



Construction Business Licenses and Construction Contracts in Japan

We have recently seen a number of foreign companies enquire about the application process for obtaining a construction business license in Japan as well as other related matters. As a result, we have put together this newsletter to provide an introduction to the license and other considerations, primarily for foreign entities considering their involvement in construction and engineering projects in Japan.

1. Recent trends in the Japanese market

In addition to private-sector capital investment and public infrastructure projects, it is anticipated that demand in Japan will continue to grow for the construction of logistics facilities, data centers, and renewable energy generation facilities such as offshore wind power generation facilities. However, Japanese contractors are becoming increasingly selective, and favouring projects where they can secure adequate profitability and construction schedules. This is due to several factors including a reduction in the total working hours for construction workers (resulting from a cap on overtime for construction businesses introduced by legislation and applied from April 2024), as well as recent price inflation. Further, the average age of construction workers is gradually becoming higher, and the overall supply capacity of workers for the construction industry is shrinking.

Given that Japanese contractors are struggling to sufficiently meet the demands of the market, and considering the recent relative weakness of the Japanese Yen, this might present an opportunity for overseas contractors to participate in construction projects in Japan.

2. Overview of the Construction Business License

(1) When a Construction Business License is Required

In order to operate a certain category of construction business in Japan, the operating company is required to obtain a “Construction Business License” (*kensetsugyo kyoka*) under the Construction Business Act (Act No. 100 of 1949). For a company with offices located in two or more prefectures in Japan, the license is issued by the Minister of Land, Infrastructure, Transport and Tourism (“MLIT”). On the other hand, for a company with only one office located in Japan (either in Tokyo or another single prefecture), the license is issued by the prefectural governor having jurisdiction over the location of the office.

A Construction Business License is not required to carry out “small construction work” (being construction where the price to be paid for the construction work is less than JPY 5,000,000 (about US\$ 35,000), or,

where construction work is classified as “general building work”, with a price less than JPY 15,000,000 (about US\$ 105,000).¹

(2) Types of Construction Business Licenses

There are 29 categories of Construction Business License in total.² The applicant for a Construction Business License is required to select which category(ies) of Construction Business License it wishes to obtain; this will depend on the actual construction work that the applicant envisages that it will be performing in future.

Construction Business Licenses can be further categorized into either a (i) “Special Construction Business License”; or (ii) “Ordinary Construction Business License”, depending on the value of the subcontracting work. If the applicant plans to undertake construction work with a subcontracting value of JPY 50,000,000 (about US\$ 350,000) or more (or JPY 80,000,000 (about US\$ 560,000) or more in the case of an “architectural and construction business”), the applicant company must obtain a Special Construction Business License for the relevant Construction Business License category. Otherwise, if the subcontracting value is less than these amounts, the applicant is only required to obtain an Ordinary Construction Business License for the work.

3. Frequently Asked Questions

(1) Requirements for Construction Business Licenses

Q Is it necessary to have employees in Japan to apply for a Construction Business License? Can a foreign national without work experience in Japan still qualify?

The Construction Business Act sets out the following four requirements (including personnel requirements) in order for a Construction Business License to be granted,³ together with certain potential reasons for refusal to grant an application:

- (i) Business management officer
- (ii) Full-time engineer
- (iii) Sincerity
- (iv) Sufficient financial basis⁴

i. Business Management Officer

An applicant must have appointed a full-time officer who has experience in the management of construction businesses relevant to the application (the “Business Management Officer”). The Business Management Officer must fall into one of the following categories:⁵

¹ The costs of materials and equipment should be included in the price for such construction work, so if the price for the work with materials and equipment would be over JPY 5,000,000 etc., a Construction Business License will be required.

² The MLIT provides an overview of these construction business license categories at the link below, but note this does not reflect the most up to date information.

https://www.mlit.go.jp/sogoseisaku/1_6_hf_000038.html

³ As for requirements (iii) and (iv), please refer to the link below on the MLIT website:

https://www.mlit.go.jp/sogoseisaku/1_6_hf_000039.html

⁴ In order to engage in the construction business in Japan, it is necessary to establish either a branch office or a Japanese corporation (usually a subsidiary of a foreign corporation). For corporate applicants which have recently been incorporated, the satisfaction of these requirements will be determined based on the financial statements of the company at the time of incorporation.

⁵ The requirement to appoint a Business Management Officer can alternatively be satisfied if a full-time officer’s personal business experience falls short of the requirements set out above, but their business experience and the business experience of those who assisted them in the line of work together satisfy certain statutory criteria.

- (a) the person has five or more years of experience in a position in which they had responsibility for the management of construction businesses (there is no requirement as to the size of the business);
- (b) the person has five or more years of experience in a position equivalent to being responsible for the management of construction businesses (limited to those that were delegated the authority to enforce management); or
- (c) the person has six or more years of experience in a position equivalent to being responsible for the management of construction businesses and, during the time in that position, has been assisting a person responsible for the management of construction businesses.

The experience required above only refers to experience within Japan. In the event that an applicant has a full-time officer with relevant experience only outside of Japan, the applicant will need to obtain certification from the MLIT to confirm that the overseas experience is equivalent to the requirements set out above. This will be examined and determined by the MLIT on a case by case basis. Preparation for such certification and the examination by the MLIT often takes a few months to complete.

ii. Full-time Engineer

The applicant must appoint and maintain in each of its offices in Japan an engineer who has certain qualifications (each a “Full-time Engineer”). These qualifications generally include that the Full-time Engineer should have graduated from a specific department of a university or college, possess certain national qualifications and have a certain amount of work experience. However, the exact qualifications will differ depending on the type of Construction Business License the applicant is applying for (for example, whether the applicant is applying for a Special Construction Business License or Ordinary Construction Business License, or the category of Construction Business License(s) that the applicant is applying for).

Similar to the work experience required for a Business Management Officer, if the applicant intends to register a foreign-educated engineer with experience overseas as their Full-time Engineer, the applicant has to provide that person’s education and qualification certificates to the MLIT, and the MLIT will examine and determine whether such certificates are equivalent to those qualifications/certificates obtained in Japan.

A Full-time Engineer is required to work full-time at the applicable office of the applicant and therefore, in general, cannot hold any other positions concurrently.⁶

Satisfying these personnel requirements (limbs (i) and (ii) above) can be challenging for foreign companies which are considering applying for Construction Business Licenses. In our experience, it can often be simpler and easier for foreign applicant companies to instead seek to hire a Business Management Officer or Full-time Engineer from Japan-educated/experienced personnel.

(2) Other possible arrangements without obtaining a Construction Business License

Q Are there any possible contractual/corporate structuring arrangements which would enable a company to be involved in a construction project without the need to obtain a Construction Business License, such as entering into a joint venture agreement with a local construction company?

It is possible for foreign contractors to participate in a joint venture with another corporation (Japanese or otherwise) for construction projects in Japan. However, in Japan, these type of joint ventures are usually formed by multiple construction companies for the purposes of undertaking and performing a single construction project. In this way, the schemes are designed for each member of the joint venture to perform their respective portion of the construction work, meaning that each member of the joint venture would typically need to have obtained an appropriate Construction Business License. Under the Construction Business Act, it is considered that only licensed construction contractors are permitted to enter into a contract for construction work, meaning that a company without a valid Construction

⁶ A Business Management Officer may also fill in the role of a Full-time Engineer for the office that person is working at, provided all of the other requirements for both positions are satisfied.

Business License is not able to enter into the contract for construction work as a joint venture with a licensed construction contractor.

On the other hand, it would be possible for a foreign company to participate in a tender jointly with a Japanese company operating a construction business (for example, where the foreign company performs the design aspect only and its partner in Japan performs the construction work), provided that the requirements for the specific tender permit this form of participation. In addition, it would not constitute a violation of the Construction Business Act for a company that does not engage in construction work (e.g. a design firm) to enter into a design-build contract on a joint names basis with a licensed construction contractor (under which any Construction Business License will not be required for the company or companies that will not perform any construction work). However, in order to prevent any perceived circumvention of the Construction Business Act,⁷ it is considered necessary to clearly define the responsibilities of each participating company in the contract and related documents. This could, for example, take the form of the documents explicitly stating that only the construction contractor will carry out the construction work.

(3) Standard form contracts

Q For a project in Japan, we would like to enter into a contract with a Japanese company using our own contract template or an international construction contract form. Are there any concerns or issues we should be aware of?

We typically see foreign contractors expecting to use international contracts with detailed terms and conditions, such as those of the International Federation of Consulting Engineers (FIDIC) or the American Institute of Architects (AIA), or alternatively their own company's standard contract templates. While it is possible for such international contract forms or company-specific templates to be used for construction projects in Japan, it will ultimately depend on the respective negotiating power of the parties. If the Japanese party is a large domestic company or has experience in international projects, it may accept a position to negotiate contracts using that template. However, it is often difficult in practice for small and medium-sized contractors to accept the use of such templates, since they are typically not comfortable negotiating a detailed contract in English.

There are also locally developed standard contract forms that can be utilized. For private construction projects, it is very common for parties to use the standard form jointly created by seven major architecture and construction associations (*Minkan (Nanakai) Rengou Kyoutei Yakkan*). For projects involving design and construction, a set of standard form contracts has been created by the Japan Federation of Construction Contractors. Further, a model domestic plant construction contract (EPC Contract) has been published by the Engineering Association of Japan.

These Japanese templates are generally simpler and more concise compared to international construction contract forms or typical English-language contracts. Therefore, if a contract is to be concluded using a Japanese standard form, international companies should note that additional measures or revisions may be necessary in order to bridge the differences between such template and international contract forms or the company's own standard templates, which international companies are more familiar with.

THIS NEWSLETTER IS PROVIDED FOR INFORMATION PURPOSES ONLY; IT DOES NOT CONSTITUTE AND SHOULD NOT BE RELIED UPON AS LEGAL ADVICE.

Authors/Contacts

Rie Kishida

Partner

E: rie.kishida@aplaw.jp

Daniel Jarrett

Partner

E: daniel.jarrett@aplaw.jp

⁷ A person operating a construction business without a Construction Business License is subject to imprisonment for no more than three years or a fine of up to three million yen.

If you would like to sign up for A&S Newsletters, please fill out the [sign-up form](#).
Back issues of our newsletters are available [here](#).

Atsumi & Sakai is a multi-award-winning, independent Tokyo law firm with a dynamic and innovative approach to legal practice; it has been responsible for a number of ground-breaking financial deal structures and was the first Japanese law firm to create a foreign law joint venture and to admit foreign lawyers as full partners. Expanding from its highly regarded finance practice, the Firm now acts for a wide range of international and domestic companies, banks, financial institutions and other businesses, offering a comprehensive range of legal expertise.

Atsumi & Sakai has an outward-looking approach to its international practice, and has several foreign lawyers with extensive experience from leading international law firms, providing its clients with the benefit of both Japanese law expertise and real international experience.

We are the only independent Japanese law firm with affiliated offices located in New York, London, Frankfurt, Brussels and Ho Chi Minh City which, together with our Tokyo office, Osaka affiliated office and Fukuoka affiliated office, enables us to provide real-time advice on Japanese law to our clients globally.

Atsumi & Sakai

www.aplawjapan.com/en/

Tokyo Head Office

Fukoku Seimei Bldg. (Reception: 16F)
2-2-2 Uchisaiwaicho, Chiyoda-ku,
Tokyo 100-0011 Japan



Osaka Affiliate Office

Nakanoshima Festival Tower 16F,
2-3-18 Nakanoshima, Kita-ku,
Osaka City, Osaka 530-0005
Japan

Fukuoka Affiliate Office

Tenjin Bldg. 10F
2-12-1 Tenjin, Chuo-ku,
Fukuoka-shi, Fukuoka 810-0001
Japan



New York Affiliate Office

1120 Avenue of the Americas, 4th
Floor, New York, New York 10036



London Office

85 Gresham Street, London EC2V
7NQ, United Kingdom



Frankfurt Affiliate Office

OpernTurm (13th Floor)
Bockenheimer Landstraße 2-4,
60306 Frankfurt am Main,
Germany



Brussels Office

CBR Building
Chaussée de la Hulpe 185, 1170,
Brussels, Belgium



Ho Chi Minh Office

10F, The NEXUS building
3A-3B Ton Duc Thang Street,
Sai Gon Ward, Ho Chi Minh City,
Vietnam



NOTICES

1. ABOUT ATSUMI & SAKAI

Atsumi & Sakai is a partnership consisting of Atsumi & Sakai Legal Professional Corporation, a Japanese professional corporation, a foreign law joint venture under the Act on Special Measures Concerning the Handling of Legal Services by Foreign Lawyers with certain Registered Foreign Lawyers of our firm, and a Japanese Civil Code partnership among Japanese lawyers, represented by Yutaka Sakai, a lawyer admitted in Japan. In addition to lawyers admitted in Japan, our firm includes foreign lawyers registered in Japan to advise on the laws of the US States of New York and California, the People's Republic of China, the Republic of Korea, India, the Democratic Socialist Republic of Sri Lanka, England and Wales*, and the Australian States of Queensland, New South Wales and Victoria. Foreign lawyers registered in Japan to advise on state laws also are qualified to provide advice in Japan on the federal laws of their respective jurisdictions.

Atsumi & Sakai has established an office in London operating as Atsumi & Sakai Europe Limited (incorporated in England and Wales (No: 09389892); sole director Naoki Kanehisa, a lawyer admitted in Japan), an office in Brussels operating as Atsumi & Sakai Brussels EU (incorporated in Belgium; managing partner: Etsuko Kameoka, a lawyer admitted in New York and registered with the Brussels Bar Association (B-List)**), an affiliate office in New York operating as Atsumi & Sakai New York LLP (a limited liability partnership established in New York; managing partner Bonnie L. Dixon, a lawyer admitted in New York and a Registered Foreign Lawyer in Japan), and an office in Ho Chi Minh City operating as Atsumi & Sakai Vietnam Law Firm (incorporated in Vietnam; sole director Katsunori Irie, a lawyer admitted in Japan). We also have a partnership with A&S Osaka LPC (partner: Teiji Maehashi, a lawyer admitted in Japan) and A&S Fukuoka LPC in Japan (partner: Yasuhiro Usui, a lawyer admitted in Japan) and an affiliate office in Frankfurt operating as Atsumi & Sakai Europa GmbH - Rechtsanwälte und Steuerberater, a corporation registered in Germany providing legal and tax advisory services (local managing director: Frank Becker, a lawyer admitted in the Federal Republic of Germany**).

* Atsumi & Sakai is not regulated by the Solicitors Regulation Authority for England and Wales.

**Not Registered as a Foreign Lawyer in Japan

2. LEGAL ADVICE

Japanese legal advice provided by Atsumi & Sakai and our global offices is provided by lawyers admitted in Japan. Advice provided in Tokyo in respect of any foreign law on which one of our foreign lawyers is registered in Japan to advise, may be provided by such a Registered Foreign Lawyer. None of Atsumi & Sakai Legal Professional Corporation, Atsumi & Sakai Europe Limited or Mr. Naoki Kanehisa is regulated by the Solicitors Regulation Authority for England and Wales, and none will undertake any reserved legal activity as defined in the United Kingdom Legal Services Act 2007. Advice provided in Germany on the laws of Germany will be provided by a lawyer admitted in Germany, and advice provided in New York on the laws of New York will be provided by a lawyer admitted in New York.