

# Japan

## Fact Sheet

*Credit Management*



# Tokyo

## October 2005

## **Introduction**

This is a statement on selected subjects based on regulations and legal practices in Japan.

We hereby wish to explain the rules and court practice in Japan, in order to facilitate a smoother dialogue between you and your Japanese parties and to minimize your risks when dealing with Japanese parties.

In case you have any further inquiries regarding how a new business relationship with a Japanese party should be established, please do not hesitate to contact us for consultation. We are always ready to support your business in the Japanese market.

### **1. How to obtain information on Japanese parties**

When you want to start your business with a Japanese partner, you may obtain information on the Japanese partner as follows:

Company Register      You can obtain a copy of the company register at the Japanese Legal Affairs Bureau by submitting an application form to the jurisdiction bureau. The company register contains the company name, registered main office, registered branches if any, the date of incorporation of the company, nature of business, names of directors and representative director, the amount of the paid-in capital and previous name details, and so on.

The cost of such a copy of company register is around 1,000 Japanese Yen (JPY).

Investigation Report	<p>You can hire an investigation company to obtain necessary facts regarding the Japanese parties.</p> <p>The investigation company will investigate mainly on the financial situation and the credibility, and it will provide you with credit information.</p> <p>When you hire an investigation company, I suggest that you obtain the cost estimate for investigation beforehand. In case the investigation company already has a standard fee, it may cost around 100,000 JPY.</p>
Website	<p>The websites of the Japanese parties could provide important information as well, please visit the websites for various company information.</p>
Annual Accounts	<p>Though the law requires publication of company financial documents such as the balance sheet. However, not all companies follow the law.</p> <p>If you are lucky, you can obtain financial information from the Japanese Official Gazette, daily newspapers or from the website.</p>

## **2. How to start business with Japanese parties**

When you want to start your business with a Japanese party, we suggest that you prepare a written contract and negotiate the terms of that contract.

The business between you and the Japanese party is international business and you should be prepared to clarify your agreements to avoid future misunderstanding between the contracting parties.

Written Contract            Though there is some legislation in Japan regarding the contents of contracts, we suggest that you negotiate the terms of a contract and that you sign a written contract. Though the contract can be in the form of a distributorship agreement, an agent agreement and/or a simple export and import agreement, it is preferable to prepare written contracts to clarify the contents of agreed issues and to avoid misunderstanding.

### **3. How to protect your interests in written contracts**

We hereby explain about the terms of contracts to be reviewed and to be negotiated with the Japanese parties.

Contents of Contract    As we mentioned above, there is no legislation that regulate the contents of a contract. However, we suggest that you review the followings points regarding your written contract with the Japanese parties.

Payment                    (1) Terms and conditions of payment

Terms                      There is no legislation directly governing the payment terms. Thus the parties to a contract should negotiate such terms and should make it clear as to when payment is due.

Post-dated                Post-dated checks and promissory notes are often seen in the context of commercial dealings. Bills of exchange, letters of

Checks	credit, and bills of lading are generally accepted in international
Promissory	transactions.
Note	You should negotiate for the best terms of payment to secure and
Letter of	protect your interests.
Credit	
Bill of Lading	
	(2) Terms of transferring the proprietary rights of the goods
Title	In some circumstances you should establish “title reservation”
Reservation	clause in the contract. If you have such a clause, you can recover
	the possession and/or the title of the goods in case of failure of
	performance of the obligation by the debtor.
	(3) Late payment
Late Payment	The late payment of commercial debts legislation is provided for
	in the Commercial Code of Japan. In an ordinary case, the rate
	of late payment is 5% or 6% per annum.
	As seller or creditor you may negotiate a better rate for late
	payment.
	(4) Cancellation
Cancellation	You should clarify when the parties are entitled to cancel the
	contract.
	As regard to this issue, there is no special act to protect the agent
	in Japan. You can cancel the agent agreement in accordance with
	the provisions of the contract. In case of agent contract
	termination, in principle the Japanese court will render around one
	to two years expected profit to be earned by the agent depending
	upon the reasons and/or causes of the cancellation.
	(5) Applicable law

Applicable Law As to the applicable law to be applied to the contract, most sellers prefer to apply their home country laws.

When you deal with Japanese parties and when you sell your goods to Japanese parties, from the practical point of view, we suggest that you consider agreeing to the Japanese law as to the applicable law. In this way your collection work may be much easier than in case of other applicable laws.

#### (6) Court jurisdiction

Court Jurisdiction It is preferable to refer to a Japanese Court regarding collection issues.

Like the applicable law issue, most sellers desire to agree to go to their home country court.

Like the applicable law issue, when dealing with Japanese parties and selling to Japanese parties, from the practical point of view, we suggest that you let a Japanese court handle your collection issues. In this way your collection work may be easier than in another court jurisdiction.

#### (7) Joint Surety

Joint Surety Though it has not become common in Japan, you may ask your Japanese party to provide joint sureties who guarantee the payment in case your Japanese party cannot perform his obligation. If you can obtain a joint surety, you will be much better protected for collection of your credit in the Japanese market.

Preferential Rights      The Japanese Civil Code provides “the Preferential Rights”. The preferential rights for sale of movable exist over the movable in respect of price and interest thereon. The preferential right for sale of immovable exists over the immovable in respect of price and interest thereon.

#### **4. What to do in case of non-payment**

Even when you began dealing with a Japanese partner with careful negotiation and/or with written contracts, the buyer may still not pay his debts. We hereby explain the issues focusing on collection from the Japanese party.

Notice and Warning Letter      In case the debtor defaults in the payment of their debts, you should send a notice letter or a warning letter demanding the debtor to perform his obligation.

In Japan it is common to write the letter with contents-certified mail form.

Though you may write such letter yourself, it is a stronger message if the letter is sent from a Japanese lawyer or the Commercial Department at the Royal Danish Embassy in Tokyo.

Though the attorney fee generally would be around 30,000 to 100,000 JPY for an ordinary collection case, you should consult

with the Japanese lawyers beforehand. The Commercial Department at the Embassy in Tokyo normally does it on terms of time spent.

Provisional Attachment Provisional Disposition	You can submit the application of provisional attachment or provisional disposition to the court. When you can get an order of provisional attachment or provisional disposition from the court, you can temporarily prohibit disposal of his property for a debtor. By this, you can force the performance of his obligation for a debtor indirectly and nonetheless the debtor continues his default you can carry out provisional attachment or provisional disposition.
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Mediation Procedure

You can choose mediation procedure, which is often performed successfully by the Commercial Department at the Embassy in Tokyo.

Civil mediation is for resolving and/or settlement of disputes by court mediators.

The Japanese mediation system is a very good one and it is worth trying when you have a collection issue in Japan.

Once a mediation agreement is concluded, it has the same effect as a final and conclusive judgment.

Lawsuit

You may have no choice but to choose a final solution, the lawsuit.



Attorney Fee     In case of a lawsuit, the biggest issue may be the lawyers' fees.  
The attorney's fee will be charged by time base and/or initial and success fee base. As the amount will vary from 5% to 20% of the collected amount, we suggest that you obtain the estimate of such lawyers' fee.

## **5 . Enforcement**

We hereby explain the measures of actual collection procedures.

Compulsory execution procedure

When you get an executable title of obligation (e.g. a record of conclusive mediation, final and conclusive judgment, and judgment with declaration of provisional execution), you can submit the form of compulsory execution with the executable title of obligation to the execution court.

Attachment of     When the obligator owns real estate, you can apply for the  
Immovable     attachment of his immovable property..

Property     After a certain period, the court arranges an auction of the real estate, and you can collect money from the highest offered price of the auction.

Attachment of     You can apply for attachment of the debtor's movable property.

Movable     In case of such attachment, the executor makes a visit to the  
Property     debtor to take over the movables to sell them at auction.

Attachment of Credit You can apply for the attachment of the debtor's credit.

Credit An attachment of the debtor's bank account order is an order which may freeze funds in the debtor's bank account to be paid to you (the claimant). You would normally receive bank account details of how much money (if any) is in the account in 14days after serving such attachment order from the court to the bank.

An attachment to the salary order is an order to take a set amount of money directly from the debtor's earnings each month to be paid to you (the claimant).

This statement has been composed in a close relationship between Fukuda, Nakagawa, and Yamakawa Law Office and the Commercial Department at the Royal Danish Embassy in Tokyo.

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