

Conducting Business in Japan from a Legal Perspective

June 7, 2013

Presented by:
Pablo Guzman
Davis LLP, Montréal

Written by:
Koji Kawamura
Davis & Takahashi,
Tokyo

- 1. Setting Up**
- 2. Foreign Exchange and Foreign Trade Law**
- 3. Employment and Labour Law**
- 4. IP/IT Law**
- 5. Regulations**
- 6. Product Liability**

1. Setting Up

- Branch or Corporation
 - Corporation is considered more stable.
- Stock Corporation or LLC
 - LLC is more flexible but stock corporation is more popular.

2. Foreign Exchange and Foreign Trade Law

- Establishment of a corporation
 - “Direct Inward Investment” → Pre-filing or post filing.
 - Post filing → 30 days waiting period
 - Ministry’s recommendation and suspension order possible.
 - Only one suspension order so far.
- Import of goods
 - Approval or pre-confirmation may be required.

3. Employment and Labour Law

- Labor Standards Act
 - Equal Employment Opportunities Law
 - Labor Contract Act
 - Labor Union Act
 - Industrial Safety and Health Law
 - Minimum Wage Act
- and so on.

3. Employment and Labour Law

- Equal Employment
 - May not specify male or female employees when advertising.
- Minimum Wage
 - 850 yen (approx. 8.76 CAD) / hour in Tokyo.

3. Employment and Labour Law

- Working Hours
 - Maximum: In principle, 8 hours/day and 40 hours/week (“statutory working hours”).
 - For employees in specific businesses (e.g. related to health and hygiene) 8 hours/day and 44 hours/week.
- Holidays
 - At least one day per week, or four days in any four-week period (“statutory holidays”).

3. Employment and Labour Law

- Overtime Payment
 - Filing of a notification of agreement with employees about working overtime and on holidays is required.

3. Employment and Labour Law

	Rate of Premium
1. Exceeding statutory working hours	25%
2. Exceeding statutory working hours by exceeding 60 hours per month This item does not apply to a small and middle sized enterprise, for the time being.	50%
3. Statutory holidays	35%
4. At night (10p.m. to 5a.m.)	25%
5. At night exceeding statutory working hours (1+4)	50%
6. At night exceeding statutory working hours by exceeding 60 hours per month (1+2)	75%
7. At night on statutory holidays (3+4)	60%

3. Employment and Labour Law

- Annual paid leave

Term of Service	0.5y	1.5y	2.5y	3.5y	4.5y	5.5y	6.5y
Days of paid leave	10	11	12	14	16	18	20

3. Employment and Labour Law

- Dismissal
 - Disciplinary Dismissal (without 30-days notice, salary or retirement allowance)
 - Possible as long as there is a strong justification and reproached behaviour is covered with employment contract or policies.
 - Standard Dismissal (with 30-day notice or 30-day salary)
 - Possible as long as there is justification.
 - Doctrine of “abuse of termination power.”
 - No concept of “termination by monetary compensation.”

3. Employment and Labour Law

- Dismissal (continued)
 - Dismissal for the purposes of reorganization
 - Necessity to reduce an employee
 - Necessity to choose a dismissal
 - Obligation to avoid dismissal.
 - Appropriateness of selection of an employee
 - Appropriateness of procedures
 - Obligation to discuss with the employee in good faith.

3. Employment and Labour Law

- Confidentiality, Non-competition and Consideration to Employee's Invention
 - Unfair Competition Prevention Act
 - Patent Act
 - Employment contract should be structured

4. IP/IT Law

- Paris Convention for the Protection of Industrial Property
 - Separate filing in Japan is necessary.
- Copyright Act, Patent Act, Trademark Act, Unfair Competition Prevention Act, etc.
- Procedures
 - “First to file” principle.

5. Laws and Regulations

- Act against Unjustifiable Premiums and Misleading Representations
- Act on the Promotion of Sorted Collection and Recycling of Containers and Packaging
- Act on the Promotion of Effective Utilization of Resources
- Industrial Standardization Act (so called, JIS Mark Labeling System (voluntray))
- Household Goods Quality Labeling Act
- Act on Control of Household Products Containing Harmful Substances
- Electrical Appliances and Material Safety Act
- Radio Act

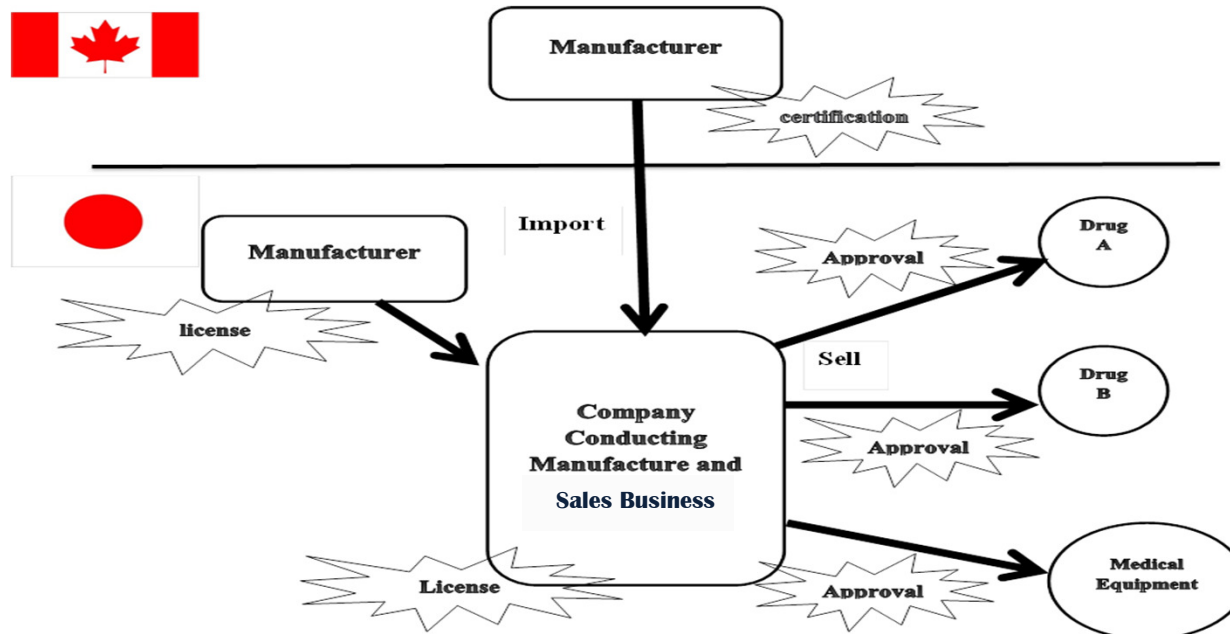
5. Laws and Regulations

(continued)

- Law Concerning Prevention of Radiation Hazards due to Radioisotopes, etc.
 - Medical Treatment Law
 - High Pressure Gas Safety Law
 - Consumer Contract Act
- and so on.

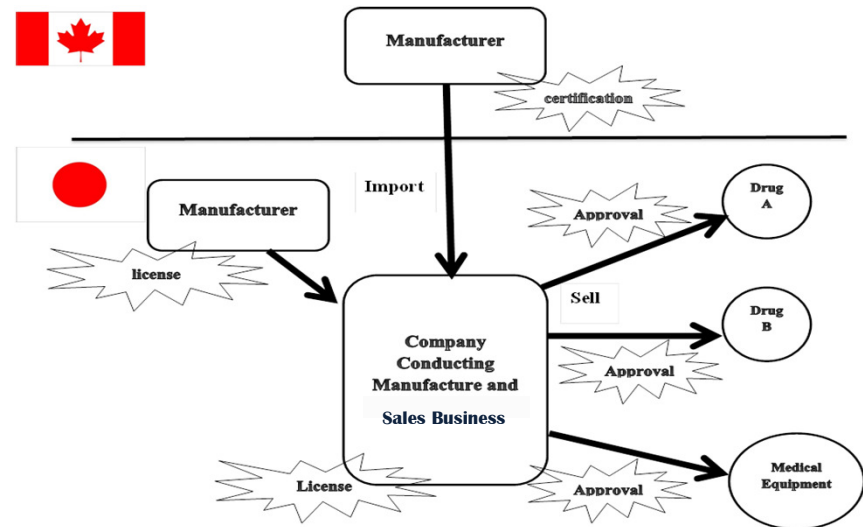
5. Laws and Regulations

- Pharmaceutical Affairs Act



5. Laws and Regulations

- License
 - “Manufacture and Sales” business needs license
- “Manufacture and Sales”
 - to sell, lease or distribute a drug, quasi-drug, cosmetic or medical equipment which was manufactured or imported.
- Manufacturer needs license



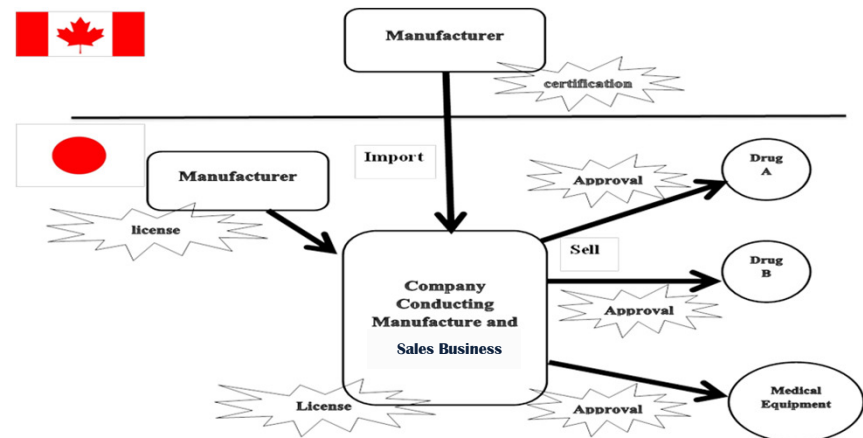
5. Laws and Regulations

- Types of license vary

Type of drugs, etc.	Type of License
1. Drugs for which a prescription is required.	First Type Drug Manufacturing and Sales Business License
2. Drugs other than item 1	Second Type Drug Manufacturing and Sales Business License
3. Quasi-drugs	Quasi-Drug Manufacturing and Sales Business License
4. Cosmetics	Cosmetics Manufacturing and Sales Business License
5. Highly Controlled Medical Equipment	First Type Medical Equipment Manufacturing and Sales Business License
6. Controlled Medical Equipment	Second Type Medical Equipment Manufacturing and Sales Business License
7. General Medical Equipment	Third Type Medical Equipment Manufacturing and Sales Business License

5. Laws and Regulations

- Approval
 - Required for each item
- Certification
 - A foreign manufacturer needs to obtain certification



5. Laws and Regulations

- Recent news regarding regulations:
 - Japanese government is to ease regulations
 - Recent Supreme Court Judgment supports the easing of regulations

6. Product Liability

- Product Liability Act
 - Strict Liability
 - Manufacturers, sellers and importers of products
 - Defect
 - Design
 - Manufacturing
 - Failure to warn

6. Product Liability

- Defense of “development risk”
 - The defect could not have been discovered given the state of scientific or technical knowledge at the time when the manufacturer delivered the product.
 - All the relevant documents should be collected and kept.
- No discovery, no class action or no punitive damages in Japan
 - Consumer Group Litigation System
 - Currently injunctive relief only.
 - Revision bill to be submitted to cover damages.

Thank you for your attention!

Pablo Guzman

T: 514.392.8406

E: pguzman@davis.ca

Koji Kawamura

T: +81.3.6234.1245

E: kkawamura@davis.jp