Property Tenure/Ownership
Real estate in Japan consists of land and fixtures affixed to land (such as buildings). Land and buildings are treated separately with respect to the tenure/ownership, which means, for example, that a parcel of land and a building on such land can be owned by different persons or entities.

Land and buildings are registered in the real estate register (‘fudosan tokibo’), which records certain information including the address, size and name of owner thereof.

There are several types of tenure with respect to real estate in Japan:

Ownership
Ownership (‘shoyukken’) is a right to freely use, obtain profit from, and dispose of the relevant property for an indefinite period, subject to certain restrictions (such as restrictions on its use for city planning purposes).

Ownership in land extends to above and below the surface of the land, subject to the restrictions prescribed by laws and regulations. An acquisition of, disposition of, or change to the ownership of real estate may not be asserted against third parties unless they are registered in the real estate register.

Leasehold
Leasehold (‘chinshakukken’) is a right to occupy and use the relevant property under a contract directly or indirectly entered into with the owner of such property.

A leasehold interest can be registered in the real estate register, but in the case of a leasehold of land for the purpose of owning a building thereon, it is normal practice that instead of the registration of the leasehold, a lessee of the land registers the building on the land to perfect its leasehold interest under the Act on Land and Building Leases.

Although the terms and conditions of a lease can be set out in an agreement between the lessor and the lessee, they are subject to various mandatory provisions under the Act on Land and Building Leases and certain court precedents that are intended to protect the lessee. These include provisions relating to the term, renewal and termination that prevail over the agreement between the lessor and the lessee.

Trust beneficiary interest
In many transactions related to investments in real estate in Japan, an investment is made to a trust beneficiary interest (‘shintaku juekikien’) in the relevant real estate. In such a case, the relevant real estate is transferred to a trust bank or a trust company as trustee, who becomes the registered owner of such real estate and holds the real estate on trust for beneficiaries of the trust. Trust beneficiary interests can be freely transferred, subject to contractual restrictions.

Others
A superficies (‘chijoken’) is a right to use the land of others to own structures (including buildings), trees or bamboo, on that land. Economically, this right can be similar to a leasehold interest, but it is given different legal characteristics.

A servitude (‘chiekiken’) is a right to use the land of others for certain specific purposes on a non-exclusive basis.

A security interest (‘tanpoken’) is a right created to secure the performance of an obligation, including a mortgage and a pledge.

Major Property Legislation

Laws relating to real estate
- Civil Code
- Act on Land and Building Leases
- Act on Building Unit Ownership, etc
- Real Property Registration Act
- Building Standards Act
- City Planning Act
- Fire Service Act

Laws relating to real estate investments
- Financial Instruments and Exchange Act
- Real Estate Specified Joint Enterprise Act
- Act on Investment Trusts and Investment Corporations

Operational Requirements for Foreign Corporations

A foreign company may not carry on its business in Japan unless it incorporates a local company or registers itself as a foreign company in Japan.

Incorporation of a local subsidiary
A foreign company may incorporate a subsidiary in Japan. Such subsidiary is usually established as a limited company (‘kabushiki kaisha’) or a limited liability company (‘godo kaisha’). The requirements for incorporating a limited company are as follows:
- Head office: Required to be located in Japan;
- Capital: JPY 1 (USD .01) or more;
- Business purpose: A company must register specific business purposes in Japan; and
Holding Period of Land

<table>
<thead>
<tr>
<th>Holding Period of Land</th>
<th>Tax Rate</th>
</tr>
</thead>
</table>
| 5 years or less         | Income tax: 30%  
                          | Residential tax: 9%  |
| Over 5 years            | Income tax: 15%  
                          | Residential tax: 5%  |

For corporations, capital gains from the transfer of land and buildings are subject to a capital gains tax rate of 10% for properties held for five years or less and 5% for properties held for over five years. A special law provides that until 31 December 2013, the capital gains tax does not apply to corporations.
Value Added Tax/Goods and Services Tax
Transfer or rental/lease of assets, or the provision of services for consideration as a business in Japan by an enterprise, is, except for certain transactions deemed nontaxable, subject to consumption tax. Sale or lease of land and lease of residential buildings are deemed nontaxable. The consumption tax rate is currently 5% (a national consumption tax rate of 4% and a local consumption tax rate of 1%). The consumption tax rate will be increased to 8% (a national consumption tax rate of 6.3% and a local consumption tax rate of 1.7%) from 1 April 2014 and further increased to 10% (a national consumption tax rate of 7.8% and a local consumption tax rate of 2.2%) from 1 October 2015.

Tax Depreciation
Depreciation for a building can be deducted as a necessary expense from the amount of income from real estate for Japanese tax purposes. The amount of the deduction depends on the useful life of the property concerned and the depreciation calculation methodology used. The length of the useful life of a building depends on the physical construction of the property. Cost of land cannot be depreciated.

Corporate Taxation
Income generated by activities of a corporation is subject to corporate tax (national tax), corporate inhabitant tax (local tax), corporate enterprise tax (local tax) and special local corporate tax (local tax). Every Japanese company, regardless of domestic or foreign ownership, is treated as a Japanese resident and is liable to pay corporate taxes in Japan on its total income, whether earned in Japan or overseas. A foreign company that has a permanent establishment (including a branch office) in Japan will be charged corporate taxes on all revenue earned in Japan.

As from 1 April 2012, the corporate tax rate is 25.5%, compared to the previous rate of 30%. There is also a surtax to the corporate tax rate that applies until 31 March 2015, resulting in a corporate tax rate of 28.05%. However, the surtax may be abolished earlier, on 31 March 2014.

The corporate inhabitant tax includes a per capita levy that varies depending on the amount of capital and number of employees, and a corporate tax levy that varies depending on the amount of capital. Corporate enterprise tax rates vary depending on the amount of capital and the amount of annual income.

Personal Taxation
A foreign person is classified into one of the following three categories for Japanese tax purposes:

Resident
A resident is an individual who has his/her domicile in Japan, or an individual who has his/her residence in Japan for one year or longer. A resident is further categorized as follows:

- Non-permanent Resident
  - A nonpermanent resident is a resident who does not have Japanese nationality and has had his/her domicile or residence consistently in Japan for less than five years in the last ten years.
  - A nonpermanent resident is subject to Japanese tax with respect to his/her Japan-sourced income and foreign-sourced income paid in or remitted into Japan.

- Permanent Resident
  - A permanent resident is a resident other than nonpermanent residents.
  - A permanent resident is subject to Japanese tax with respect to all of his/her income, regardless of whether or not it is earned in or paid into Japan.

Nonresident
- A nonresident is an individual other than residents, including a temporary visitor, who stays in Japan for less than a year.
- A nonresident is subject to Japanese tax with respect to his/her Japan-sourced income.

Income generated by the activities of an individual is subject to income tax (national tax), individual inhabitant tax (local tax) and individual enterprise tax (local tax). An individual who is classified as a nonresident as of 1 January each year is not subject to individual inhabitant tax for such year.

Tax Treaties: Avoidance of Double Taxation
Treaties for the avoidance of double taxation are in existence and in effect between Japan and the following countries as of end-April 2013:

- Armenia
- Bangladesh
- Australia
- Belarus
- Austria
- Belgium
- Azerbaijan
- Guernsey (not yet in effect)
- Bahamas
- Brazil
- Bermuda Islands
- Brunei Darussalam
Real Estate Investment Trusts

Introduction
In Japan, real estate investment trusts (‘J-REIT’) were introduced along with a revision to the Act on Investment Trusts and Investment Corporations (Investment Trust Act) in 2000. In a J-REIT scheme, an investment corporation is established as a special investment vehicle that invests funds gathered from investors in real estate-related assets and distributes income from such investment to investors in the form of dividends. An investment corporation issues its equity securities called ‘investment securities’ to investors, and such investment securities meeting certain criteria for listing can be listed and traded on a stock exchange.

A special investment vehicle can also be formed as an investment trust under the Investment Trust Act, and beneficiary certificates issued by the trustee of the trust can also be listed, but there are currently no trust beneficiary certificates listed on a stock exchange.

Although an investment corporation has legal personality and is technically responsible for owning and managing real properties, in reality, all investment decisions are deferred to its asset management company, which is registered as a Financial Instruments Business Operator under the Financial Instruments and Exchange Act.

Restrictions

1. Establishment
   • Under the Investment Trust Act, the total amount of investment in an investment corporation at the time of its establishment shall be at least JPY 100 million (USD 1.03 million), while the minimum amount of net assets regularly held by an investment corporation shall be JPY 50 million (USD 512,712).
   • To have investment securities listed on the Tokyo Stock Exchange, there are additional requirements, such as:
     - the total net assets shall be JPY 1 billion (USD 10.3 million) or more;
     - the total assets shall be JPY 5 billion (USD 51.3 million) or more; and
     - the net assets per investment security shall be at least JPY 50,000 (USD 513).
   • The incorporator of an investment corporation shall notify the Prime Minister of certain matters required by the Investment Trust Act before establishment of the relevant investment corporation.
   • In a J-REIT scheme, an investment corporation needs to be registered by the Prime Minister so that it is able to make investment in real estate related assets.

2. Asset Restrictions
   • At least 50% of the total assets of an investment corporation shall be invested in ‘specified assets’, including securities and real estate.
   • To have investment securities listed on the Tokyo Stock Exchange, there are additional requirements such as:
     - real estate (inclusive of certain limited categories of real estate-related asset classes) must make up at least 70% of the total assets under management; and
- real estate (inclusive of certain limited categories of real estate-related asset classes), real estate-related assets and floating assets must make up at least 95% of the total assets under management.

3. Distribution and Unit holders' Restrictions
The amount of dividend distributions shall not exceed the amount obtained by deducting the ‘amount of the net assets threshold’ (as defined under the Investment Trust Act) from the amount of net assets stated on the balance sheet.

To have investment securities listed on the Tokyo Stock Exchange, there are additional requirements such as:
- at least 4,000 units shall be listed;
- major unit holders may hold no more than 75% of listed units;
- there shall be at least 1,000 unit holders; and
- no redemption of investment securities may be made other than because of dissolution or liquidation of the investment corporation.

Taxation
Unlike ordinary corporations, which are liable for corporate taxation on profits, investment corporations are exempt from taxation if certain criteria are met, which include, among others:
- the investment corporation not being engaged in any business other than those permitted to REITs;
- the investment corporation not being an entity that would be classified as a ‘family corporation’ at the end of its fiscal period;
- the investment corporation distributes over 90% of its profits to unit holders as dividends for each fiscal period; and
- over 50% of the ‘investment units’ (‘toushi-guchi’) on an issued amount basis having been offered in Japan.

With respect to an acquisition of real estate by an investment corporation, the investment corporation may receive, conditional on certain criteria being satisfied, the benefit of a reduction in the following taxes (among others):
- applicable registration and license tax levied on the registration of the transfer of ownership title of the real property; and
- applicable real property acquisition tax levied on the acquisition.

Special Purpose Entity Available Only to Certain Property Investment: TMK

Introduction
A tokutei mokuteki kaisha (‘TMK’) is a specified purpose company created under the Act on Securitization of Assets that will purchase real estate as part of securitization transactions. A TMK gathers funds from investors and uses the funds to purchase real estate. Proceeds obtained from the management of real estate will be distributed to the investors. TMKs are very often used in real estate investment transactions because of their tax benefits and for certain regulatory reasons. In real property transactions using a TMK, the acquisition of underlying real property is funded by loans extended to the TMK, and/or bonds, commercial papers or preferred equity interests issued by the TMK.

‘Pay-through’ Entity
TMKs are exempted from taxation if certain criteria are met, which include, among others:
- all bonds issued by the TMK are expected to be held by certain qualified institutional investors, or all preferred equity interests to be subscribed by certain qualified institutional investors;
- the TMK not being an entity that would be classified as a ‘family corporation’ at the end of its fiscal period;
- the TMK distributes over 90% of its profits to unitholders as dividends for each fiscal period; and
- over 50% of the preferred equity and certain equity on an issued amount basis having been offered in Japan.

Reduction of Taxes on Acquisition of Real Estate
With respect to an acquisition of real estate by a TMK, the TMK may receive, on the condition that certain criteria are satisfied, the benefit of reduction of the following taxes (among others):
- applicable registration and license tax levied on the registration of the transfer of ownership title of the real property; and
- applicable real property acquisition tax levied on the acquisition.
## Common Terms of Lease for Tenancy Agreements

### Unit of Measurement

| Unit of Measurement | Tsubo (1 tsubo = 3.3 sqm = 35.58 sq ft) |

### Rental Payments

<table>
<thead>
<tr>
<th>Rent</th>
<th>¥/sqm/month ¥/tsubo/month may also be stated in the lease</th>
</tr>
</thead>
<tbody>
<tr>
<td>Typical lease term</td>
<td>Standard leases: 2–3 years with possibility of renewals. Fixed term leases: 3–5 years, but can be longer.</td>
</tr>
<tr>
<td>Frequency of rent payable (in advance)</td>
<td>Monthly</td>
</tr>
<tr>
<td>Typical rent deposit (expressed as x month’s rent)</td>
<td>12 months</td>
</tr>
<tr>
<td>Security of Tenure</td>
<td>Only for the duration of the tenancy, no guarantee beyond the original lease term (typically has automatic renewal provision in standard leases)</td>
</tr>
<tr>
<td>Does tenant have statutory rights to renewal?</td>
<td>Standard lease term: Yes Fixed lease term: No</td>
</tr>
<tr>
<td>Basis of rent increases or rent review</td>
<td>Open market rental value</td>
</tr>
<tr>
<td>Frequency of rent increases or rent review</td>
<td>Typically at lease renewal, but with traditional leases can be any time during term if market rent has substantially increased or decreased. Rents may not be varied for a fixed term, unless otherwise agreed</td>
</tr>
</tbody>
</table>

### Service Charges, Operating Costs, Repairs & Insurance

| Responsibility for utilities | Electricity, water consumption and after core hour HVAC charges are separately metered and payable by each tenant; telecommunication is separately payable typically to vendor |
| Car parking | Where parking is available, it is held under a separate monthly lease for an additional rent and deposit |
| Responsibility for internal repairs | Tenant |
| Responsibility for repairs of common parts (reception, lifts, stairs, etc) | Landlord |
| Responsibility for external/structural repairs | Landlord |
| Responsibility for building insurance | Usually landlord |

### Disposal of Leases

| Tenant subleasing & assignment rights | Generally accepted to tenant’s affiliated companies and rarely to unrelated third parties (subject to the landlord’s approval) |
| Tenant early termination rights | Subject to landlord’s approval with 6 month’s written notice and subject to penalty payment. Termination within initial lease term usually requires repayment of any rent-free period. Typically not allowed under fixed-term lease. |
| Tenant’s building reinstatement responsibilities at lease end | Reinstated to original condition |

Source: Jones Lang LaSalle