

# JAPAN

## Law and Practice

### Contributed by:

Satoru Hasumoto, Takahiro Sato and Fuyuki Uchitsu  
**Mori Hamada & Matsumoto**



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**Mori Hamada & Matsumoto** has a real estate practice that extends from traditional acquisition and leasing transactions to complex fund structures involving a special purpose vehicle or a trust, or even investment structures for overseas properties. The team's work in this practice primarily involves private fund formations

for domestic and overseas properties, J-REITs, real estate acquisitions, developments and dispositions and real estate financings. Recent highlights include advising KKR on its acquisition of hotel properties and the hotel operator of Unizo Hotel and advising Japanese banks on a USD911 million financing for 425 Park Avenue.

## Authors



**Satoru Hasumoto** is a partner at Mori Hamada & Matsumoto who deals with all aspects of real estate, including the development and operation of hotels, data centres and

logistics facilities. He focuses on inbound and outbound real estate and construction projects. His publications include *"Real Estate Investments in Australia"* (ARES Journal, October 2024), *"An Introduction to Real Estate Financing in the US"* (ARES Journal, October 2020) and *"Outline of Real Estate Investment Regarding Data Centres"* (ARES Journal, December 2019).



**Takahiro Sato** is a partner at Mori Hamada & Matsumoto, who has recently been involved in the development of logistics facilities, office restacking projects and the formation of an

open-end core real estate fund. He has also recently handled the formation of private REITs, listed REIT mergers, going-private transactions for listed REITs and S-REIT listings. His publications include *"Characteristics and Practical Considerations of Sponsor Changes for REITs"* (ARES Journal, February 2025) and *"Amendment to the Civil Code and Real Property Registration Act (Regarding Land of Unknown Ownership)"* (ARES Journal, August and October 2021).



**Fuyuki Uchitsu** is a partner at Mori Hamada & Matsumoto, who practises in real estate, including the acquisition, development, management and sale of hotels, residences, office buildings and a wide range of other properties. His publications include *“Legal Practices for Hotel Real Estate Investments and Acquisitions of Hotel Operators”* (ARES Journal, June 2024), *“An Introduction to Commercial Construction Loans in the US”* (ARES Journal, June 2022), *“Basics of Electronic Contracts and Electronic Signatures – Focusing on Real Estate Transactions”* (ARES Journal, October 2021) and *“Real Property Security Token Offering (STO) – Outline of Structuring and Regulations Under the Financial Instruments and Exchange Act”* (ARES Journal, June 2021).

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## Mori Hamada & Matsumoto

Marunouchi Park Building  
2-6-1 Marunouchi  
Chiyoda-ku  
Tokyo 100-8222  
Japan

Tel: +81 3 6212 8330  
Fax: +81 3 6212 8230  
Email: [info@morihamada.com](mailto:info@morihamada.com)  
Web: [www.morihamada.com/en](http://www.morihamada.com/en)

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## 1. General

### 1.1 Main Sources of Law

The Civil Code provides the general legal framework for real property and real estate transactions, including ownership, co-ownership, superficies, easement and security interests and for sale and purchase and leasing transactions.

In addition to the Civil Code, the Law on Unit Ownership of Buildings governs unit ownership (*kubun shoyu ken*) and the relationship between the unit owners of a multi-unit building, while the Land Lease and Building Lease Law applies to leases of buildings and leasehold interests or superficies in land for the purposes of owning a building on a parcel of land.

Since this Law was enacted to enhance protection of the tenant's interest, some provisions are mandatory and cannot be circumvented by the parties to a land lease or building lease. There are also court rulings relating to land leases and building leases which have established legal doctrines that generally restrict the lessor's rights and protect the tenants.

### 1.2 Main Market Trends and Deals

The Japanese economy is experiencing inflation for the first time in many years. In March 2024, the Bank of Japan exited from the negative interest policies it introduced in February 2016. It further increased its policy rate in July 2024. While increases in the policy rate would result in increasing interest payments for real estate funds, these factors may positively affect the real estate market going forward.

The Japanese real estate market is still active of late and is attracting particular attention from abroad due to the relatively low interest rates and the depreciation of the yen. In 2024, there

were several large-scale transactions where hotel assets were sold to foreign real estate funds, indicating the strong appetite of foreign funds for Japanese hotels due to the increase of inbound tourism and the recent trend of traditional Japanese companies to turn to asset-light strategies. Another trend is rising inflation stimulating investments in inflation-resistant real estate, such as residential, hotel and retail properties.

Overseas investments are also increasing. For example, in 2024, Sekisui House REIT, Inc acquired two real estate properties in the United States. In contrast, new large-scale development projects have stalled somewhat because of the rising cost of materials and labour.

A new type of real estate fund, security token offerings, have also been increasing over the past few years and will attract more attention going forward.

For more information on market trends, see our Chambers article [Japan: An Introduction to Real Estate](#).

### 1.3 Proposals for Reform

New legislation concerning real estate transactions for national security purposes became effective on 20 September 2022. The Act on Investigation and Regulation on Use of Properties in the vicinity of Significant Facilities and Border Remote Islands will authorise the Japanese government to:

- designate close monitoring areas and enhanced close monitoring areas;
- investigate persons using the properties located within these areas and the use of these properties; and

- issue recommendations and orders to take remedial measures if these persons are found to be disturbing the functions of significant facilities, such as defence facilities and sensitive infrastructure and Border Remote Islands, or if there is an evident threat that these persons will do so.

In addition, parties to a real estate purchase agreement will be required to submit a notice of certain prescribed matters (eg, identity of the parties and purpose of use) prior to the execution of the agreement if the real estate is located within the enhanced close monitoring area.

In 2024, amendments to the Construction Business Act were passed by the National Diet. These revisions aim to secure a stable workforce in the construction industry by introducing measures to:

- secure wage resources for the improvement of the treatment of workers in the construction industry and their dissemination to subcontractors;
- reduce the burden of labour costs on contractors by facilitating the transfer of increases in the price of materials to contract prices; and
- promote work style reforms and productivity improvements.

These amendments include provisions prohibiting contractors from entering into construction contracts that fall below cost unless there are justifiable reasons and obligations regarding the adjustment of contract prices due to price fluctuations. These amendments can impact the practice related to claims for increased contract prices due to materials and labour cost increases, which have been significant issues in

negotiations recently and have caused disputes between owners and contractors.

In 2024, draft revisions to the Act on Building Unit Ownership, etc were under discussion. The proposed revisions included the relaxation of the majority requirement for resolutions for reconstruction from four-fifths to three-fourths. If the revised bill is submitted and passed, it is expected that the reconstruction of deteriorated condominiums will progress.

## 2. Sale and Purchase

### 2.1 Categories of Property Rights

In the Japanese market, the most common subject properties or interests for investment purposes are currently:

- ownership (equivalent of fee simple absolute) of the land or the building, or both;
- a combination of the right to use the land (leasehold interest or superficies) and fee simple ownership of the building;
- co-ownership (*kyo-yu*) of the land or the building, or both; and
- a combination of co-ownership of the land and unit ownership of private units in a multi-unit building.

Co-ownership refers to a type of ownership where one person owns a certain percentage interest in the entire property and other owners own the remaining percentage interests.

Unit ownership is a type of ownership recognised for a multi-unit building under the Law on Unit Ownership of Buildings. A unit owner is entitled to:

- own exclusive private units in the building; and
- own and use common areas (such as the entrance hall to the building) jointly with other unit owners and to use the underlying land in the form of co-ownership, leasehold interests or superficies.

In addition, many real estate properties are held under trust arrangements, meaning the investor will acquire a trust beneficial interest (TBI) in respect of the entrusted real property. Under a trust arrangement, the real property is owned by the trustee (usually, a licensed trust bank in Japan) as part of the assets of the trust and the investor becomes a beneficiary of the trust by acquiring the TBI.

## 2.2 Laws Applicable to Transfer of Title

The Civil Code generally governs the transfer of title. Other laws may also be relevant, depending on the ownership structure. For example, the Law on Unit Ownership of Buildings specifies certain rules for the transfer of unit ownership.

Specific restrictions may apply to specific types of real estate. One such restriction is the requirement under the Agricultural Land Law that the acquisition of agricultural land is subject to governmental permission.

## 2.3 Effecting Lawful and Proper Transfer of Title

### How to Effect a Title Transfer

A transfer of title to real estate is effected pursuant to an agreement between the seller and the buyer. Most sale and purchase agreements provide that the transfer of title takes effect upon the full payment of the purchase price by the buyer.

## Registration of Title to Real Estate

Japan has a real estate registration (*toki*) system where title to and certain other interests (such as mortgages) on real estate are registered. In practice, parties to a real estate transaction usually rely on the real estate registration because it is generally the best indication of the true owner of or holder of interest on a real property.

## Registration of a Title Transfer

A transfer must be registered pursuant to the real estate registration system in order for it to be perfected. If a transfer of real property is not registered, the buyer cannot assert its title against a third party.

Applications for registration of title transfer can be completed online, but the use of registered seals to execute the documents required for registration is still the prevalent practice. In Japan, the COVID-19 pandemic caused no major delays or other disruptions in real estate registration procedures.

## Title Insurance

Title insurance is not commonly used in the Japanese real estate market.

## 2.4 Real Estate Due Diligence

A real estate due diligence process usually involves some or all of the following elements.

- Document review: documents to be reviewed include publicly available materials such as a certified copy of the real estate registration, as well as the contracts that have been entered into in respect of the subject property. An “*explanation sheet of important matters*” (*juyo jiko setsumei sho*) prepared by a broker or the seller is usually one of the major documents that should be reviewed, as it is supposed to provide an orderly over-



view of the property (including pre-closing or post-closing requirements under public laws applicable to the transfer of the property) and highlight issues relating to the property.

- On-site inspection: the buyer often retains and brings to on-site inspections, an appraiser and a property inspector, who will prepare the necessary third-party reports.
- Question and answer sessions: these are conducted in writing, through email, telephone or online meeting software, or at face-to-face meetings.
- Third-party reports: for commercial real estate, the buyer often arranges for professional service providers to prepare a real estate appraisal report and an engineering report.

## 2.5 Typical Representations and Warranties

Under the Civil Code, the seller is liable for any defect in the subject property. This defect liability may be limited by agreement on the scope, duration or amount of liability. This defect liability is referred to as “*non-conformity liability*” in the Reformed Civil Code. Aside from this statutory liability, the seller and the buyer often agree on contractual representations and warranties regarding the subject property. The scope and duration of the seller’s property representations and warranties vary from deal to deal.

The primary remedies for statutory liability and seller’s misrepresentations are termination of the purchase agreement and compensation for damages (or indemnity). It is not common for the parties to use representation and warranty insurance for real estate transactions in Japan.

## 2.6 Important Areas of Law for Investors

The primary laws relating to real estate transactions include the:

- laws governing private parties’ rights and obligations (the Civil Code, the Law on Unit Ownership of Buildings, the Land Lease and Building Lease Law and the Real Estate Registration Law);
- laws regarding regulations and public policy (the City Planning Law, the Construction Standards Law, the Soil Contamination Countermeasures Law, the Real Estate Transaction Business Law and local government ordinances);
- laws related to trusts and TBI transactions (the Trust Law, the Trust Business Law and the Financial Instruments and Exchange Law); and
- laws related to foreign investment (the Foreign Exchange and Foreign Trade Law).

## 2.7 Soil Pollution or Environmental Contamination

The buyer may be responsible for soil pollution or the environmental contamination of a property. If the soil contamination is likely to harm human health, the land will be designated as an area requiring action (*yo sochi kuiki*) under the Soil Contamination Countermeasures Law and the landowner is required to take the necessary measures to remedy the contamination. These measures depend on the class of hazardous substances found on the land and on the state and degree of contamination. In practice, the removal of contaminated soil is the prevailing remedial method.

## 2.8 Permitted Uses of Real Estate Under Zoning or Planning Law

The City Planning Law is the main source of zoning regulations. An “*explanation sheet of important matters*” prepared by a broker or the seller will address the zoning restrictions applicable to the subject property under the City Planning Law. A buyer may also consult with relevant

governmental bodies to ascertain the applicable local or specific zoning or planning regulations.

## 2.9 Condemnation, Expropriation or Compulsory Purchase

The Land Expropriation Law provides the requirements and procedure for the expropriation of privately owned real estate by governmental bodies. Owners of expropriated assets are generally entitled to reasonable compensation. The two major elements of the whole process are confirmation that the project necessitating the expropriation serves the public interest and the amount of compensation has been determined.

## 2.10 Taxes Applicable to a Transaction

The outright transfer of real property (asset deal) is subject to real estate acquisition tax (*fudosan shutoku zei*), registration and licence tax (*toroku menkyo zei*), consumption tax (*shohi-zei*) and stamp duty. Depending on the type of real property and the timing of the transactions and subject to some exceptions, the tax rates are as follows:

- registration and licence tax: 1.5% to 2% of the taxable base of the property, which is the property value recorded in the tax rolls for purposes of fixed assets tax;
- real estate acquisition tax: 3% to 4% of the taxable base;
- consumption tax: 10% of the purchase price of the building; and
- stamp duty: up to JPY600,000 (or up to JPY480,000 under the current special tax treatment).

Corporation tax is also imposed on net income if the seller is a corporation.

## Share Deal

In a share deal, corporate sellers are subject to corporation tax but not consumption tax, real estate acquisition tax or registration and licence tax. Moreover, the share purchase agreement is basically not subject to stamp duty.

## Allocation of Responsibilities for Taxes

The real estate acquisition tax, the registration and licence tax and the consumption tax are typically borne by the buyer and the corporation tax is borne by the seller. The responsibility for the stamp duty is allocated based on agreement between the buyer and the seller.

## Special Methods to Mitigate Tax Liability

For tax treatments that can be accomplished by using a trust structure or a *tokutei mokuteki kaisha* (TMK), please see 8.2 Mitigation of Tax Liability.

## 2.11 Legal Restrictions on Foreign Investors

There are no legal restrictions on the acquisition of real property in Japan by non-residents, except that these buyers are required to make a post-transaction filing pursuant to the Foreign Exchange and Foreign Trade Law.

# 3. Real Estate Finance

## 3.1 Financing Acquisitions of Commercial Real Estate

Please see 5.1 Types of Entities Available to Investors to Hold Real Estate Assets.

## 3.2 Typical Security Created by Commercial Investors

A mortgage is the most typical security interest created by a borrower who holds outright ownership of real estate. If the borrower and the lender

intend to enter into financing transactions on a continual basis, a revolving mortgage may be created instead. If the borrower holds an interest in real estate in the form of a TBI, a pledge over the TBI is the principal security interest in place of a mortgage. Some lenders may require pledges over insurance claims.

### 3.3 Restrictions on Granting Security Over Real Estate to Foreign Lenders

There are no special restrictions on granting security over real estate to foreign lenders. However, a licensing requirement applies if a foreign financial institution lends money in Japan as part of its money lending business, unless the institution is a licensed bank in its home country and has a Japanese branch.

### 3.4 Taxes or Fees Relating to the Granting and Enforcement of Security

Formal (ie, non-provisional) registration of a mortgage is subject to a registration and licence tax at a rate of 0.4% of the secured amount. Due to the fact that this tax can be substantial depending on the secured obligation, some lenders permit the borrower to only make a provisional registration, which costs JPY1,000 for each real property. Once the mortgage is formally registered based on the provisional registration, the mortgagee enjoys priority over other mortgagees who register their mortgages after the provisional registration.

Judicial foreclosure of a mortgage involves various costs. The applicant has to prepay up to JPY2 million (in the case of the Tokyo District Court) to a competent court, which will be credited to the court's expenses.

### 3.5 Legal Requirements Before an Entity Can Give Valid Security

If there are minority shareholders in a company that is providing security to secure a debt owed by its parent company, the directors of the security provider usually obtain the consent of the minority shareholders to ensure that the directors are not deemed to be in breach of their fiduciary duty and duty of care.

### 3.6 Formalities When a Borrower Is in Default

In the case of a borrower's default, a mortgagee would typically accelerate the entire outstanding debt pursuant to the credit agreement. After the secured obligation becomes due, the mortgagee may judicially enforce the mortgage by submitting the real estate registration certificate on which the mortgage is registered. The priority of the mortgage vis-à-vis other mortgages is determined based on the order of mortgage registration. There have been no specific governmental measures taken in response to pandemics to restrict a lender's ability to foreclose or realise collateral in real estate lending.

### 3.7 Subordinating Existing Debt to Newly Created Debt

Unless the existing lenders with perfected security interest agree, they do not become subordinated to any newly created non-preferred debt.

### 3.8 Lenders' Liability Under Environmental Laws

Due to the fact that a financier such as a lender is not an "owner" for the purposes of the Soil Contamination Countermeasures Law, a lender is not responsible for soil contamination investigations and countermeasures, unless it acquires the land from the borrower in default through the enforcement of a security.

According to a notice issued by the Ministry of Environment, even if the borrower assigns its land to a lender for the purpose of security (*joto-tampo*), the borrower but not the lender is deemed to be the “owner” of the land and will be responsible for any investigations and countermeasures under the Soil Contamination Countermeasures Law.

### 3.9 Effects of a Borrower Becoming Insolvent

The creation of a security interest by a financially distressed borrower may be invalidated (by the insolvency trustee or the debtor-in-possession under the theory of bankruptcy avoidance) if the security interest was created to secure existing debt after the filing of an insolvency petition with respect to the borrower.

The perfection of a security interest may also be avoided even where the creation of a security interest itself may not be avoided, pursuant to these criteria. The requirements of this avoidance include the perfection being made after the suspension of payments or the filing of an insolvency petition. The perfection of the security interest may also not be made within 15 days of the creation of the security interest.

### 3.10 Taxes on Loans

There are no recording or similar taxes in connection with mortgage loans or mezzanine loans related to real estate in Japan. Regarding the registration and licence tax required for registration of a mortgage, please see **3.4 Taxes or Fees Relating to the Granting and Enforcement of Security**.

## 4. Planning and Zoning

### 4.1 Legislative and Governmental Controls Applicable to Strategic Planning and Zoning

While the City Planning Law is the main source of planning and zoning regulations, local ordinances are also relevant.

### 4.2 Legislative and Governmental Controls Applicable to Design, Appearance and Method of Construction

The Construction Standards Law is the primary law regulating the construction of new buildings and the refurbishment of existing buildings. The Law establishes minimum standards concerning building sites, structures, equipment and building use.

### 4.3 Regulatory Authorities

Under the Construction Standards Law, the confirmation of authorised entities regarding the details of construction or refurbishment must be obtained for the construction of new buildings or any major refurbishment of existing buildings. Authorised entities include local governments such as cities, towns and villages and private building agencies accredited by the government.

### 4.4 Obtaining Entitlements to Develop a New Project

A building developer or building owner must apply for confirmation from the relevant local governments or government-accredited private building agencies to develop a new project or complete a major refurbishment. The detailed requirements for this confirmation, including the steps to be taken vis-à-vis third parties, may differ under the relevant local ordinances.

## 4.5 Right of Appeal Against an Authority's Decision

Theoretically, it is not impossible to litigate against an authority's decision, although litigation of this type is not commonly seen in practice.

## 4.6 Agreements With Local or Governmental Authorities

Unless the development project involves a property or facility that is currently or was previously owned by a governmental body, it is not common to enter into agreements with governmental bodies to facilitate a development project.

## 4.7 Enforcement of Restrictions on Development and Designated Use

The contractor of a building under construction in violation of the Construction Standards Law or the City Planning Law, or the owner of a building that has been so constructed, may be ordered to suspend the construction or to demolish or refurbish the building, or ensure the building complies with the relevant legal requirements.

# 5. Investment Vehicles

## 5.1 Types of Entities Available to Investors to Hold Real Estate Assets

Generally speaking, real property tends to be owned directly by joint stock companies (*kabushiki kaisha* or KK), which is the most popular form of corporate entity available under the Companies Law.

When it comes to real estate investment, there are three typical investment structures, each of which uses a different type of entity to acquire property:

- the GK-TK structure;

- the TMK structure; and
- the J-REIT structure.

Of these three structures, the GK-TK structure and the TMK structure are primarily used to acquire a specific asset or portfolio identified at the outset. The TMK structure is more often preferred by non-Japanese investors.

However, the J-REIT is used as a going concern vehicle for real estate investment, the asset portfolio for which can be continually expanded or replaced with new assets.

The main features of each structure are discussed below.

### GK-TK Structure

A GK-TK structure usually involves three types of vehicles:

- the fund is formed as a limited liability company (*godo kaisha* or GK);
- the GK is to acquire and hold one or more TBIs in a real estate trust (property trust); and
- the GK obtains quasi-equity investment from a TK investor under a TK agreement and takes out a loan from a third-party financial institution.

A GK is one of the ordinary corporate forms available under the Companies Law, with all equity holders (members) of the GK bearing limited liability.

For tax and other regulatory or practical reasons, real property is often traded under trust arrangements in Japan, ie, property is acquired in the form of a TBI rather than an outright purchase of the property. In that case, the real property is owned by the trustee of the property trust (usu-

ally, a licensed trust bank in Japan) for the benefit of the GK as the beneficiary.

A TK is one of the forms of partnership available under the Commercial Code and is formed by an agreement between the GK as operator and a TK investor. Under the law, the funds contributed by the TK investor belong to the GK as operator and all acts of the TK business are carried out in the name of the GK.

### TMK Structure

A *tokutei mokuteki kaisha* (TMK) structure involves a specified purpose company, which is a corporate entity specifically designed to acquire a specific asset (such as real estate assets) by issuing asset-backed securities under the Asset Liquidation Law.

The most attractive feature of a TMK is that, by fulfilling certain requirements, it will be eligible for special favourable tax treatment that is not available to a KK or a GK. The imposition of various regulatory requirements and special restrictions under the Asset Liquidation Law are the least attractive feature.

In most cases, a TMK finances the acquisition of real estate assets (which can be actual real properties or TBIs) by issuing preferred shares and obtaining third-party debt.

The TMK's equity consists of "*specified shares*" and "*preferred shares*". "*Specified shares*" are similar to ordinary voting shares of a KK. The amount of "*specified shares*" is nominal and is not supposed to be used for the acquisition of real estate assets. "*Preferred shares*" comprise mostly of the TMK's equity.

The third-party debt is usually obtained in the form of "*specified bonds*" or "*specified loans*".

### J-REIT Structure

Please see 5.3 REITs.

## 5.2 Main Features and Tax Implications of the Constitution of Each Type of Entity

Please see 5.1 Types of Entities Available to Investors to Hold Real Estate Assets.

### 5.3 REITs

A J-REIT is a type of investment fund in corporate form under the Investment Trust and Investment Corporation Law, which is set up to acquire real estate assets (whether actual real properties or TBIs). Similar to a TMK, a J-REIT can be eligible for special favourable tax treatment that is not available to a KK or a GK, but it is subject to various regulatory requirements and restrictions under the Investment Trust and Investment Corporation Law.

A J-REIT's equity is issued in the form of investment units and the investment units of a J-REIT can be listed and traded on a stock exchange. As of 1 March 2024, there were 58 publicly listed J-REITs in Japan.

In general, the Foreign Exchange and Foreign Trade Law allows non-residents of Japan to acquire units of listed J-REITs from Japanese residents without any restriction. Units of non-listed J-REITs are usually offered and held only by certain types of institutional investors due to securities regulation and tax considerations.

### 5.4 Minimum Capital Requirement

There are no minimum capital requirements for KKs, GKs and TMKs. However, J-REITs have a minimum equity requirement of JPY100 million.



## 5.5 Applicable Governance Requirements

The governance requirements vary, depending on the structure.

### GK-TK Structure

The governance of a GK is simpler and more flexible than a KK and the characteristics of the operations and governance of a GK are intended to be more similar to those of a limited partnership. In most cases, a GK is incorporated with one corporate entity being the sole managing member representing the GK and the managing member appoints an individual (operating manager or *shokumu shikkosha*) to act as its representative and perform the duties of a managing member.

In a GK-TK structure, the GK is structured as a special purpose company that has no human resources. It is therefore intended that the GK will retain an asset manager, who will take a lead role in the GK's activities. The asset manager must be a registered investment adviser or manager under the Financial Instruments and Exchange Law.

### TMK Structure

A TMK must always have at least one director and one statutory auditor. In addition, one accounting auditor is usually required to be appointed. This auditor must either be a certified public accountant or an auditing firm.

Certain fundamental matters with respect to a TMK require the approval of its shareholders (in the form of a resolution). In general, only specified shareholders have voting rights at shareholders' meetings.

The management and disposal of the real estate assets owned by the TMK must be subcontract-

ed to a third party, which must be a trust company or certain other service provider experienced in asset management and permitted under the Asset Liquidation Law. In practice, there are two types of asset management, depending on whether the TMK acquires actual real properties or TBIs:

- actual real properties: the TMK needs to retain an asset manager who is licensed to engage in a real estate transaction business under the Real Estate Transaction Business Law; or
- TBIs: the trustee of a property trust is responsible for the management and disposal of the real estate assets and the TMK needs to retain an asset manager who is a registered investment adviser or manager under the Financial Instruments and Exchange Law.

### J-REIT Structure

A J-REIT must have at least one corporate officer and supervisory officers who outnumber the directors by at least one person. They must also have a board of officers and an accounting auditor, who must either be a certified public accountant or an auditing firm.

The fundamental matters with respect to a J-REIT are quite limited and require the approval of its unitholders (in the form of a resolution).

Under the Investment Trust and Investment Corporation Law, a J-REIT must retain:

- an asset manager who is a registered investment manager under the Financial Instruments and Exchange Law and a licensed real estate transaction business provider with a discretionary agency permit under the Real Estate Transaction Business Law;
- an asset custodian; and

- an administrative agent.

## 5.6 Annual Entity Maintenance and Accounting Compliance

Maintenance costs vary significantly and vary on a case-by-case basis. However, generally speaking, the following applies:

- the cost to maintain a TMK structure is higher than for a GK-TK structure;
- the cost to maintain a J-REIT structure is significantly higher than for a GK-TK structure or a TMK structure; and
- the cost to maintain a publicly listed J-REIT is higher than for a private J-REIT.

## 6. Commercial Leases

### 6.1 Types of Arrangements Allowing the Use of Real Estate for a Limited Period of Time

Leases are the most common arrangements by which another person's land or building can be used, but superficies (*chijo-ken*) are a common alternative.

The purpose of a lease is not limited and leases are available for both land and buildings. In contrast, superficies are only available for land to own buildings or trees.

In general, holders of superficies are in a stronger position than leaseholders against the landowner, as they are holders of “*real right*”. For instance, the landowner owes the superficies holder a duty to co-operate in the registration of the superficies that are required for perfection, but the lessor does not owe such a duty to the tenant.

### 6.2 Types of Commercial Leases

There are two types of land or building leases based on the lease term: a general lease and a fixed term lease.

A general lease is subject to renewal, which the lessor is only entitled to refuse when there is a justifiable reason, taking the lessor's and the tenant's respective needs to use the property, the history of the lease, the present use of the property and the amount of compensation being offered by the lessor to the tenant to vacate the property into account.

A fixed term lease allows for three alternative arrangements for land leases as outlined below.

- Land leases relating to land on which a building is built for business or residential purposes and that have a term of at least 50 years are not renewable and must be executed in writing will be a fixed term lease.
- Land leases relating to land on which a building only used for business purposes (ie, not for residential purposes) is built and that have a term of at least 30 years but under 50 years are not renewable and must be executed by way of notarial deeds will be a fixed term lease.
- Land leases relating to land on which a building is only used for business purposes (ie, not for residential purposes) is built and that have a term of at least ten years but under 30 years are not renewable and must be executed by way of notarial deeds (a “*Category 3 fixed term land lease*”).

A “*fixed term building lease*” is also available. This lease must be in writing and is not renewable meaning it will terminate upon the expiry of the lease term.



## 6.3 Regulation of Rents or Lease Terms

### General Lease

In a general lease for land or buildings, lease terms that are contrary to or reduce certain statutory protections or rights granted to the tenant under the Land Lease and Building Lease Law are void. Several of these statutory protections and rights are outlined below.

- The lessor must have a justifiable reason to refuse a renewal of the lease.
- The tenant may demand that the rent be decreased in response to market conditions and cannot be deprived of the right to demand a decrease in the rent even if they explicitly agree not to exercise that right.
- In the case of a land lease, the leasehold interest in the land is perfected without registration if the land tenant owns a registered building on the leased land.
- In the case of a land lease, the land tenant has the right to request the landlord to purchase the building upon the termination of the land lease.
- In the case of a building lease, the leasehold interest in the building is perfected without the need for registration if the leased building is delivered to the tenant.

The rent and other terms of a general lease are otherwise freely negotiable and not regulated or subject to a voluntary code.

### Fixed Term Lease

The tenant may be deprived of the protections and rights in the case of a land lease, where the land tenant has the right to request the landlord to purchase the building upon the termination of the land lease and the lessor must have a justifiable reason to refuse a renewal of the lease.

The tenant may also be deprived of the right to demand that the rent be decreased in response to market conditions and the right not to be deprived of the right to demand a decrease in the rent even if they explicitly agree not to exercise that right and the right to require the lessor to have a justifiable reason to refuse a renewal of the lease.

## 6.4 Typical Terms of a Lease

The initial term of a land lease for owning a building is required by law to be at least 30 years and tends to range from 30 years to 50 years, except where the land lease is “*Category 3 fixed term land lease*”.

Building leases are typically for a much shorter term. Office space leases are often for a short term (most commonly two to five years), while building leases for retail or commercial facilities tend to be longer, for ten to 20 years.

The maintenance and repair of the premises actually occupied by the tenant are typically the responsibility of the tenant. However, if certain renovation works are required by the tenant before it can start using the premises, the allocation of the responsibility and the cost for these works is negotiated before entering into the lease agreement.

Monthly payment is the most typical payment term.

## 6.5 Rent Variation

Lease agreements usually schedule a regular rent review, which is conducted every three to five years in many cases. During a rent review, the parties will negotiate an increase or decrease in the rent for the next three to five years.

Aside from a contractual rent review, the Land Lease and Building Lease Law entitles either party to a lease to demand that the rent be increased or decreased in response to market conditions. If the parties cannot come to an agreement, a court may order an adjustment after considering the following:

- any change in tax or other liabilities imposed on the leased real estate (or the underlying land in the case of a building lease);
- the value of the leased real estate (or the underlying land in the case of a building lease) and other relevant economic conditions; and
- rents in neighbouring areas.

If the lessor and tenant specifically agree not to increase the rent for a certain period, the lessor cannot exercise its right to demand an increase in the rent but, with respect to a land lease and a general building lease, the tenant cannot be deprived of the right to demand a decrease in the rent, even if it has explicitly agreed not to exercise that right under the lease.

However, a different rule applies to a fixed term building lease, under which the lessor and the tenant may exclude the application of the rule on rent adjustment by setting out express provisions on rent revisions.

## 6.6 Determination of New Rent

Please see 6.5 Rent Variation.

## 6.7 Payment of VAT

Consumption tax (which is equivalent to VAT) is payable on the rent on building leases other than for residential purposes. The rent on land leases is exempted from consumption tax.

## 6.8 Costs Payable by a Tenant at the Start of a Lease

Typical costs payable by a tenant at the start of a lease include a deposit (often calculated by a multiple of the monthly rent, depending on the type of lease and the real estate), brokerage fees, insurance premiums and other expenses, such as for replacement of the keys. In addition, it is market practice for the tenant to pay a renewal fee (a multiple of the monthly rent) for each renewal of the lease term.

## 6.9 Payment of Maintenance and Repair

The maintenance and repair costs of common areas are paid by the building owner, primarily from the money paid by tenants as common area fees.

## 6.10 Payment of Utilities and Telecommunications

Utilities and telecommunications serving a property occupied by several tenants are paid for by the building owner, primarily from the money paid by tenants as common area fees.

## 6.11 Payment of Property Taxes

The real estate taxes relating to rental property are the fixed asset tax (*kotei shisan zei*) and the city planning tax (*toshi keikaku zei*), which are imposed on and paid by the owners of the real estate under Japanese law. However, in practice, we have seen parties making separate arrangements for these taxes. For example, in the case of a triple net lease, the tenant, rather than the building owner, usually bears the property taxes indirectly.

## 6.12 Insurance Issues

A tenant typically pays for insurance covering damage caused by accidents occurring in the real estate and by fire and, in some cases, earthquake and flood. Conventional business inter-

ruption insurance did not cover rent payments or other costs in the event of business interruption due to the COVID-19 pandemic, but since the outbreak of the COVID-19 pandemic, a new type of insurance has appeared, which covers damages resulting from business interruption caused by pandemics.

## 6.13 Restrictions on the Use of Real Estate

There may be contractual restrictions on how a tenant uses the real estate, restrictions on the use of common areas and prohibitions on the handling of hazardous materials or explosives.

## 6.14 Tenant's Ability to Alter and Improve Real Estate

The extent to which, and the conditions under which, the tenant is permitted to alter or improve the real estate are entirely up to the agreement between the lessor and the tenant.

## 6.15 Specific Regulations

In principle, there are no specific regulations or laws that apply to leases of particular categories of real estate.

## 6.16 Effect of the Tenant's Insolvency

In the case of a bankruptcy procedure (*hasan tetsuzuki*) or a corporate reorganisation procedure (*kaisha kousei tetsuzuki*), a bankruptcy trustee, or a debtor-in-possession in the case of a civil rehabilitation procedure (*minji saisei tetsuzuki*), has a statutory right to determine whether to terminate the lease agreement or to continue the lease by performing its obligations.

If the bankruptcy trustee of the tenant or the tenant as debtor-in-possession opts for the termination of the lease, the treatment of the unpaid rents depends on when the due date arose. Unpaid rents accruing before the com-

mencement of the relevant insolvency procedure are treated, in principle, as general insolvency claims and are therefore subject to the insolvency procedure and subordinated to preferential claims, while rents that become due after the commencement of the insolvency procedure are paid from the insolvency estate in preference to other general insolvency claims and are not subject to the insolvency procedure.

If continuation of the lease is chosen instead, unpaid rents accruing before the commencement of the relevant insolvency procedure will be treated as general insolvency claims, although there is a different academic view that treats these unpaid rents as preferential claims. Furthermore, if the lease is continued, the rents that are due on or after the commencement of the relevant insolvency procedure are paid from the insolvency estate in preference to other general insolvency claims.

In practice, lease agreements often provide for the lessor's right to terminate the lease upon the commencement of an insolvency procedure on the part of the tenant. However, there are a few legal precedents that reject these contractual provisions, so their validity remains contended.

## 6.17 Right to Occupy After Termination or Expiry of a Lease

A tenant is obliged to vacate and return the leased property on or before the expiration or termination of the lease term if the lease is not renewed.

The lessor does not generally have to do anything to ensure that the tenant vacates the property on time, as long as the lease duly expires or terminates. However, there is a special requirement in a fixed term building lease that the lessor must provide written notice of the expiry of the

lease term between six months and one year prior to the expiry date in order to oblige the tenant to vacate the leased property by the end of the lease term.

## 6.18 Right to Assign a Leasehold Interest

A tenant may assign its leasehold interest in the lease or sublease all, or a portion, of the leased premises if it is able to obtain the owner's approval.

## 6.19 Right to Terminate a Lease

Lease agreements typically provide that the following events give the landlord a right to terminate the lease:

- a breach of obligation by the tenant, such as a failure to pay rent;
- the commencement of an insolvency procedure by the tenant;
- the occurrence of events that constitute grounds for the commencement of an insolvency procedure, such as being "*unable to pay*" (ie, unable to pay debts generally when they fall due); and
- the issuance of an order for compulsory execution, petition for auction sale or compulsory disposition for delinquent public charges.

Having said this, the court takes the view that the lessor is only entitled to terminate the lease if the tenant's breach amounts to a destruction of the relationship of trust between the lessor and the tenant, regardless of any provision in the lease agreement.

A statutory right to terminate in the case of the tenant's insolvency is discussed in **6.15 Effect of the Tenant's Insolvency**.

## 6.20 Registration Requirements

A fixed term land lease and a fixed term building lease must be made in writing (see **6.2 Types of Commercial Leases**).

A leasehold interest in the land must be registered pursuant to the real estate registration system in order for it to be perfected. However, if the lessee owns a building standing on the land, the lessee may perfect its leasehold interest in the land by registering its ownership of the building.

A leasehold interest in a building could also be perfected by registering it pursuant to the real estate registration system or upon the delivery of the subject building by the landlord to the tenant. In this case the tenant can assert its leasehold interest against any person who acquires the building after delivery.

Registration of a leasehold interest is subject to a registration and licence tax at a rate of 0.4% of the taxable base of the property.

## 6.21 Forced Eviction

In order to force a tenant to leave, the lessor must obtain a court judgment ordering the tenant to vacate the leased property on the basis of the termination of the lease first. If the tenant does not comply with the judgment, the lessor will need to file a petition for compulsory enforcement against the tenant to compel them to surrender the leased property.

The length of time necessary to obtain such a judgment and to complete a compulsory enforcement largely depends on the tenant's response in court hearings and the tenant's reaction to the requirement to surrender and varies from a few months to one year.

## 6.22 Termination by a Third Party

Leases cannot be terminated by any third party, including central government or municipal authorities.

## 6.23 Remedies/Damages for Breach

In principle, there are no specific regulations or laws that limit the damages a landlord may collect or remedies a landlord may pursue. However, even if a lease agreement provides that the tenant will have to pay rent for the remaining lease term as a penalty in case of early termination by the tenant without cause, the court may determine that the provision is against public order and morals and therefore void because it allows the landlord to obtain an excessive amount of damages.

Upon the execution of a lease agreement, the tenant is usually required to pay a deposit in cash as security for the payment of rent and other tenant obligations, although there are rare cases where the landlord may allow the tenant to provide a letter of credit in lieu of a cash deposit.

# 7. Construction

## 7.1 Common Structures Used to Price Construction Projects

The most typical construction price structure is the fixed price arrangement, whereby the parties agree on the price at the signing of the construction contract, taking the estimated costs and expenses as well as the contractor's profit into account. For a large construction project, the price adjustment mechanism may be implemented to reflect fluctuating procurement prices of materials or services linked to the cost element of the construction price.

## 7.2 Assigning Responsibility for the Design and Construction of a Project

Design and construction works are typically provided under separate independent agreements, ie, the owner tends to enter into a design contract with a design company and a construction contract with a construction company. Each contract's terms and conditions are usually prepared and negotiated based on general terms and conditions made available as templates by the pertinent industry associations in Japan.

## 7.3 Management of Construction Risk

The general terms and conditions of a typical construction contract that are made available jointly by the pertinent industry associations (the "*Form Terms and Conditions for Construction Contracts*") provide for the construction contractor's obligation to take out insurance and for defect liability.

With respect to insurance, the Form Terms and Conditions for Construction Contracts require the contractor to purchase and maintain fire insurance or contractor's all risk insurance for the completed portion of the work, materials and building equipment and other materials delivered to the construction site. The details of the insurance coverage are left to the parties to agree.

With respect to defect liability, the Form Terms and Conditions for Construction Contracts provide that the owner may demand that the contractor repairs the defect, reduces construction fees and/or pays damages. In principle, the contractor's liability is subject to a time limitation of one to two years, depending on the construction materials (such as wood, stone, metal or concrete). However, in the case of a newly constructed residential building, the defect liability period for certain major structural works is mandatorily set at ten years after the delivery

of the building, pursuant to the Housing Quality Assurance Law (which is a special law aimed at ensuring the quality of residential buildings).

## 7.4 Management of Schedule-Related Risk

Schedule-related risks can be managed by the payment of liquidated damages by the contractor. These contractual arrangements are allowed under Japanese law and the courts are bound by the amount of liquidated damages agreed, without having to ascertain the actual damages incurred.

In particular, the Form Terms and Conditions for Construction Contracts provide that if the contractor fails to deliver the completed work by the due date for any reason attributable to the contractor, the owner may claim liquidated damages calculated at 10% per annum of the agreed construction price (minus a portion of the construction price equivalent to the part of the work already completed and delivered), calculated on the basis of the number of days delayed.

On the other hand, the Form Terms and Conditions for Construction Contracts allow the contractor to seek an extension of the due date if there is any justifiable reason, such as a force majeure event or a need for adjustment of the works. If the reason for the delay is not attributable to the contractor and the owner agrees to extend the due date, the owner is not entitled to liquidated damages.

## 7.5 Additional Forms of Security to Guarantee a Contractor's Performance

For domestic construction projects, additional forms of security such as performance bonds or parent guarantees are not common. It is normally difficult to get major construction companies to provide additional security.

## 7.6 Liens or Encumbrances in the Event of Non-Payment

The law grants contractors the right to retain (*ryuchi ken*) or refuse to deliver the completed building in the event of non-payment, as long as the contractor has possession of the building. This right to retain does not require any registration.

Construction contracts typically provide for the payment of the last instalment of the construction price in exchange for the delivery of the completed building.

## 7.7 Requirements Before Use or Inhabitation

The Construction Standards Law requires the owner to obtain an inspection certificate (*kensa zumi shou*) before it is allowed to use a newly constructed building. The process is as follows:

- the owner must apply for inspection by the relevant local government or government-accredited private building agency within four days of the completion of the construction;
- the inspection will be carried out within seven days of the application being accepted; and
- if it is confirmed that the construction and the site comply with relevant laws and regulations, the inspection certificate will be issued.

# 8. Tax

## 8.1 VAT and Sales Tax

The sale of a building is subject to consumption tax (equivalent to VAT) at the rate of 10% of the purchase price of the building. The sale of land is not subject to consumption tax.

Although the seller is liable for the consumption tax under tax law, in practice the buyer is con-



tractually obliged to pay an amount equivalent to the consumption tax on top of the purchase price of the building.

In general, sellers whose taxable sales did not exceed JPY10 million in the penultimate taxable year are exempt from consumption tax.

## 8.2 Mitigation of Tax Liability

The most common method to mitigate tax liability is to use a trust structure where the investor purchases the TBI in a property trust rather than the outright ownership of the real property itself. Please also see **2.1 Categories of Property Rights** and **5.1 Types of Entities Available to Investors to Hold Real Estate Assets**.

In doing so, generally:

- the registration and licence tax for the establishment of a property trust is reduced from 1.5% (for land) or 2% (for buildings) of the taxable base of the property (which is applicable in an outright purchase of real property) to 0.3% (for land) or 0.4% (for buildings) of the taxable base of the property. In addition, JPY1,000 is paid for each TBI transfer; and
- the real estate acquisition tax is reduced from 1.5% (for building land), 3% (for non-building land and residential buildings) or 4% (for non-residential buildings) of the taxable base of the property (which is applicable in an outright transfer of real estate) to zero.

Alternatively, by using a TMK as an acquisition vehicle, the registration and licence tax is reduced to 1.3% of the taxable base of the property and the real estate acquisition tax is effectively reduced to 0.6% (for building land), 1.2% (for non-building land and residential buildings) or 1.6% (for non-residential buildings) of the taxable base of the property because, in computing

real estate acquisition tax, the TMK is allowed to reduce the taxable base of the property to 40% of the regular taxable base.

## 8.3 Municipal Taxes

No universal municipal taxes are paid on the occupation of business premises in Japan, except in certain major cities, where taxes (of a relatively low amount) are imposed on the basis of the size of the taxpayer's premises or the amount of salaries paid.

The main municipal taxes paid on real estate *per se* are a fixed asset tax (*kotei shisan zei*) and a city planning tax (*toshi keikaku zei*), which are imposed on every owner of real estate, regardless of the purpose of the real estate. However, there are limited exemptions for these municipal taxes in certain designated areas where the municipal government is promoting particular industry sectors.

## 8.4 Income Tax Withholding for Foreign Investors

### Withholding Income Tax for Foreign Investors

There is withholding income tax for non-resident individuals and foreign corporations.

### Taxation on Rental Income

Rental income from real estate is subject to corporation tax if the lessor is a foreign corporation, or to income tax if the lessor is a non-resident individual. In 2024, the applicable corporation tax rate was 15% (for small income of a small enterprise) or 23.2% (in other cases), plus a local corporation tax of 10.3% of the amount of the corporation tax and a special corporation enterprise tax of various rates. The applicable progressive income tax rates range from 5% to 45%, plus a special income tax for reconstruction, levied at 2.1% of the amount of the income tax.

If the lessor is a non-resident individual or foreign corporation, the tenant is required to withhold 20.42% of the rent, payable to the tax authority no later than the tenth day of the month following the date of the payment of the rent. Withholding is not required if the tenant is a natural person using the property as a residence for themselves or their relatives. Any amount withheld by the tenant from the rent can be used as a deduction for corporation or income tax.

There is no exemption for taxation on rental income from real property in Japan.

## Taxation on Gains From the Disposition of Real Property

Capital gains from the disposition of real property in Japan are subject to corporation or income tax in the same manner as rental income.

If the owner of the real property to be sold is a non-resident individual or foreign corporation, the buyer is required to withhold 10.21% of the purchase price, payable to the tax authority no later than the tenth day of the month following the date of payment of the purchase price. Withholding is not required if the purchase price does not exceed JPY100 million and the buyer will use the property as a residence for themselves or their relatives. Any amount withheld by the buyer from the purchase price can be used as a deduction for corporation or income tax.

There is no exemption for taxation on capital gains from the disposition of real property in Japan.

## 8.5 Tax Benefits

A depreciation deduction is available for a person who owns a building. The depreciation expense is allocated to each taxation year equally or by a declining rate for the life of the building as prescribed by law, depending on the structure and purpose of the building. Land is not a depreciable asset.