

## Important Legal Considerations for the Construction of Semiconductor Plants in Japan

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### 1. Introduction

The Japanese Government aims to revive advanced semiconductor manufacturing as a key driver of economic growth. This has resulted in an ongoing construction boom for semiconductor plants in Japan. In this newsletter, we will shed light on key considerations when entering into construction contracts for semiconductor plants, such as insurance coverage, the importance of force majeure clauses, and the role of specialist contractors.

### 2. General considerations in construction contracts

Constructing semiconductor plants entails certain distinctive aspects that require careful consideration in the construction contract. Some key points to address include:

#### (1) Contract Structure

Semiconductor plants comprise various specialist works such as clean rooms and water treatment works. While a main contractor may be appointed to undertake single-point responsibility to the employer for these works, it may in certain instances be more practical for the employer to contract directly with the various specialist contractors. If so, the employer needs to consider how best to coordinate the works of the various contractors and specialist contractors.

#### (2) Technical Specifications

Given the precise nature of semiconductor manufacturing processes, the technical specifications need to be clearly outlined in the contract. This includes, amongst other things, detailed specifications on cleanroom requirements, environmental controls, utility systems, and equipment specifications.

#### (3) Quality Standards

Semiconductor plants demand adherence to the strictest quality standards. The contract should explicitly stipulate the required quality control measures, inspections, and testing procedures to ensure compliance.

#### **(4) Intellectual Property Protection**

The contract should address issues such as the ownership of proprietary information, technology transfers, and non-disclosure obligations. Ideally, a non-disclosure agreement should be entered into before the employer commences discussions with any potential contractors.

### **3. Price Fluctuation**

While the costs for construction and building works in Japan have risen significantly over the last two years, it is advisable to understand the contractual framework for price fluctuations applicable to contract prices. Standard forms of construction contracts in Japan, such as *Minkanrengo* and *Nikkenren*, commonly include the following two price fluctuation clauses, which can be used by both the contractor and the employer to request an adjustment of the contract price:

- a. If the contract price has become apparently inappropriate and improper due to a drastic change in economic conditions or any other unforeseeable cause; or
- b. If, in a long-term contract, the amount of the contract price corresponding to any portion of the work executed after the first anniversary of the contract conclusion is inappropriate and improper due to changes in commodity prices, wages, and other such matters.

Additionally, it is important to understand that the Construction Business Act, a mandatory law applicable to any construction project carried out in Japan, states that the employer must not exploit their transactional position unjustly to conclude a contract price for a construction contract that is less than the cost usually necessary to execute the intended construction work (Article 19-3 of the Construction Business Act).

Furthermore, Article 19-3 and relevant provisions of the Construction Business Act are likely to be amended in the near future to reinforce the mechanism for adjusting contract prices due to price escalation. The amendment was approved by the Japanese Cabinet in March 2024 and is currently being examined in Parliament.

### **4. Insurance Coverage**

Building a semiconductor plant can require a substantial financial investment. Due to the high value of these projects and potential risks involved, it is essential to assess if there is adequate insurance coverage. Construction companies and project owners must carefully evaluate their insurance needs to protect against property damage, business interruption, and liability claims. If comprehensive insurance coverage is required, the increased insurance premiums need to be adequately priced into the construction contract. Insurance companies may respond to this increased demand by offering specialized coverage options tailored to the unique risks associated with semiconductor facility construction.

### **5. Force Majeure Clauses and Natural Disasters**

Japan is prone to natural disasters, including earthquakes, typhoons, and volcanic eruptions. Therefore, force majeure clauses play a significant role in construction contracts in Japan. These clauses allocate risks and

liabilities in the event of unforeseeable circumstances. Parties must clearly define the triggering events and the resulting obligations, such as suspending work, extending deadlines, or terminating the contract. Given the potential for natural disasters in Japan, it is crucial to incorporate robust force majeure provisions to address these risks effectively.

## 6. Specialist contractors and collaboration with Japanese contractors

The installation of certain specialized equipment in semiconductor plants often requires expertise from specialist contractors. In Japan, it is necessary to appoint Japanese contractors with the requisite licenses to operate legally within the country under Japanese Construction Business Act. Foreign specialist contractors without the necessary licenses should obtain them, even if they are working as subcontractors. If a foreign specialist contractor is unable to obtain the required licenses, it may need to consider alternative arrangements rather than being hired as a contractor or subcontractor.

## 7. Ownership of the designs and construction method of the semiconductor plant

The construction of a semiconductor plant will result in the creation of designs for the semiconductor plant, and even possibly patentable methods of construction. Here, employers will be especially concerned that the relevant contractors keep such designs confidential. Employers may insist on either giving full ownership of such designs to the employer, or licensing such designs back to the employer such that the employer may be able to replicate the same semiconductor plant at another site. Alternatively, employers may insist on having the ownership of any construction methods that may arise out of the construction of the semiconductor plant.

## 8. Conclusion

Meticulous attention to drafting construction contracts, grounded in a thorough understanding of Japanese construction law and practice, is essential for addressing the aforementioned issues and ensuring successful project outcomes.

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