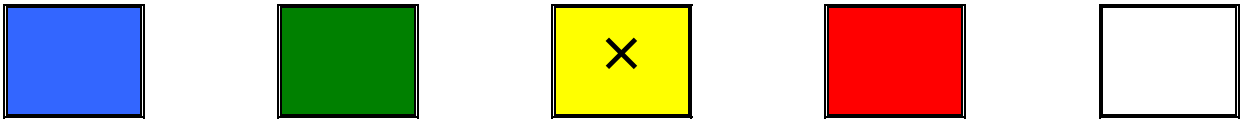
Public takeover regime

Generally A public takeover regime which is free and open tends to favour managers who can guard against takeovers by poison pills and the like and who have relative freedom to acquire other companies. An example is the Delaware regime. A restrictive regime on the lines of the British system tends to favour shareholders.

The chief features of a restrictive regime are: (1) the bidder must make a mandatory bid in cash when a threshold of shares in the target is reached, eg 30%; (2) the bidder must pay the same price to all shareholders (sharing the control premium); (3) no partial bids (getting control on the cheap); (4) proof of certain funds to implement the offer; (5) compulsory acquisition of dissenting minorities (squeeze-out); (6) fixed timetable; (7) no ability of the managers to frustrate a bid by poison pills without shareholder approval; and (8) control of the content of circulars, especially forecasts.

Q6 Apart from exchange controls and restrictions on foreign direct investments, the public takeover regime in Japan is open and has few restrictions.

True **False** **Can't say**



Comment:

The bidder must make a mandatory bid, for example, if the purchase is made outside the stock exchange market, and, (1) the aggregate voting rights held by a purchaser and any affiliated persons divided by the total voting rights of the target exceeds 5% after the purchase or (2) the number of total sellers is ten or fewer and the total voting ratio of the purchaser exceeds one-third after the purchase (Article 27-2(1), Financial Instruments and Exchange Act "FIEA"). In principle, a mandatory bid is not required when the transaction is made in the stock exchange market.

The same purchase price must be offered to all target shareholders (Article 27-2(3), FIEA). There is no minimum price requirement in Japan.

It is allowed for the bidder not to purchase part or any of the tendered shares exceeding the number of shares it originally planned to purchase (Article 27-13(4), FIEA). In the case of a partial bid, it must be proceeded using the method of proportional distribution (Article 27-13(5), FIEA). However, if the total holding ratio of share certificates of the bidder increases to two-thirds or more after the purchase, the bidder must make a mandatory offer on all shares.

The public notice must include certain information required by the relevant Cabinet Office Ordinance such as the purpose of the takeover, the class of shares for which the offer is being made and any other conditions of purchase. (Article 27-13(1), FIEA). Written evidence of funds for the tender offer must be attached to the Tender Offer Registration Statement (Article 27-3(2), FIEA).

There is no compulsory acquisition of dissenting minorities. A bidder can obtain the shares of remaining minority shareholders using shares subject to class-wide call, consolidation of shares, or special controlling shareholders' right to demand the sale of shares.

The bidder can determine the length of the takeover period, which must be at least 20 business days but no longer than 60 business days (Article 27-6(1), FIEA).

Even though listed companies are not legally required to seek the approval of shareholders for introducing poison pills, when establishing provisions on takeover defense measures in the articles of incorporation, it is necessary to obtain the special resolution of a shareholders meeting concerning the amendment to the articles of incorporation (Article 466, Company Act). Even when the articles of incorporation are not changed, in many cases, takeover defense measures are introduced after obtaining the resolution of a shareholders meeting in order to confirm the intent of shareholders.

Other indicators

Other important indicators are corporate governance (difficult to measure), free ability to merge companies by fusion, the one-share-one-vote rule, and, to a lesser extent, minority protections. Other indicators relate to quick and cheap incorporation, the *ultra vires* rule, maintenance of capital, no par value shares, shareholder liability, substantive consolidation on insolvency and disclosure. These are not measured here.

Commercial contracts

Introduction

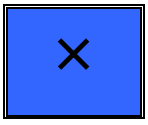
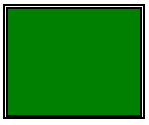
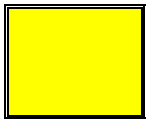
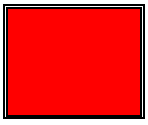
Contract is at the heart of commercial life, and is everywhere. In fact, the main tenets of contract law across the main families of jurisdictions are consistent - it is in the fields of insolvency and property law where the main differences emerge. It is true that there are contract differences, for example, between writing requirements, open offers, the time of acceptance and specific performance, but often these differences are of lesser significance in practice in the business field.

The key indicators the survey chooses all tend to symbolise whether the approach of the jurisdiction to contract is hard or soft. If the approach is hard, then the jurisdiction tends to support predictability in business contracts so that certainty and freedom of contract are valued more than mitigating the risk of occasionally abusive behaviour and unfair results, especially for weaker parties. A soft jurisdiction tends to give greater primacy to notions of good faith and the like.

Exclusion of contract formation

Generally Commercial parties often wish to be able to negotiate heads of terms commercially without being bound by a contract. In some jurisdictions, the courts are ready to infer that the parties are bound if the terms are sufficiently clear, even if they have said expressly that they do not intend to be bound.

Q7 In Japan, parties are not bound to heads of terms if they expressly state that the terms are "subject to contract" or some such clear phrase.

True			False	Can't say
				

Comment:

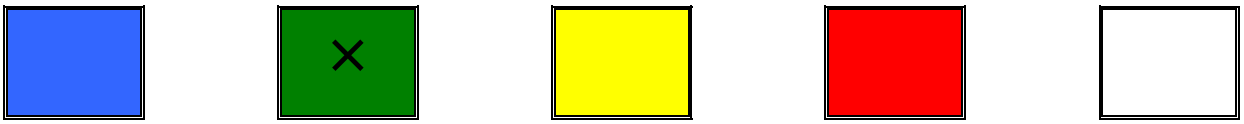
With respect to the binding effect of a letter of intent (heads of terms under UK law context), there is no specific black-letter law about how to interpret such kind of language. Although it is not found either in court precedents or scholars' opinions about such kind of issues (to be best of my knowledge), as a general interpretation method in practice, if the content of the document is about the actual legal rights and obligations between the parties, the terms and conditions thereof will still be legally binding in terms of contractual rights and obligations. However, if the letter of intent expressively state that their terms are "subject to contract" or some such clear phrases, it should generally be considered as non-binding and the parties will not be bound to such heads of terms (still subject to the actual terms and conditions).

Termination clauses

Generally Many contracts, especially loan contracts, leases of goods and long-term sales contracts, contain events of default on the occurrence of which one party can terminate the contract. Jurisdictions which uphold freedom of contract and the literal interpretation of contract give effect to these clauses and do not rewrite the contract according to the court's notions of what is fair. Other jurisdictions prefer good faith. We ignore consumer contracts - where there may be consumer protections.

Q8 In Japan, a termination clause in a loan or sale of goods contract between sophisticated companies (not individuals) providing for the termination of the contract immediately on certain events is usually upheld, even if the event concerned is relatively trivial.

True | **False** | **Can't say**



Comment:

Basically, in a contract between sophisticated companies, each party has the freedom to choose whether to enter into the business relationship, and the contract conditions are determined based on the judgment that they are the best choices for each party to maximize the short-term or long-term profits, so that the reason of terminating the contractual relationship determined by the parties by agreement should be respected, even if the event concerned is relatively trivial.

Continuous contracts, however, may be subject to restrictions on termination rights in order to protect a party who is forced to terminate the contract. Some lower courts have ruled that, in a continuous contract, even if there is a termination clause, an "unavoidable reason" is required for termination (Judgment of the Tokyo High Court, May 11, 2012, and Judgment of the Tokyo High Court, September 14, 1994 (Shiseido Case)). Whether there is an "unavoidable reason" is individually judged in consideration of the nature of the contract, the process leading to the termination, whether there is a prior notice period, and the progress of negotiation. Also, the Supreme Court ruled that the termination is invalid if it violates the principle of good faith, constitutes an abuse of rights or violates public order and good morals (Judgment of the Supreme Court, December 18, 1998 (Kao case)).

Exclusion clauses

Generally Contracting parties often seek to exclude their liability for defective performance of the contract. So the issue is whether these exclusion clauses are generally upheld if they are clear and whether freedom of contract is allowed in this area.

Q9 In Japan, exclusions of liability in most commercial contracts between sophisticated companies, such as a sale of goods contract, are generally upheld if they are clear.

True			False	Can't say
		×		

Comment:

Pursuant to the Civil Code and commercial laws of Japan, the legal effects of disclaimers may sometimes be denied in specific occasions. For example, regarding warranty against defects, pursuant to Article 572 of the Civil Code, even if the seller has clearly disclaimed that the seller will not bear any liabilities about warranty against defects, such disclaimer will not be recognized for facts concealed by the seller. The foregoing section is mandatory and even if the seller inserts terms and conditions in a contract to disclaim the warranty against defects in the case of intentional breach of such warranty, such specific terms may still be denied.

Notwithstanding the specific rules as stated above, there is no general restriction for disclaimers and limitations of liabilities ("Disclaimers") that applies to all in the Civil Code and commercial laws in Japan. With respect to contracts with consumers, however, Disclaimers will generally be considered null and void pursuant to Article 8 of the Consumer Contract Act for the purpose of consumer protection. In other words, Disclaimers may in most of the cases be effective, based on "autonomy of private law" and "freedom of contract," if they do not conflict with public order, good morals or the principle of trust and good faith.

Please also note that in Article 415 of the Civil Code about the liabilities for breach of contract, in general the liabilities for intentional conduct and gross negligence cannot be exempted by Disclaimers.

As to court precedents about Disclaimers on intentional conduct and gross negligence, for example, about shipping agreements, Disclaimers of liabilities for negligent delay of delivery may still be effective pursuant to the principle of freedom of contract, but Disclaimers exempting liabilities derived from intentional conduct may still not be admitted (judgment of the Grand Court of Judicature, January 29, 1916).In summary, whether or not Disclaimers can be generally admitted if agreed by sophisticated companies is not yet proved in court precedents and in practice the question is still unclear.

As an attempt to interpret Article 415 of the Civil Code, I believe Disclaimers among sophisticated companies may more easily be admitted as it is less necessary for the courts to intervene in the agreement between the parties. There however may be exceptions like the court precedent about shipping agreements as stated above. That being said, Disclaimers agreed by sophisticated companies should still be more easily admitted.

With the foregoing being said, even in the case of specific and clear Disclaimers among sophisticated companies, it is still difficult to say they will be "generally upheld." If the question can be rephrased as "exclusions of liability (……) are generally upheld if they are clear and are not violating mandatory rules, public policy and good morals," then I believe the answer will be more certainly "True."

Other indicators

Other contract indicators not assessed here include writing formalities, open offers, mistake, frustration, damages, penalties, specific performance and whether notice of assignment of the contract to the debtor is mandatory if the assignment is to be valid on the insolvency of the assignor.

Litigation

Introduction

The first three key indicators of governing law, jurisdiction and arbitration tend to show whether the jurisdiction does or does not place a high value on international comity and freedom of contract as opposed to national primacy.

The indicator on class actions tends to show whether or not the jurisdiction's litigation system is orientated towards plaintiffs, especially mass plaintiffs in product liability cases. This indicator may also show the attitude of the jurisdiction to the protection of individual parties as against business parties, both in terms of the incidence of costs and enforcement.

Governing law clauses

Generally Most countries apply a foreign governing law of a contract even if there is no connection between the contract and the jurisdiction. If the courts do not uphold the governing law, the effect is that the contract obligations may be different.

Q10 The Japanese courts will apply an express choice of a foreign law in a loan or sale of goods contract between sophisticated companies, even though the contract has no connection with the foreign jurisdiction, but subject to Japanese public policy and mandatory statutes.

True			False	Can't say
×				

Comment:

The Act on General Rules for Application of Laws provides rules for choosing the applicable law. Article 7 provides that the formation and effect of a juridical act is governed by the law which the parties chose, thus the choice of law is generally permitted. If there are neither explicit nor implicit choice of law by the parties, the rules under Article 8 of the Act applies. The law chosen by the parties will be upheld unless it is inconsistent with public policy and mandatory statues, or the contract is between a consumer or it is a labour contract.

Foreign jurisdiction clauses

Generally Many contracts confer jurisdiction, sometimes exclusive, on the courts of a foreign jurisdiction, usually accompanied by a choice of foreign governing law.

Q11 The Japanese courts will generally uphold a clear submission in a loan or sale of goods contract between sophisticated companies to the exclusive jurisdiction of the courts of a foreign country, even if there is no connection between that country and the contract.

True		False		Can't say
✕				

Comment:

Article 3-7 of Code of Civil Procedure regulates the choice of foreign jurisdiction by the parties. Pursuant to this article, the parties may freely agree on an exclusive foreign jurisdiction, but the choice of the foreign jurisdiction must be made with respect to an action based on certain legal relationships, and the chosen foreign court must be able both at law and in practice to hear that case.

The principal case is the dismissal judgment of the Japanese Supreme Court of November 28, 1975, known as the "Tjisadane case". The Supreme Court said that the agreement of choosing a court with exclusive jurisdiction is generally valid. It goes on to say that the contract must be valid according to the chosen court's law, but a mutual guarantee of accepting foreign court judgment is not necessary.

A recent case about this topic was a dispute between Apple Inc. and Shimano Co., Ltd. The litigation was held at the Tokyo District Court, where Apple Inc. claimed that according to the contract, there was an agreement that the court of California had exclusive jurisdiction. The Tokyo District Court's judgement about this claim was that the agreement between the parties was not about "an action based on certain legal relationship", in other words, the agreement did not identify the subject of the agreement sufficiently, and therefore the choice of jurisdiction was invalid.

Arbitration recognition

Generally Contracting parties, especially in trading and construction contracts, but less so in loan contracts, wish to submit disputes to arbitration, sometimes in a foreign country. The resulting award is often enforceable locally under the New York Arbitration Convention of 1958, to which most countries have adhered.

Q12 In Japan, the courts allow sophisticated contracting parties to submit contract disputes to a foreign arbitral tribunal to the exclusion of the Japanese courts.

True		False		Can't say
✕				

Comment:

The court of Japan will not hear and will dismiss an action if there is a valid agreement by parties to submit disputes to foreign arbitration.

Japan is a member of the New York Convention, therefore an arbitral award pursuant to an agreement between the parties to submit a case to a foreign arbitral tribunal is generally respected. With the arbitral agreement designating a country that is not a member of the New York Convention, the Arbitration Act of Japan is the law that regulates the enforcement of the award, and the provisions of Article 45(2) that regulate it are mostly the same as those of the New York convention.

Class actions

Generally In some countries, such as the United States, a plaintiff can be authorised by the court to sue on behalf of all claimants who are similarly situated. Claimants have to opt out or they are bound.

Q13 In Japan, class actions where the class is bound if they do not opt out are generally not allowed.

True			False	Can't say
×				

Comment:

There is no law that explicitly provides about class-actions in Japan, and there are no types of litigation that has an Opt-out system. There is a new law that was said to be a Japan-typed class action, i.e., Act on Special Measures Concerning Civil Court Proceedings for the Collective Redress for Property Damage Incurred by Consumers, which uses Opt-in system instead of Opt-out system. Generally, even in the case of joint action, each litigant is responsible for their own action and the fact that originated from one litigant does not apply to the other litigants (Article 39, Code of Civil Procedure).

Other indicators

Other indicators not covered by this survey include contingent costs, loser pays the costs of the winner, prejudgment freezes or arrests, appeals, scope of disclosure (discovery of documents), efficacy of waivers of sovereign immunity and the enforceability of foreign judgments.

Real property

Ownership of land

Generally In most countries, nationals can own land absolutely and are not restricted simply to leases for a limited term or simple rights of occupancy. However, in some jurisdictions, absolute ownership of land is not available to nationals or local corporations. If this is so, then the jurisdiction would be coloured green if citizens can lease land for a very long term without material restrictions, such as 999 years, and can also mortgage or sell the land or give it away or bequeath it under their wills without official consent because the ownership is a close proximate of absolute ownership. If on the other hand citizens are entitled only to a lease of, say, 70 years or less, or to similar rights of occupancy, and if there are limitations on dealing with the land without official consent, such as mortgaging, selling or bequeathing it, then the jurisdiction would be red.

Q14 In Japan, nationals and local corporations are entitled to own land absolutely.

True			False	Can't say
×				

Comment:

Except for the restriction on public welfare, such as defence and disaster prevention, natural persons can own land. Nationals and local corporations have mostly the same rights as natural persons, except for the difference of some tax systems, e.g., inheritance tax.

Security of land title and land registers

Generally Many jurisdictions improve the security of title to land by a registration system which, although not necessarily state-guaranteed, has high reliability. An example is the Torrens system developed in Australia and used in many other countries, eg Canada and England.

Most countries in the civil code groups do not have a title register but instead require documents concerning land to be notarised and filed at the registry so that they can be searched. The United States does not generally have title registers for land although there may be mortgage registers. They rely on title registration companies which provide title insurance.

Q15 Most land in Japan is registered in a land register which records most major interests in land, eg ownership, mortgages and longer-term leases.

True			False	Can't say
	×			

Comment:

A land register in Japan registers most interests, not only ownership but mortgages. On the other hand, Longer-term leases are not registered in a land register, because they are protected absolutely and do not have to be protected by a land register.

In spite of the existence of land-register system, in Japan, there are certain problems on the ownership of land. The Civil Code of Japan provides “The nullity of the manifestation of intention pursuant to the provision of the preceding paragraph may not be asserted against a third party without knowledge.” (Civil Code Art.94-2), which protects a third party without knowledge. And this article has been applied analogically on dealings in real property, that is, actual legal relationship has priority over the contents of the land register.

In urban or suburban areas, there are less issues with the land register, because they are the content of land registers are usually updated when it changes. In forest or wasteland, however, sometimes there are differences between the contents of the land register and the actual condition of the land. For example, there

are frequently cases where the land category has changed from forest to residential land without the change of the content in the land register.

To sum it up, most land in Japan is registered in a land register, but there are certain problems caused by the difference between the registered contents and the actual condition.

Land development restrictions

Generally Many countries restrict development and the change of use of land and require permits to be obtained for any development or change of use.

Q16 In Japan, apart from environmental controls (dealt with later), the control of commercial development and the change of use of land is very light and, where required, permits are quick and cheap to obtain.

True			False	Can't say
		×		

Comment:

The City Planning Act defines zoning which restricts the use of land. Within the limits of zoning, it is not difficult to change the use of land and construct some structures. However, changing the zoning is not basically allowed and even if allowed, it would costs considerable time and money.

For instance, in urbanization area, people can perform development activities without permission (Art.29, City Planning Act), but they basically cannot perform development activities in urbanization control areas. In addition, according to the Agricultural Land Act, the change of use of land is basically prohibited or requires complex procedures.

Other indicators

Other indicators not surveyed include transfer costs, stamp duties and lessee protections.

Employment law

Generally The indicator here is whether it is easy or hard to hire and fire employees. The measures include high minimum wages, maximum hours, minimum holidays, maternity rights, equal pay for equal work (non-discrimination) and severance costs.

Q17 In Japan, there are few controls on hiring and firing employees or on the terms of employment.

True			False	Can't say
		×		

Comment:

Minimum wages in Japan are defined as minimum wages stipulated either by each prefectural or city government, or by each industry.

Employers shall not have employees work more than 8 hours daily or more than 40 hours per week (Article 32, Labor Standards Act ("LSA")). Employers shall provide employees either with at least one day off per week or 4 days off or more during a four-week period (Article 34(1) and 35(1), LSA). Where an employer has entered into a written agreement either with a labor union organized by a majority of the employees at the workplace or with a person representing a majority of the employees and has notified the relevant government agency of such agreement, the employer may extend the working hours or have workers work on days off in accordance with the provisions of such agreement (Article 36, LSA).

Prenatal leave shall be granted to a female worker who is expecting to give birth within 6 weeks if she requests leave from work (Article 65(1)). Postnatal leave shall be granted within 8 weeks after childbirth regardless of her request. This shall not prevent an employer from having such a female worker work, if she has so requested, after 6 weeks have passed since childbirth, in activities which a doctor has approved as having no adverse effect on her (Article 65(2)).

Employers shall not engage female workers in differential treatment in comparison to male workers with respect to wages (Article 4, LSA). Employers shall not use the nationality, creed or social status of any workers as a basis for engaging in discriminatory treatment with respect to wages, working hours or other working conditions (Article 3, LSA). Also, the Japanese government is now trying to adopt an "equal pay for equal work" scheme, requiring employers to pay the same wage for workers doing the same job, to address the disparity between regular and irregular contracts.

A dismissal is invalid as an abuse of the right of dismissal if it lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms (Article 16, Labor Contract Act). When dismissing a worker, employers are required either to notify the worker at least 30 days in advance or to pay the worker the average wage for at least 30 days as a dismissal notice payment (Article 20, LSA). Severance pay is not required in any acts in Japan.

Environmental restrictions

Q18 In Japan, the rules governing the environment and liability for clean-up are very light and relaxed.

True			False	Can't say
		×		

Comment:

The Basic Environment Act shows the basic policy about protection of the environment and liability for clean-up. According to this Act, many relevant laws have been enacted (e.g. Air Pollution Control Act, Water Pollution Prevention Act). The Environmental Impact Assessment Act, for instance, provides that companies which construct large-scale infrastructure and other construction shall follow three steps of submitting documents. Soil Contamination Countermeasures Act also requires such submission and permission.

Art. 37 of the Basic Environment Act requires polluters to clean-up (Polluter Pays Principle, PPP). Liability for clean-up is owned by polluters, so polluters must basically bear the expenses for cleaning the environment which was polluted by them. On the other hand, there are provisions under which the government may help polluters clean-up in certain cases. Although such provisions exist, in most cases, the polluters bear all or most of all expenses. Moreover, in Japan, there are certain cases in which it is not possible to specify the polluters and to pursue their liability.

In summary, although there are some relief measures for polluters, basically the rules regarding the environment are strict in Japan.

Openness to foreign business

Generally These indicators measure the degree to which the country is open to foreign businesses. The indicators are quite generic and therefore subjective.

Foreign direct investment

Q19 In Japan, foreigners may freely own and control local companies outside protected industries, such as media, banks and defence.

True			False	Can't say
	×			

Comment:

In Japan, restrictions against foreign investments can be categorized as "restrictions in specific kinds of business" and "the general restrictions regarding foreign exchange transactions and foreign investments" pursuant to the Foreign Exchange and Foreign Trade Act (the "FEFTA"). For "restrictions in specific kinds of business," the restrictions are generally taking the form of limiting the shareholding ratio of sensitive

businesses or limiting the voting rights of shares owned by foreigners. As for "the general restrictions regarding foreign exchange transactions and foreign investments," the restrictions are taking the form of required governmental approvals of which the cases are reviewed on a case by case basis.

For example about "restrictions in specific kinds of business" in the telecommunication area, pursuant to Article 52-8 of the Broadcasting Act or the laws relating to NTT, the voting rights of shares held by foreigners are exercisable only when the voting rights do not represent a majority or a significant ratio. For example in the domestic maritime transportation, pursuant to Article 1 and 3 of the Ship Act, only "Japanese ships" can pass the domestic water. For example in the mining area, pursuant to Article 17 of the Mining Act, only Japanese individuals and Japanese legal entities can own the right of mining.

As for "the general restrictions regarding foreign exchange transaction and foreign investments," pursuant to Article 27 of the FEFTA, prior regulatory approvals by the competent authorities are required for foreign investors' investments that may: (i) damage the national security or public order, (ii) adversely affect the safety of general public, or (iii) adversely influence the economics of the country. The competent authority, upon applications of foreign investments, may order to change the way the investment is implemented, or order to terminate the investment. In the event that the foreign investors do not follow orders from the authority, the authority may directly change the implementation of, or effect the termination of, the investment.

In addition, pursuant to Article 55-5 of the FEFTA, for investments that do not require prior approvals under Article 27 of the FEFTA, the authority may still from time to time, by applying the rules it promulgated, require the investors to report the transactions and implementation details about the investments.

The foregoing restrictions on "restrictions in specific kinds of business" and "the general restrictions regarding foreign exchange transactions and foreign investments" are based on protection of the public interests to impose restrictions on "specific business" and "business with specific natures." For restrictions under the FEFTA, the competent authority has considerable discretion powers to decide on respective cases and impose limitations. As a result, such restrictions are broader than limitations on "protected industries, such as media, banks and defence." In practice the authority actually imposed restrictions on foreign investments based on "protection of certain business areas" in the famous J Power case and the Japan Airport Building case. In a nutshell, the restrictions towards foreign investments may be more appropriately described as protection on the business that concern public utilities, welfare of people, and national security.

Exchange controls

Q20 In Japan, there are no exchange controls. Businesses may therefore have foreign bank deposit accounts in foreign currency, borrow in foreign currency and repatriate profits to foreign shareholders in foreign currency.

True		False	Can't say
	✕		

Comment:

Pursuant to the Foreign Exchange and Foreign Trade Act (the "FEFTA"), in principle foreign exchange transactions can be freely conducted but there are still restrictions under the FETA. Examples are as follows:

(1) for opening account to conduct foreign exchange transactions, such account opening may not be accomplished without going through a verification process to verify the identities of the accountholders pursuant to Article 18 of the FEFTA and the anti-money laundering laws.

(2) For non-residents as business owners to advance foreign currency funds and borrowing foreign currency, under certain circumstances such transactions must be preapproved by the authority and the authority may impose restrictions on, or prohibited, such transactions.

(3) For borrowing foreign exchange to make direct outbound investments, pursuant to Article 23 of the FEFTA prior approval from the authority is needed.

(4) For dividends distributed to foreign shareholders in the form of foreign currency, pursuant to Article 55 of the FEFTA, ex-post report to authority is needed. However, for non-residents to make payments to foreign countries and the payment amount is below JPY 30 million, such report is not required.

Alien ownership of land

Q21 In Japan, foreign-controlled companies have the same rights as nationals or residents to own or lease land without a permit.

True			False	Can't say
×				

Comment:

According to the Foreign Exchange and Foreign Trade Act (FEFTA), non-residents (including foreign-controlled companies) owning or leasing land are categorized to be "capital transactions" (Art. 20, Paragraph 1, Item x). Art. 55(1), Item (xii) of FEFTA provides that non-residents shall report to the Minister of Finance the content of the capital transactions. Any such companies can basically own or lease land without permission, but if such transaction has the risk of threat to national security and so on, the transactions can be restricted according to Art. 27 of FEFTA.

The Foreigners' Land Act was enacted in the Meiji Period (late 1800s), and in order to restrict the transactions of lands by foreigners, the principle of reciprocity was adopted. However, the implementing cabinet order has never been enacted since, so this law is now void for all practical purposes.

Application of the law

Generally These indicators deal with the application of the law, as opposed to what the law actually says. They are bound to be generic and subjective, a matter of impression.

Q22 In Japan, the higher courts usually treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

True		False	Can't say
	✕		

Comment:

Pursuant to court precedents in Japan, I believe it is not generally observed that big businesses or foreigners are being discriminated and facing unfair treatments. That being said, for specific case there may be a sense of differential treatment towards foreign companies. A significant example is the Bulldog Sauce case (decision of the Supreme Court, August 7, 2007). In that case the Japanese company Bulldog Sauce faced takeover attempt by a foreign company and successfully fended off the takeover attempt by issuing new shares excluding the foreign shareholder's preemptive rights and such defense was recognized as valid in the litigation brought up by the foreign company.

Costs and delays of commercial litigation

Q23 The costs and delays of commercial litigation in the higher courts in Japan are not considered materially greater than in other comparable countries.

True		False	Can't say
✕			

Comment:

1. The trial period for higher courts

The following are the statistics about the trial period for higher court in Japan and other selective countries, taking only commercial cases as examples:

(1) Japan

The trial period for high courts in Japan, taking the year of 1973 for example, was in average 19.7 months and thereafter is getting shorter. In 2014 it becomes in average 5.5 months and in recent years it approximately maintains the same performance.

For Supreme Court cases, taking the year of 2014 for example it is in average 4.9 months (including admitted and not admitted cases). For admitted cases it is in average 5.4 months.

(2) Germany

According to the statistics of the Judicial Ministry of Germany, the trial period for high courts in average is 9.5 months (not including family law cases) and for supreme courts it may vary for cases being admitted by high courts or admitted by supreme courts, as shown in the chart as follows:

	Cases	Below 6 months	6-12 months	12-18 months	18-24 months	Above 24 months
Admitted by high courts	471	7 (1%)	179 (38%)	170 (36%)	65 (14%)	50 (11%)
Admitted by supreme courts	265	2 (1%)	36 (14%)	101 (38%)	70 (26%)	56 (21%)

(3) United States

According to the statics of the USA Judicial Statistics Bureau, in the year of 2015 about the cases of tort, contract and properties, the average trial period for high courts was 11 months.

(4) Taiwan

According to the statics from the Taiwan Judicial Yuan, in the year of 2015 the average trail period for civil cases in high courts was 187 days and for supreme courts 45 days.

(5) Brief summary

It would be arbitrary to simply look at numbers of different countries as the civil trial systems and the basis of the statistic results are different. By just roughly comparing the numbers from a general perspective, the trial periods for the higher courts of Japan are not quite materially longer than other comparable countries.

2. The costs for higher courts to rule on cases

It is not quite easy to obtain publicly available information about costs for higher courts in foreign countries to rule on cases. The following are just limited information about the system in Japan.

(1) Court fee and related litigation costs

The court fee and related litigations will include filing fee, delivery fee, witnesses' fee, fee for producing documents and fees for discovery etc. There are different kinds of standards for various kinds of fees. Taking court fee for example, it can be looked up in the following website: http://www.courts.go.jp/vcms_lf/315004.pdf)。

(2) Lawyer's fee

About lawyer's fee, it basically depends on the agreement between the lawyer and the client. As to who ultimately bears the costs of lawyer's fee, in principle it is the one who retains its lawyer to bear the costs, same as the system in the USA. But in Germany or the UK, the one who loses the case will bear the costs of the other party's lawyer's fees as well.

However, in some Japanese court precedents for specific kinds of cases, the party who lost its case may be required to bear certain portion of the lawyer's fee, such as in cases of torts and labor disputes.

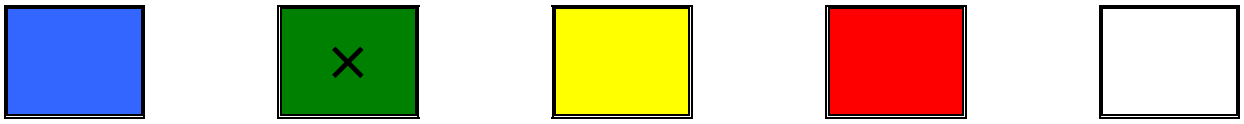
As stated above, it is quite difficult to look up the system of litigation costs from publicly available information. However, from my experience handling cross border litigations, the costs for commercial litigation in Japan are not quite materially greater than other comparable countries.

Overall ranking

This overall ranking is achieved by a survey of all the rankings as shown in this table:

	Question	Rating
1.	Insolvency set-off	
2.	Security interest	
3.	Universal trusts	
4.	Director liability for deepening insolvency	
5.	Financial assistance to buy own shares	
6.	Public takeover regime	
7.	Exclusion of contract formation	
8.	Termination clauses	
9.	Exclusion clauses	
10.	Governing law clauses	
11.	Foreign jurisdiction clauses	
12.	Arbitration recognition	
13.	Class action	
14.	Ownership of land	
15.	Security of land title and land registers	
16.	Land development restrictions	
17.	Employment law	
18.	Environmental restrictions	
19.	Foreign direct investment	
20.	Exchange controls	
21.	Alien ownership of land	
22.	Court treatment of foreign big business	
23.	Costs and delays of commercial litigation	

True **False** **Can't say**



Commentary and suggestions for change

The legal system in Japan is in principle, a hybrid of civil law system and common law system. In terms of commercial laws and regulations, Japanese legal system is quite dynamic and has been constantly reformed and improved.

Under Japanese law, foreigners can expect relatively equal treatment regarding restrictions and protections in doing business. It can be observed in different areas, including the ownership of real properties by foreigners. As a developed country, Japan has relatively cautious regulations to preserve the common good and stability of society which can be observed in the areas of environment protection and energy policy.

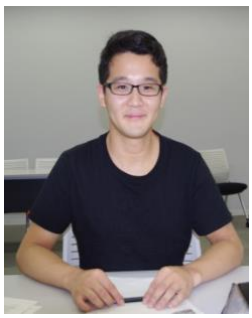
In terms of regulations regarding business organizations and finance activities, there are flexible and helpful rules to promote business activities under the Japanese legal system, such as the highly-developed system for financing and contractual arrangements. There are also restrictions similar to other developed counties, such as requirements on reliability, transparency and accountability of business activities. Commercial disputes can be handled by the mature judicial systems and judges which not only protect legitimate business activities but also prevent undue conducts from undermining the business society. Furthermore, financial instruments and facilities are highly developed to invigorate transactions in Japan.

The Japanese laws and regulations are constantly evolving. It can be beneficial to do business in the country because of the mature and efficient commercial legal system. However, in order to achieve successful results, it would also require understanding and respect of the local business culture.

Profiles

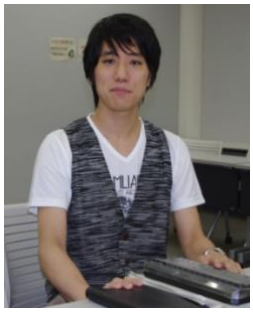
The survey was carried out by the following students:

Koya Hatano



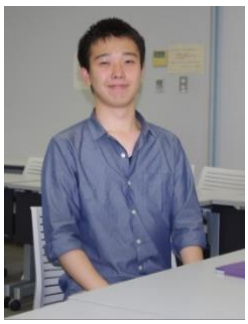
Koya is a third-year student at the University of Tokyo School of Law. He graduated from the University of Tokyo with a Bachelor of Law. His main areas of interest are corporate, M&A, commercial law, and antitrust law. He is an active student, who participates in many student activities and international student conferences held in Bulgaria and Tokyo.

Yuta Ito



Yuta is a second-year student at the University of Tokyo School of Law. His main areas of interest are commercial, arbitration, intellectual property, and private international law.

Takuma Hashimoto



Takuma is a third-year student at the University of Tokyo Faculty of Law. His main areas of interest are commercial and administrative law. He is also interested in political science and business, and has been working at a venture company since starting up.

Alan Tian-Chang Jih

Alan Jih is a Legal Researcher at the University of Tokyo. He graduated from Columbia University School of Law (LL.M), National Taiwan University School of Law (LL.M & LL.B). He is the founding partner as well as the managing partner of KPMG Law Firm in Taiwan. He turned the firm into one of the biggest law firms in Taiwan in the space of three years, after he left Jones Day as a veteran lawyer. Mr. Jih's legal practice encompasses a broad range of commercial areas, with emphasis on M&A, corporate advice, investment, and intellectual properties. He is constantly praised by his clients for his exceptional handling and coordinating skills. Furthermore, Mr. Jih is fluent in Chinese, English, Japanese, and Taiwanese, which allows him to have the experience of participating in various cross-border mega deals involving Europe, America, Japan, and Taiwan.

Project Director

Professor Keiichi Karatsu

Keiichi Karatsu is teaching various classes and seminars concerning business law, such as International Business Law, Modern American Law, Global Business Law Summer Program, Corporate Governance, International Transaction, International Commercial Arbitration and M&A at the University of Tokyo Faculty of Law and the University of Tokyo Graduate Schools for Law and Politics. His research interests include business law practice, business planning, legal education, corporate governance and commercial dispute resolution. He holds an LLM from the University of Pennsylvania Law School and an LLB from the University of Tokyo. In the past, he worked for the New York law firm of Sullivan & Cromwell as a Visiting Lawyer (1987 to 1988), Nippon Steel Corporation as a Department Head of Legal Dept. (1991 to 2008) and HOYA Corporation as a General Manager of Legal & Intellectual Property Section (2008 to 2010).

Members of the Practitioner Expert Panel

Tatsu Katayama

Tatsu Katayama is a partner at Anderson Mori & Tomotsune, whose areas of expertise are international banking, finance and securities matters on behalf of foreign clients. His firm is regularly mentioned by legal periodicals, such as Chambers International and Euromoney, as one of the leading Japanese firms in regard to banking and finance and capital markets matters as well as real estate transactions, and Mr. Katayama has been individually named as a leading lawyer in Japan in such areas. Mr. Katayama often works together with overseas legal counsel on these matters and is well accustomed to meeting the needs of overseas clients as well as foreign-subsidiary domestic clients.

Mr. Katayama served as the international director of the Japan Federation of Bar Associations. He has expertise in cross border legal practices, anti-money laundering and other international aspects of bar issues.

Osamu Ito

Osamu Ito is a partner in the Tokyo office of Allen & Overy, specialising in M&A, joint ventures and general corporate matters, as well as acting on cross-border disputes, restructuring and insolvency. He represents both foreign companies investing in Japan and Japanese companies investing in overseas markets in various sectors, including technology, life sciences, financial institutions, retail and consumer goods. Prior to joining Allen & Overy, he was a partner at a major Japanese law firm. He is also active in the bar association and is currently co-chair of the Foreign Lawyers and International Legal Practice Committee of the Japan Federation of Bar Associations and also served as chair of the International Committee of the Tokyo Bar Association. He holds an LLM from the University of Cambridge (Queens' College) and an LLB from Hitotsubashi University.

Allen & Overy Global Law Intelligence Unit

The Allen & Overy Global Law Intelligence Unit is part of the international firm of Allen & Overy and produces papers, surveys and other works on cross-border and international law within the field of its practice. Allen & Overy is one of the largest legal practices in the world with approximately 5,000 people, including some 512 partners, working in 40 offices worldwide. For further information, please contact Philip Wood, philip.wood@allenovery.com or Melissa Hunt, melissa.hunt@allenovery.com.

Philip R Wood QC (Hon) BA (Cape Town), MA (Oxon) LLD (Lund, Hon)

Head, Allen & Overy Global Law Intelligence Unit
Special Global Counsel at Allen & Overy LLP
Visiting Professor in International Financial Law, University of Oxford
Yorke Distinguished Visiting Fellow, University of Cambridge
Visiting Professor, Queen Mary University, London

Philip Wood is one of the world's leading comparative lawyers and practitioners. He has written about 18 books on financial law. He was formerly a partner and head of the banking department of Allen & Overy. For many years he has been developing innovative and pioneering methodologies for assessing legal jurisdictions and has produced a book of maps of world financial law. His university textbook on the Law and Practice of International Finance has been translated into Chinese and a Japanese version is forthcoming.

Melissa Hunt is project director of the Intelligence Unit and is responsible for the management of the project. She carries out other work for the Intelligence Unit, including the preparation of tables covering rule of law and legal infrastructure risks in the jurisdictions of the world.

Allen & Overy LLP
One Bishops Square
London E1 6AD

T: 00 44 (0)20 3088 0000
D. 00 44 (0)20 3088 2552
M. 00 44 (0)7785 500831

philip.wood@allenovery.com
intelligence.unit@allenovery.com

D. 00 44 (0)20 3088 2750
melissa.hunt@allenovery.com

Allen & Overy LLP

One Bishops Square, London E1 6AD United Kingdom | Tel +44 (0)20 3088 0000 | Fax +44 (0)20 3088 0088 | www.allenovery.com