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INCENTIVE TO ESTABLISH ASIAN BUSINESS CENTER IN JAPAN

The Act for Promotion of Japan as an Asian Business Center (the “Act”) came into force on November 1, 2012. The Act was passed in July 2012 with the aim of encouraging global enterprises to establish their R&D centers and Asian headquarters in Japan. Below is an outline of the support measures which the Act provides for certain types of business activities.

➤ **Targeted Business Activities**

When a specified multinational enterprise as defined in the Act intends to establish a Japanese affiliated company for the purpose of (i) conducting R&D business for the first time in Japan, or (ii) managing its business for the first time in Japan, the Japanese affiliated company can apply to obtain certification from the competent minister regarding its R&D plan or business management plan.

Under the Act, various types of support measures are given to Japanese affiliated companies which are established during the implementation of certified plans, and/or to specified multinational enterprises.

➤ **Tax Benefit**

[Corporate Tax Incentive-tax deduction]

A Japanese affiliated company which meets the requirements under the Act is entitled to apply for an income deduction when it files its blue-tax return. The deduction is 20% of

eligible income and will be applicable for 5 years. Consequently, it realizes an effective corporate tax reduction of approximately 7% for 5 years (from approximately 38% to 31%).

[Individual Tax Incentive-tax deferral]

When directors, executive officers, and employees of a Japanese affiliated company exercise stock options granted by the parent foreign enterprises which established the Japanese affiliated company in accordance with a certified plan, any profit earned upon the exercise of such tax option will not be taxable. Instead, it will be taxed as income tax when transferring the stock. This is similar to the tax treatment when Japanese enterprises are granted stock options by foreign parent companies.

➤ **Patent Benefit**

[Patent Fee Reduction]

Patent fees for small and medium sized enterprises (“SME”) are reduced 50% when the patents are invented in accordance with an R&D business plan which is certified by the competent minister.

[Acceleration of Patent Examination]

Patent examination is accelerated for patent applications relating to technology invented as a result of R&D activities accredited by the Act. According to the performance records for 2011, the average examination waiting period was 22.2 months for regular cases while 1.9 months for accelerated cases.

➤ **Shortening of Investment Procedures**

Under the Foreign Exchange and Foreign Trade Act, a foreign enterprise wishing to invest in Japanese companies in regulated industries must wait for 30 days after submitting a prior notification for inward direct investment. The Act grants a shortened waiting period of 2 weeks for a foreign enterprise investing in an accredited plan under the Act

➤ **Funding Support**

SME are entitled to receive funding support from Small and Medium Business Investment & Consultation Co., Ltd.

**Please note that the Act provides more detailed conditions and requirements for each of the support measures. For further details, please feel free to contact us.*

INTRODUCTION TO OUR OVERSEAS PRACTICES**➤ The Brazil Group (by Junko Izumi, Esq.)**

Recently, Brazil has become well known for rapid economic growth. This country now has the 6th largest economy in the world and it is expected that Japanese corporations will continue to invest in Brazil.

In order to meet the needs of our clients to enhance their businesses in Brazil, our office established a Brazil Group and built a strong relationship with Aoki Nishi Advogados Associados, a law firm located in Sao Paulo. On November 27, 2012, we hosted a seminar “Opportunities of doing in business in Brazil and legal aspects” together with Aoki Nishi Advogados Associados at the Japanese Institute of International Business Law, Inc. This seminar covered various legal issues relating to matters such as foreign exchange, contractual law, company law, personnel affairs, labor matters, environment, intellectual property, regulations, etc., which are to be considered when a Japanese corporation starts conducting business in Brazil.

We also are a member of and participate in the Central Association of Japan and Brazil, which is an incorporated body that has historically contributed to the development of the economic and cultural relationship between Japan and Brazil and has promoted inter-personal exchanges. We understand in depth the needs of Japanese corporations which have already started conducting business or which are considering conducting business in Brazil.

Further, we are planning to issue a newsletter featuring legal matters in Brazil, interviews with persons who have close relationships with Brazil, and other relevant topics.

If you are interested in conducting business in Brazil, please feel free to contact the members of our Brazil Group:



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➤ **The Hong Kong Group (by Nao Tsuchiya, Esq.)**

Hong Kong has gained a reputation as one of the financial centers of the world on par with London and New York, both in the era before and after the return of Hong Kong to China in July, 1997. Historically, Hong Kong has been very well known as a city for global financial and investment companies to establish their foothold in Asia. At the same time, it has developed as one of the most important business centers in Asia in the same way as Tokyo and Singapore. In addition to such historical values, Hong Kong recently has attracted close attention from a variety of global companies including companies in the manufacturing industry, especially upon establishing businesses in mainland China.

In order to meet our clients' needs to enhance their businesses in Hong Kong, we have established a Hong Kong team which deals with legal matters that can arise from a variety of Hong Kong-related commercial transactions. We have also been building a strong network with local professionals such as a law firm and accounting firm.

On November 7, 2012, we hosted a seminar "Impact of Tax Treaty of Hong Kong and Japan" at the Hong Kong Japanese Club together with Y's consulting, which is a Hong Kong entity and one of our partners in Hong Kong. Following the great success of this seminar, we hosted another seminar with Y's consulting group on January 18, 2013 at the Shenzhen Japanese CCI.

We are in the process of enhancing our relationship with local professionals to help our clients achieve their Hong Kong-related goals. Moreover, we are even aiming to establish our own local office in future.

If you are interested in Hong Kong business, please feel free to contact the members of our Hong Kong Group:

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AMENDMENT TO JAPAN-U.S. TAX TREATY (PROTOCOL SIGNED)

The protocol to amend the Japan-U.S. Tax Treaty was signed by the governments of Japan and the United States on 25 January 2013. We would like to introduce the main points of the amendments.

➤ Dividends

Currently, income tax levied on dividends from subsidiaries are exempted from withholding tax when a recipient of dividends holds (i) more than 50% of the shares of the entity that pays such dividends (ii) for 12 months or more. The amendments relax these requirements by allowing the exemption to be granted when a recipient of dividends holds (i) 50% or more of shares of the entity that pays such dividends (ii) for 6 months or more. In other words, the holding requirement has been reduced from 12 months to 6 months.

➤ Interest

Currently, income tax levied on interest arising from a source country is, generally speaking, taxable at 10%. However, after the protocol comes into force, such income tax will, generally speaking, be eliminated. Please note that there are cases where a source country will have the right to impose tax on the interest.

➤ Arbitration

Arbitration clauses have been newly included in the Treaty. According to the amendments, when a person has a case where taxation is not conducted in accordance with the provision of the Treaty, he/she may bring the case to arbitration proceedings pursuant to the conditions provided in the Treaty.

OVERVIEW OF JAPANESE REAL ESTATE LAW – No.1

In this series of articles, we will offer an overview of Japanese laws relating to real estate. As Japan is a country which uses the Civil Law system, a legal principle exists here whereby the rights relating to real estate must be specified in codified laws (*bukken hotei shugi*). However, the courts recognize certain real estate rights arising from common law (which, by definition, is not codified). Below we will first address the real estate registration system and then describe an overview of the right of ownership in Japan.

➤ **Real Estate Registration System**

Under the real estate registration system in Japan, ownership of real estate as well as certain other real estate-related rights (e.g., easement, surface right, mortgage) are registered. An owner of an unregistered real estate property or a holder of other unregistered rights may not assert its title or rights against a third party.

In practice, parties who plan to enter into a real estate transaction usually rely upon the register. However, the real estate register does not necessarily reflect the true holder of the title or right, and does not have the effect of warranting or guaranteeing the title as described in the register. Unlike in the USA, title insurance is not available in Japan. A party has no recourse against anyone but the seller if, relying on the register, it purchases real estate or a related right from a seller and the information contained in the register turns out to be incorrect. However, the courts have protected purchasers of real estate who registered their title based on a variety of legal principles, and consequently, it is extremely rare for a purchaser to lose its title if there has been a proper registration.

➤ **Right of Ownership**

The right of ownership (*shoyu-ken*) is defined as the right under which, subject to certain limitations prescribed by laws and regulations, a person may freely use, earn from, and dispose of, real estate. The right of ownership is the most comprehensive and basic right, not subject to any prescribed time limit. However, under principles of Japanese law, an owner may not exercise its right of ownership in an abusive manner or in a way against public policy.

➤ **Liabilities of the Owner of Real Estate**

Under Japanese law, if any damage has been caused to another person by reason of any defect in the construction or maintenance of a structure on land, the person in possession of the structure is liable to compensate the injured person for the damages it suffers, provided that if the person in possession has exercised due care in order to prevent the occurrence of such damage, the owner of the structure is liable for such damage.

Warranty Obligations. A purchaser of real estate may in some instances seek reimbursement from the seller pursuant to statute/contract-based warranties for liability to a third party caused by a defect in the property existing at the time of the sale. Unless contractually excluded, a seller of real estate property owes statute-based warranty

obligations to a purchaser for any latent defect in the real estate property, enforceable by a cancellation of the underlying sale or by requesting damages from the seller. These statute-based warranty obligations may be contractually excluded from, or substantially reduced in, the sale and purchase agreement under which the real property is purchased.

Soil Contamination Control Law of Japan. Under the Soil Contamination Control Law of Japan, a current owner of real property may be held strictly liable for the removal or remediation of hazardous or toxic substances on or under such property, whether or not the current owner knew of, or was responsible for, the presence of such hazardous or toxic substances.

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EDITORS' NOTE

In Japan, we have a festival called "Setsubun" in early February. In the evening, people throw beans while shouting "Demons out and Fortunes in". Historically, it is believed that these beans can help to bring good luck throughout the year

We hope you all have a great fortune through the year of 2013.

- The Newsletter Team



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