




TMI Associates

A decorative graphic element consisting of a bright blue light source at the top left, with a thin, glowing arc curving downwards and to the right, ending in a small white dot.

# How to Tackle Legal Issues Foreign Companies Face in Japan

**ARQIS Foreign Law Office  
Foreign Law Joint Enterprise with  
TMI Associates**

DÜSSELDORF – MÜNCHEN – TOKIO

# About ARQIS & TMI

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- History:** ARQIS was founded in January 2006 by experienced partners from well-known international law firms. In January 2009, ARQIS established a registered joint enterprise in Tokyo with the Japanese law firm TMI Associates, one of the top five leading law firms in Japan. ARQIS & TMI have a combined team of over 400 attorneys.
- Competences:** Broad expertise in all relevant areas of business law, such as
- M&A
  - Corporate & Commercial
  - Labor & Employment
  - Data Protection
  - IP
- Clients:** We advise and represent listed companies, international affiliates, medium-sized companies, and financial investors in Japan as well as Japanese companies in Europe.
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# ARQIS & TMI - Offices in Asia\*



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\*Other than the Tokyo office, all offices in Asia are operated solely by TMI Associates.

# Labor Law

## I. Termination of Employment – Basics

### General Principle

Article 16 Labor Contract Act:

*“A dismissal shall, if it lacks objectively logical reasons and is not justifiable under general social terms, be treated as an abuse of rights and be held invalid”*



- ANY unilateral dismissal of an indefinite employment relationship in Japan requires a “**justifiable cause**”, i.e. the cause has to be
  - objective
  - logical and
  - reasonable

## I. Termination of Employment – Basics

- Requirement of “justifiable cause”
  - Applicable to **all businesses** (no minimum number of employees threshold)
  - Applicable to **all employees** (including managing employees, but not to directors in a service relationship with the company)
  - Applicable **from the first day** after hiring (within and after the probationary period)
  - Contractual **deviations not possible** (at-will employment agreements are void)
  - In case of termination of **fixed-term employment** agreement by the employer during the term, **even stricter** requirement (“unavoidable cause”)

## I. Termination of Employment – Grounds

### A. Low Performance

#### b. Legal Requirements

- The courts typically demand:

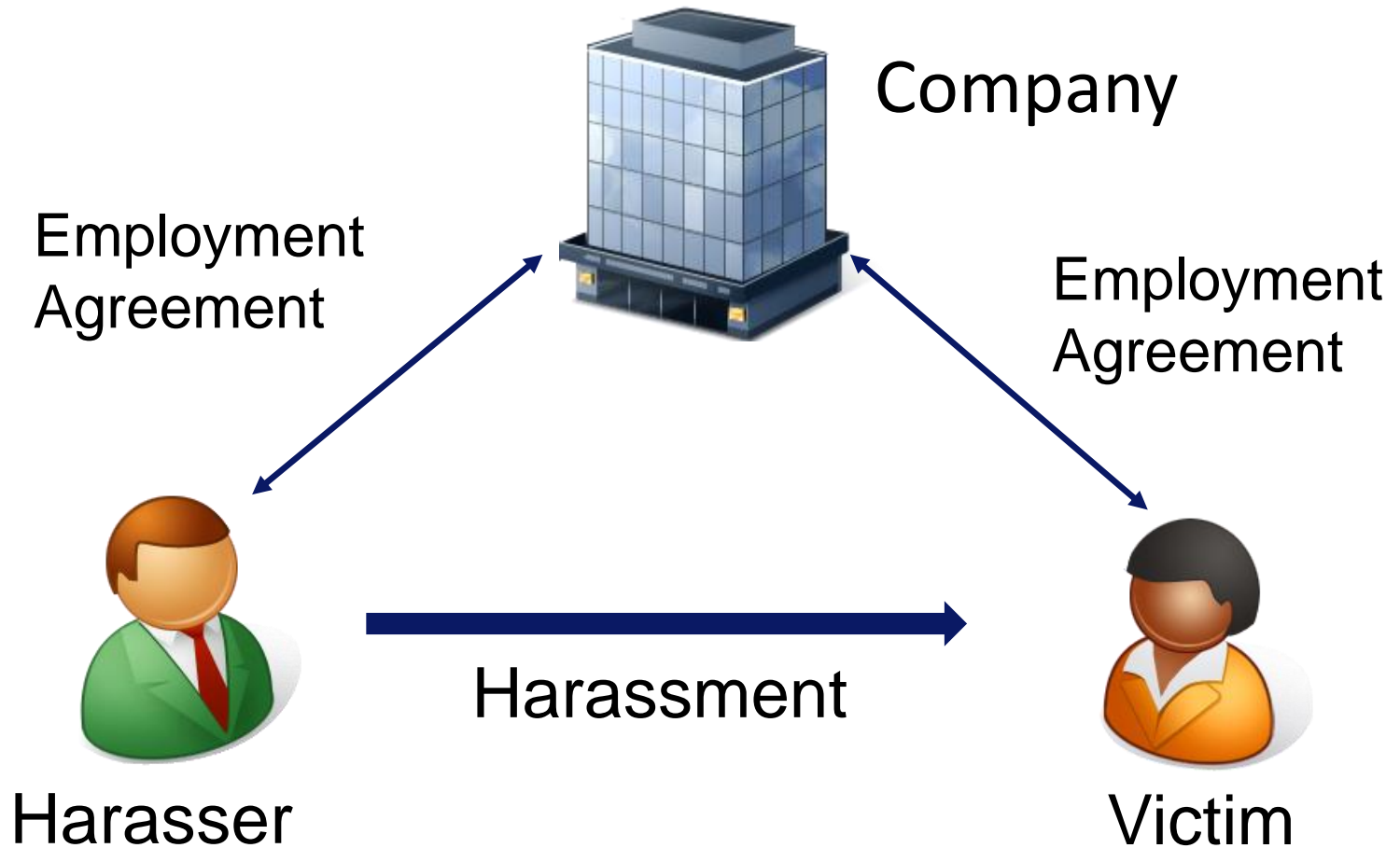
(1) **Underperformance** of employee at a **substantial/significant** level compared to peer group; and

(2) **Negative prediction regarding improvement** of employee`s performance in the future

(3) **Disruption of business operations** by underperformance (or at least reasonable likelihood of disruption).

# I. Termination of Employment – Grounds

## B. Sexual Harassment / Power Harassment





## II. Overtime

- Labor-management agreement required if employees shall work outside the regular working hours (Article 36 Labour Standards Act).
- Overtime premiums (Article 37 Labour Standards Act, Premium Rate Order) apply.
- Overtime hours are limited:

Period	Maximum Overtime Hours
1 week	15 hours
2 weeks	27 hours
4 weeks	43 hours
1 month	45 hours
2 months	81 hours
3 months	120 hours
1 year	360 hours

## II. Overtime

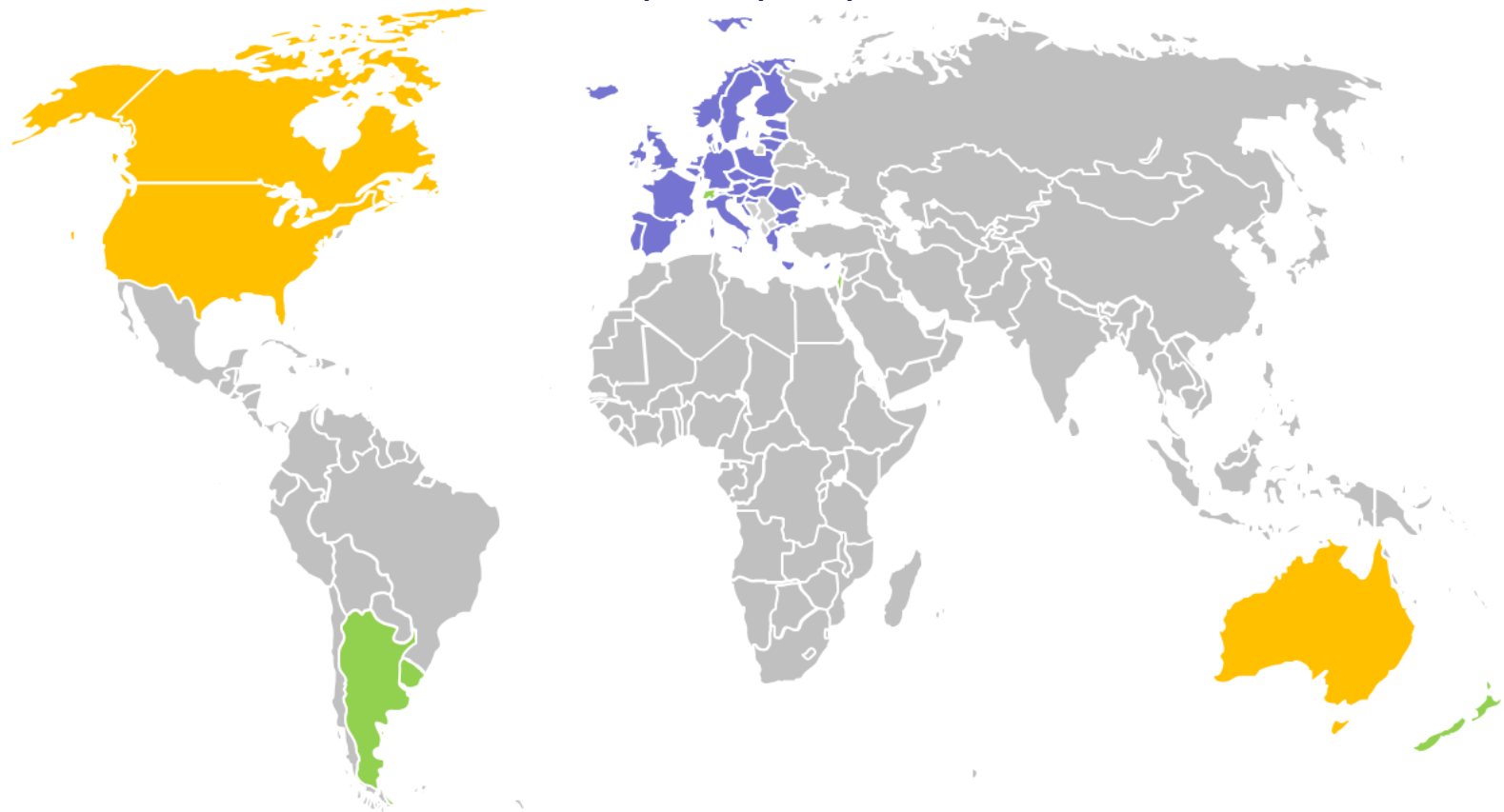
- Flexible Working Hours System: (160h work hours per month, one-hour lunch break basis; reference period one month)

<b>Week 1</b>	<b>Mo</b>	<b>Tue</b>	<b>Wed</b>	<b>Thu</b>	<b>Fri</b>	<b>Total</b>
Working Times	8h	5h	8h	10h	9h	40h
Working Hours	9 - 18	9 - 15	9 - 18	9 - 20	8 - 18	
<b>Week 2</b>	<b>Mo</b>	<b>Tue</b>	<b>Wed</b>	<b>Thu</b>	<b>Fri</b>	<b>Total</b>
Working Times	6h	6h	6h	6h	7h	31h
Working Hours	8 - 15	9 - 16	9 - 16	8 - 15	9 - 17	
<b>Week 3</b>	<b>Mo</b>	<b>Tue</b>	<b>Wed</b>	<b>Thu</b>	<b>Fri</b>	<b>Total</b>
Working Times	9h	10h	10h	11h	9h	49h
Working Hours	8 - 18	8 - 19	8 - 19	9 - 21	10 - 19	
<b>Week 4</b>	<b>Mo</b>	<b>Tue</b>	<b>Wed</b>	<b>Thu</b>	<b>Fri</b>	<b>Total</b>
Working Times	8h	8h	8h	8h	8h	40h
Working Hours	8 - 17	8 - 17	10 - 19	9 - 18	8 - 17	

# Data Protection

# I. Introduction

View of the world from a European perspective:



- Data protection standard pursuant to EU Law
- Secure
- Secure under certain circumstances
- Insecure

# I. Application

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- Revised Act on Protection of Personal Information (APPI) applying from 30 May 2017
- **NEW:** Threshold has been abolished
  - ✓ If any personal information is handled by a business using personal information (Business Handling Personal Information), the APPI will be applicable!
- Personal Information: any information (containing numbers, symbols and codes) about a living individual which can identify the specific individual by name, date of birth or other description contained in such information
- Handling of personal information only within the “purpose of use” for which the data are collected

## II. Data Processing – Purpose of Use

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### Sample: Purpose of collecting personal information

Personal information obtained from customers will be used for the following purposes:

- [1] Reservations, ticket sales, check-in, airport services, and in-flight services with regard to air transport services
- [2] Reservations, ticket sales, check-in, airport services for interline transportation, wet lease, code share, intermodal transportation
- [3] Service provisions for ANA Mileage Club members
- [4] Guidance, provision, and management of other services and products offered by ANA
- [5] All operations incidental or related to the above[1]-[4]
- [6] Implementation of questionnaires concerning service and products, etc. offered by ANA
- [7] Development of new services and products
- [8] Management and information provision for various events and campaigns
- [9] Notification of services and products offered by ANA
- [10] Management and notification of services, products, events and campaigns of ANA Group companies and partner companies.
- [11] Responses to inquiries and requests

Source: ANA Privacy Policy, [www.ana.co.jp/www/japan/e/local/common/aboutana/legal](http://www.ana.co.jp/www/japan/e/local/common/aboutana/legal)

# III. Data Processing – Data Transfer

- Any transfer of personal information to third parties requires in principle the consent of the data subject (opt-in) unless an exception applies
    - No specification in the APPI regarding means of consent (e.g. in writing etc.)
    - Exceptions e.g. if transfer is required for life or safety of an individual or required by laws or ordinances
    - Third Parties are not:
      - ✓ Outsourced Service Providers (e.g. data processing company or express courier, cloud service providers if personal information is processed on behalf)
      - ✓ Succeeding Legal Entities (e.g. by merger, spin-off or transfer of business, but not in case of isolated transfer of the database)
      - ✓ Joint Users (e.g. use with parent or subsidiary within the scope of Purpose of Use, provided that data subject is informed about joint use in advance)
- IMPORTANT: The above three exceptions do not apply to international data transfer.

### III. Data Processing – Data Transfer

Scope of Data Sharing	ANA HOLDINGS INC.	Air Japan Co.,Ltd. ANA WINGS Co., Ltd.	ANA Sales Co.,Ltd. companies *1
Purpose of use by the user	<p>(1)For development of new services and products, etc.</p> <p>(2)For notification of new products and services by direct mail, etc.</p> <p>(3)For delivery and transfer to the relevant company in the event of an inquiry, application for use or other request from a customer regarding products and services provided by ANA Group companies.</p> <p>(4)For appropriate and smooth fulfillment of other transactions with customers, etc.</p>	Provision of air transportation services	Provision of information required for tours, hotels, and other air travel services and related operations
Personal information items to be shared	AMC Number, Customer Name, Address, Telephone and Fax numbers, E-mail Address, Business contact(Name of Company, Department, Title, Address, Telephone and Fax Numbers), Mailing Address, Member Card Type, Member Service Qualification, Membership Area, Mileage Status, Credit-card number and expiration date, need for wheelchair arrangements, Flight reservation and cancellation information, boarding status, etc.		AMC Number, Customer Name, Address, Telephone and Fax numbers, E-mail Address, Business contact(Name of Company, Department, Title, Address, Telephone and Fax Numbers), Mailing Address, Member Card Type, Member Service Qualification, Membership Area, Mileage Status, Credit-card number and expiration date, need for wheelchair arrangements, etc.
Party responsible for management of personal information	ANA		

Source: ANA Privacy Policy, [www.ana.co.jp/www/japan/e/local/common/aboutana/legal](http://www.ana.co.jp/www/japan/e/local/common/aboutana/legal)



### III. Data Processing – Data Transfer

- **NEW:** Limitation of data transfer to places outside of Japan. The data transfer is hereunder only permitted:
  - To overseas recipients in countries which have an „adequate“ level of data protection
  - To overseas recipients with whom contractual agreements have been concluded to ensure compliance with data protection standards in Japan.
  - To overseas recipients in case the concerned individual has given its prior written consent to the transfer.

# Q&A

# Contact Details



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