

Important Legal Considerations for the Construction of Data Centers in Japan

Construction / Infrastructure Newsletter

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1. Introduction

The market for data centers in Japan is increasingly attractive to owners and investors. Increased demand driven by AI, digital transformation, and cloud servers, as well as government subsidies, favorable exchange rates, political stability, and a reliable supply of electricity are key factors driving the recent boom in data center construction.

On the flip side, increasing construction costs, labor shortages, and extended lead times for equipment delivery pose challenges to both owners and contractors.

In this newsletter, we will shed light on key considerations when entering into construction contracts for data centers in Japan, for example, general considerations for construction contracts, price fluctuations, insurance coverage, the importance of force majeure clauses, advance instructions for certain work and equipment, and limitation of liability provisions.

2. General considerations in construction contracts

(1) Contract Structure

In Japan, the construction of data centers typically involves contract packages for (i) design and supervisory work and (ii) construction.

Design work involves the preparation of schematics and detailed designs according to the owner's requirements, whereas supervisory services (some of which are mandatory obligations under the Construction Standards Act) involve ensuring that the construction work will be performed in compliance with the drawings and specifications. Often, design work and supervisory services are entrusted to the same architectural company, which must be a licensed architect.

In Japan, the standard contract forms most commonly used for (i) design and construction, (ii) construction only, and (iii) design and supervisory services only are as follows:

- Design and Construction: General Conditions of Design/Build Contract ("**Nikkenren**"), issued by the Japan Federation of Construction Contractors;

- Construction only: General Conditions of Construction Contract (*Minkan (Nanakai) Rengo Kyoutei Kouji Ukeoi Keiyaku Yakkan*) (“**Minkanrengo**”), published by the General Conditions of Construction Contract Committee; and
- Design and Supervisory Services only: General Conditions of Design and Supervisory Services Contract (*Yonkai Rengou Kyoutei Kenchiku Sekkei Kannritou Gyomuitaku Keiyaku Yakkan*) (“**Yonkairengo**”), issued by the Research Society for General Conditions of Design and Supervisory Services Contract.

Although owners often request to use their own standard terms and conditions, it is not uncommon for parties to use either the *Nikkenren* standard form (when a single contract package is awarded for both construction and design), or the *Minkanrengo* and *Yonkairengo* (when the design and supervisory services work is awarded separately from the construction work).

(2) Technical Specifications and Quality Standards

Data centers have to meet stringent requirements to achieve key metrics that will satisfy their target tenants. Stringent requirements also are necessary to ensure the operational resilience of their infrastructure and minimize disruptions to the business of the data center and its tenants.

These requirements need to be set forth clearly in the technical specifications. To the extent possible, the contract should contain detailed specifications for power distribution systems, temperature controls, humidity, data security, access to physical space, and facility maintenance services.

In some situations, data center owners already have contracts with tenants in place before completion of the construction work. Failure to achieve on-time completion of the construction work may result in potentially significant losses and liabilities to the owner, in particular with regard to the owner’s contracts with the tenants. From the owners’ perspective, to ensure the completion deadline is met, it may be necessary to negotiate a mechanism to secure timely completion that is acceptable to both parties.

3. Price Fluctuations

As the costs for construction and building work 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 construction contract forms 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. In a long-term contract, if 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 (“CBA”), a mandatory law applicable to any construction project carried out in Japan, states that the employer must not exploit its transactional position unjustly to obtain a contract price for a construction contract that is less than the cost usually necessary to execute the intended construction work (CBA, Article 19-3).

The CBA was amended by the “Act to Partially Amend the Construction Business Act and the Act on Promoting Proper Tendering and Contracting for Public Works (2024 Law No. 49)” which was promulgated on June 14, 2024. The amendments include an additional requirement that construction contracts include provisions to specify the “calculation methods for contract price adjustment” in the event there is a change in contract prices due to price fluctuations (Article 19, Paragraph 1, Item 8 of the amended CBA). Also, the amended CBA permits contractors to request discussions about changes to the time for completion, scope of work, or contract price based on the specified calculation method in situations involving significant reductions in supplies or increases to the price of materials, or when other events occur (Article 20-2, Paragraph 3 of the amended CBA). Owners must make an effort to engage in good-faith discussions when such a request is made (Article 20-2, Paragraph 4 of the amended CBA). For more detailed information, please refer to our newsletter on the 2024 amendments to the CBA.¹

4. Insurance Coverage

Building a data center requires a substantial financial investment. Due to the high value of these projects and the potential risks involved, it is essential to assess whether there is adequate insurance coverage. Contractors and owners must evaluate their insurance needs carefully, to safeguard against property damage, business interruption, and liability claims. Earthquakes are not uncommon in Japan, which makes it important to consider purchasing insurance that covers earthquakes and related risks. If comprehensive insurance coverage is required, the increased insurance premiums need to be adequately reflected in the construction contract price.

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 suspension of work, extended deadlines, or termination of the contract.

Given the potential for natural disasters in Japan, parties should strive to allocate these risks in a fair manner as force majeure events are not attributable to the fault of either the owner or the contractor.

6. Advanced Instructions for Works Involving Long Lead Equipment Procurement

For certain work or equipment required for data center construction, the main contractor may need to appoint sub-contractors or suppliers for portions of the work, or prepare for procurement of key equipment, even before signing the construction contract with the owner, taking into consideration the construction schedule and the

¹ [Overview of the 2024 Amendments to the Japanese Construction Business Act and Their Impact on Contract Price Adjustment | N&A Newsletters | Knowledge | Nishimura & Asahi](#)



long lead times for delivery of certain equipment. Examples include appointing sub-contractors for development work (preparation of land and soil for construction, etc.) required before the actual construction work commences, or early procurement of uninterruptible power supply (“UPS”) equipment and back-up generators, which are crucial to ensuring regular supply of uninterrupted power and limiting system downtime caused by outages.

In these situations, owners need to instruct the main contractor to proceed with the work or procurement by issuing pre-order instructions or long lead equipment procurement instructions prior to signing a construction contract.

In addition, as the CBA broadly regulates construction contracts in Japan, it is important to review construction contracts, including pre-order instructions, from the perspective of the CBA and other related regulations in Japan.

7. Limitation of Liability

To reduce exposure to owners, contractors may seek to insert limitation of liability clauses, for example, caps on the total liability or exemption of special/indirect damages, in their contracts. However, owners should consider potential liability to other counterparties arising from breaches of the construction contract before agreeing to these clauses in negotiations with contractors.

8. Conclusion

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

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