



JAPAN LEGAL UPDATE

Projects and Infrastructure

Ministry Releases Draft Basic Policies for IR Act

On September 4, 2019, the Ministry of Land, Infrastructure, Transport and Tourism ("MLIT") released a draft Basic Policy ("Basic Policy") on integrated resorts (including gaming) in Japan. The release of the Basic Policy is required under the terms of the Specified Complex Tourist Facilities Areas Development Act ("IR Act"). In accordance with the IR Act, the Basic Policy is intended to address certain fundamental issues regarding the development of integrated resorts, such as general goal, measures for promoting development, and an outline of basic requirements for implementation policies and area development plans to be prepared by local governments.

The standards for approving area development plans have received particular attention in recent months because only three area development plans will be approved by the MLIT, while a far greater number of local governments have expressed an interest in hosting integrated resorts. According to the draft Basic Policy, the MLIT will establish a review committee consisting of experts to evaluate the area development plans and also establish a set of "minimum standards" that must be satisfied and an additional set of "evaluation standards" that will be used to identify superior plans (the MLIT will also separately decide on how to apportion scores across these criteria).

The draft Basic Policy was open for public comment through October 3, 2019. The MLIT is now considering the comments received and may make further changes to the Basic Policy.

Antitrust

JFTC Publishes Draft Guidelines on Abuse of Superior Bargaining Position by Digital Platform Operators

On August 29, 2019, the Japan Fair Trade Commission ("JFTC") published draft "Guidelines Concerning Abuse of a Superior Bargaining Position under the Antimonopoly Act on the Transactions between Digital Platform Operators and Consumers that Provide Personal Information, etc." ("Guidelines") and opened the matter for public comment.

Under the draft Guidelines, digital platform operators who acquire personal information from consumers are subject to additional regulations concerning their conduct. The draft Guidelines characterize a "digital platform" as an information technology system through which third parties provide various services and that facilitates multi-sided markets with multiple user segments. Online shopping malls, app markets, and search engines all fall under this category.

According to the draft Guidelines, a digital platform operator has a "superior bargaining position" in cases where consumers must endure mistreatment from the operator in order to use its digital platform, and an "abuse" of superior bargaining position occurs when an operator with such superior bargaining position unjustifiably acquires or uses the personal information of a consumer and this causes disadvantage to the consumer. Examples of such abuse may include acquiring personal information without providing the purpose, using personal information beyond the scope of its intended purpose as understood by the consumer, or acquiring and using personal information without taking precautions to properly safeguard that information. Such conduct will be examined on a case-by-case basis in light of normal business practices and from the viewpoint of maintaining and promoting fair competition.

However, the scope of the abuses of superior bargaining position in the draft Guidelines remains ambiguous. In particular, it is unclear how certain types of abuse would have harmful effects on competition or why each type has to be regulated as an abuse of superior bargaining position under the Antimonopoly Act. Despite such ambiguity, it will be important for any company operating a digital platform to carefully consider whether there is any risk that its actions could be viewed as an abuse of its superior bargaining position.

Intellectual Property

Commencement of IP Conciliation at Tokyo District Court and Osaka District Court

On October 1, 2019, the Intellectual Property Departments of the Tokyo District Court and Osaka District Court commenced a new practice of conciliation under the Civil Conciliation Act for resolving intellectual property-related disputes. The new practice of conciliation proceedings ("IP Conciliation") is intended to provide alternative dispute resolution for parties to smoothly and swiftly resolve disputes relating to intellectual property rights after obtaining the advice and views of a conciliation board consisting of three experts, including one judge belonging to the court's intellectual property department.

IP Conciliation contemplates that a petition for conciliation will be filed with the Tokyo District Court or Osaka District Court upon agreement between the disputing parties, and that the dispute should generally be resolved privately within three hearings. If an IP Conciliation is unsuccessful or withdrawn and a complaint is filed for the same dispute, it will not be heard by the same judge from the IP Conciliation.

Given that IP Conciliation is presided over by a judge from the court's intellectual property department, it is expected to provide an effective means of dispute resolution for suitable cases, such as disputes arising during negotiations between parties that do not involve very complicated issues and in which both parties wish to resolve the dispute amicably.

Tax

Protocol to Amend U.S.-Japan Tax Treaty Comes into Effect

Further to the [July-August 2019 issue of this newsletter](#), the protocol to amend the U.S.-Japan Tax Treaty ("Protocol") entered into force upon the exchange of ratification instruments between Japan and the United States on August 30, 2019, in Tokyo. The Protocol will apply to: (i) taxes withheld for amounts paid on or after November 1, 2019; and (ii) other taxes for taxable years beginning on or after January 1, 2020. Benefits available under the treaty will be increased by the Protocol, including a broadening of the tax exemption on dividends (i.e., the required share-holding ratio is changed from "more than 50 percent" to "at least 50 percent," and the required holding period is shortened to "six months" from the current "twelve months") as well as an exemption from withholding taxes on interest payments.

TOKYO OFFICE CONTACTS

[Yuichiro Mori](#)
[Hiromitsu Miyakawa](#)
[Benjamin O. Lang](#)
[Kiyosuke Katahira](#)
[Harukuni Ito](#)
[Yuki Yoshida](#)
[Yoshitake Masuda](#)
[Toshiaki Takahashi](#)
[Yusuke Hanada](#)
[Michael W. Meade](#)
[Kotaro Miura](#)

Follow us on:



Jones Day is a global law firm with more than 2,500 lawyers on five continents. One Firm Worldwide®.

Jones Day's publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our "Contact Us" form, which can be found on our website at www.jonesday.com/contactus. The electronic mailing/distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.

© 2019 Jones Day
North Point, 901 Lakeside Avenue, Cleveland, OH 44114-1190
www.jonesday.com

[Click here](#) to opt-out of this communication.
[Click here](#) to update your mailing preferences.