

## Client Alert

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## Prime Minister Abe Declares State of Emergency in Response to COVID-19

On 7 April 2020, the Japanese Government declared a state of emergency under the Act on Special Measures to Respond to Novel Influenza and New Infectious Diseases, as amended effective 14 March 2020 (the "**Act**"), to address the recent spike in COVID-19 infections.

The state of emergency initially applies for a period of one month (until 6 May 2020) in seven Japanese prefectures: Tokyo, Kanagawa (where Yokohama is located), Saitama, Chiba, Osaka, Hyogo (where Kobe is located) and Fukuoka. These seven prefectures represent 56 million of Japan's total population of 126 million.

### Powers of the authorities under the Act

The declaration empowers the governors of the relevant prefectures (and in some cases the heads of municipalities; together the "**Local Authorities**") to take the following measures, among others:

1. request that residents stay indoors except where going outdoors is necessary for the maintenance of their livelihoods, and to otherwise cooperate as necessary to prevent infection;
2. request or direct operators of schools, social welfare facilities, event facilities and other facilities that may be used by large numbers of people, and organizers of events at such facilities, to restrict or cease their use of the facilities, the holding of events at the facilities and to take other specific measures. The Local Authorities are required to consult with the national government before making such requests or directions;
3. use private land, buildings or materials with or without the consent of the owners or occupiers of the same if necessary for the operation of temporary medical treatment facilities (in practice, the Local Authorities of Tokyo, Osaka and some other areas have already converted, or are in the process of converting, hotel rooms into medical facilities with the cooperation of the operators);
4. request or direct specified logistics companies to transport necessary supplies, and specified medical distributors to deliver drugs and medical devices, to specific places on specific dates; and
5. request the sale of, or seize without the consent of the owner, certain essential supplies (e.g., medical supplies and food) and order logistics companies to store such essential supplies.



## Measures to be taken by Local Authorities

The aim of the government is to reduce person-to-person contacts by 80%. The government believes that anything below this percentage would result in a potentially much longer period of restrictions (and therefore more risks for the economy).

The Local Authorities have requested that residents refrain from going outside (as set out in 1 above) except for work, hospital visits and grocery shopping and that companies implement remote working to the greatest possible extent in order to minimize commuting by their employees. This is based on the so-called "three Cs" policy (ie, closed spaces where crowds meet in close proximity should be avoided).

The national government is waiting to see whether the request that residents refrain from going out is effective before taking the measures set out in 2 above. The Governor of Tokyo has requested, based on the powers that she has with or without the declaration of a state of emergency, that certain categories of shops, restaurants and facilities cease operating or shorten their business hours. Other Local Authorities have issued similar requests.

## Will there be a lockdown?

The government has made it clear that there will be no lockdown of the type seen in some other countries. Requests and directions made under the Act are not supported by penalties. Private individuals or businesses cannot therefore be forced to comply with requests and directions. At this stage, public transport will not be requested to suspend or reduce its services.

## Is it necessary to comply with "requests"?

The declaration of a state of emergency is intended to impart a greater sense of urgency to the general public and companies. Even for operators of facilities that have closed since the announcement, the fact that the closure does not affect all of Japan creates significant business issues that may need to be addressed by the government and Local Authorities. It is expected that businesses will in general comply with requests. In theory, non-compliant persons and entities may also risk tort liability if it can be proven that their failure to comply with a closure request has resulted in specific infections.

## Does this constitute a "force majeure" event?

This issue must be addressed in light of the force majeure clauses of specific agreements and general contract rules under the relevant governing law. Japan is a civil law jurisdiction but does not offer a comprehensive regime of force majeure remedies, unlike some other civil law jurisdictions. The first question to ask is whether a contract has a force majeure clause. If it does, the specific language of the clause must be examined to determine how events triggering force majeure remedies are defined and whether the state of emergency would fall within the scope of the clause. If there is no force majeure clause, no-fault impossibility of performance (*riko funo*) or other statutory defenses available for breach of contract under the Civil Code should be considered.