TENLAW: Tenancy Law and Housing Policy in Multi-level Europe

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National Report for

JAPAN

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1 Housing situation

1.1 General features

The characteristics of the Japanese housing policy are the conservative family image, subordination to market-economic policy, dependence on company system. Although the housing system worked in some way in the past, it does not function properly and produces many 'housing refugees' and 'housing poor' due to the transition of the family types and a rapid emergence of different types of unstable jobs caused by economic crises. Japan has many housing related problems, such as, urbanization, wooden low quality housings concentrated on city areas, housing lacking in earthquake-resistance, low income families excluded from the public housing, housing loan refugees, aging communities in a city as well as public housing, or vicious businesses targeted at the poor without residence. The government has been making efforts to deal with those problems by administrative measures, statutes, and subsidization.

1.2 Historical evolution of the national housing situation and housing policy

- Please describe the historic evolution of the national housing situation and housing policies briefly.
    - In particular: Please describe briefly the evolution of the principal types of housing tenures from the 1990s on. Explain the growth and decline of the different tenures and the reasons why that happened (e.g. privatization or other policies).
    - In particular: What is the role of migration within the country, immigration or emigration from/towards other countries inside and outside the EU (including war migration as in Ex-Yugoslavia)

In the World War II Japan had suffered from a tremendous damage of housing. Thus, its subsequent housing policies focused on providing enough shelter for the Japanese citizens. After the WWII there were 3 main housing policy pillars. In 1950 the Government Housing Loan Corporation (GHLC, which was reformed into the Japan Housing Finance Agency (AHF)[1]), in 1951 the Public Housing Act, and in 1955 the Japan Housing Corporation (JHC, which was transformed into Urban Renaissance Agency in 2004 (UR)[2]) were established as the start of those policies.

Iwao Sato points out several characteristics in the housing policies after the World War II in Japan.[3] Firstly, the basic principle was a 'self-help' principle, which meant that the private sector should construct housing on their own. Therefore, secondly, the state involvement to secure housing was minimum, exemplified by the minimum construction of public housing, which was considered as a bridge until the private housing construction would recovered. Thirdly, the government did not take subsidy policies, for

[1] http://www.jhf.go.jp/english/index.html
[2] http://www.ur-net.go.jp/profile/english/
[3] Iwao Sato, 'Jutakuseisaku to Fudosan no Chintaishaku (Housing policies and rental immovable properties)' in *Fudosanchintaishaku no Kadai to Tenbo (Problems and prospects of the renting immovable properties)* ed. H. Matsuo & A. Yamanome (Tokyo: Shojihomu, 2012), 300-302.

example, rental allowances for private persons or subsidy programs to encourage the private sector to construct rental housing with good quality and a moderate rent. This led landlords to reduce the cost to construct their rental housing according to tenants' ability to pay the rent, and consequently, the overall quality of the private rental housing became poor.

In contrast, the government has earnestly supported home ownership of the middle class since 1950s. The means were a financial assistance of a long-term, low-interest housing loans through the GHLC and supply of housing built for sale through JHC. The consequences of these Japanese policies—shortage of public housing, bad quality of private rental housing and the government's support of home ownership—have led to the high percentage of home ownership among the various housing tenures.

Another important aspect of the Japanese housing policies, according to Sato, was urban planning.[4] Compared to the Western countries, the Japanese regulations based on the urban planning were weak and the system to return the benefit of the urban renewal (not only for the landlords but) to the society was not effective. This problem became salient especially from the high economic growth (from the mid of 1950s to the mid of 1970s) to the economic bubble era in 1980s. Chaotic and speculative urban developments prevented good residential space, as well as caused the problems of demolition of the existing housing or eviction of the tenants, that is, 'Jiage,' that wicked traders buying up small plots of land for consolidation and resale for a huge profit. However, especially in that situation, the courts rendered decisions in favor of tenants by interpreting the tenancy law flexibly. The Japanese tenancy law has played a great role to protect tenants.

1.3 Current situation

- Give an overview of the current situation.
  - In particular: What is the number of dwellings? How many of them are rented vs. owner-occupied? What would be the normal tenure structure (see summary table 1)? What is the most recent year of information on this?

According to the Housing and Land Survey conducted by the Ministry of Land, Infrastructure, Transport and Tourism (hereinafter referred to as MLIT) in 2008 (conducted every 5 years), the total number of the housing stock was 57,590,000, which was 3,700,000 (6.9%) increase compared to the last survey in 2003. Thirty million and 100 thousand dwellings (52.3%) were concentrated in the 3 great metropolitan areas.[5]

The number of vacant dwellings was 7,560,000, which was 13.1% of the total number of the housing stock. The share of vacant dwellings to the total housing stock increased from 12.3% (2003) to 13.1% (2008), which was the highest record in the history. The total number of households in 2008 was 49,990,000, and 2,730,000 (5.8%) increased from 2003. Until 1963 the total dwellings were less than the total households,

[4] Sato, 'Jutakuseisaku to Fudosan no Chintaishaku,' 302.

[5] Three metropolitan areas are Kanto (Tokyo, Saitama city, Chiba city, Yokohama city, Kawasaki city, and the cities and towns around), Chukyo (Nagoya city, and the cities and towns around), and Kinki (Kyoto city, Osaka city, Sakai city, Kobe city, and cities and towns around). <http://www.stat.go.jp/data/jyutaku/2008/pdf/yoyaku.pdf>.

but the numbers were reversed in 1968. Since then the increasing rate of dwellings was more than that of households, and consequently the number of dwellings was 7,610,000 more than the number of households in 2008. This means, the number of dwellings per household was 1.15.

In 2008 the number of dwellings occupied with households was 49,610,000 (hereinafter the word 'dwellings' means 'dwellings with households'). As for the building types of dwellings there are 4 types classified in the Survey. (1) A detached house is a building consisting of a dwelling unit. (2) A tenement house is a building consisting of two or more dwelling units connected by walls, but with each having an independent entrances to the street. (3) An apartment is a building consisting of two or more dwelling units for which corridor, staircases and other common areas are jointly used. Two or more dwellings built one above the other are also included in this category. (4) Dwellings other than those mentioned above. A part of a factory or office classified as dwelling quarters is included in this category. [6]

According to the building types, detached houses were 27,460,000 (55.4%), tenement houses were 1,330,000 (2.7%), apartments were 20,690,000 (41.7%), and others were 130,000 (0.3%). The increase of the detached houses from 2003 to 2008 was 970,000 and its increasing rate was 3.7%. But this rate was less than 5.9%, the increasing rate of the whole housing. On the other hand, the increase of apartments was 1,960,000, and its increasing rate was 10.5%.

Apartment buildings have become higher in recent years. Apartments in the buildings with 1-2 stories were 5,720,000 (27.6% of the total number of apartments), with 3-5 stories were 8,230,000 (39.8%), with more than 6 stories were 6,750,000 (32.6%). Within the apartments in the buildings with more than 6 stories, apartments in the buildings with more than 11 stories were 2,630,000 (12.7%) and with more than 15 stories were 570,000 (2.8%). Compared to the numbers in 2003, the increasing rate of the apartments in the buildings with 1-2 stories was 5.6%, with 3-5 stories was 4.6%, with more than 6 stories was 23.7%, with more than 11 stories was 34.1%, and with more than 15 stories was 75.8%. The increasing rate of the apartments in the building with more than 6 stories was much higher than the increasing rate of the total apartments (10.5%), which shows that the high-rise apartment buildings are trend in Japan.

Regarding the percentage of ownership according to the types of buildings, ownership and renting of the detached houses were respectively 91.7% and 7.0%, ownership and renting of the tenement houses were 27.5% and 65.8%, ownership and renting of the apartments were 22.8% and 72.0%. Detached houses were mostly owned, while tenement houses and apartments were in the greater part rented.

Traditionally the mostly used construction material for housing was wood, but the share of wooden buildings has been declining. In 1978 the share of wooden buildings was 81.7%, compared to 58.9% in 2008. In other words, non-wooden buildings (with ferroconcrete, steel ferroconcrete or steel frame) increased constantly from 18.3% in 1978 to 41.1% in 2008. The share of the wooden building in the detached houses was 92.6% (including fireproofed wooden buildings), and the one in the tenement houses was 76.1%. Contrastingly, 86.5% of the apartments were non-wooden and only 13.3% of them were wooden in 2008.

[6] <http://www.stat.go.jp/english/data/jyutaku/20021.htm>.

If we take a look at dwellings according to the construction period, 1,860,000 were constructed before 1950, and 44,200,000 were constructed after 1951, of which share was 89.1% of all the dwellings (including the buildings with unknown construction period). Within the dwellings constructed after 1951, the share of the dwellings constructed in the period of 1951-1960 was 2.3%, between 1961 and 1970 was 7.8%, between 1971 and 1980 was 18.1%, between 1981 and 1990 was 20.1%, between 1991 and 2000 was 23.4%, between 2001 and September 2008 was 17.4%. The share of the dwellings in the buildings constructed in the period of 1981-2008 (28 years) is more than 60% of all the dwellings. Regarding the building types of the dwellings according to the construction period, the percentages of the detached houses, of the tenement houses, and of the apartments constructed before 1950 were respectively, 92.8%, 4.2% and 2.6%. On the contrary, the percentage of the apartments construction has become higher since 1951, especially the share of the apartments constructed in the period of 2004-2008 was 50.8%.

1.4 Types of housing tenures

- Describe the various types of housing tenures.
    - Home ownership
        - How is the financing for the building of homes typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)
        - Restituted and privatized ownership in Eastern Europe
    - Intermediate tenures:
        - Are there intermediate forms of tenure classified between ownership and renting? e.g.
            - Condominiums (if existing: different regulatory types of condominiums)
            - Company law schemes: tenants buying shares of housing companies
            - Cooperatives
    - Rental tenures
        - Are rental tenures with and without a public task distinguished? If so, how are they called and what is their share in the housing stock?
        - How is the financing for the building of rental housing typically arranged?

(Please be brief here as the questionnaire returns to this question under 3)

- Home ownership

The principal type of housing tenure is home ownership in Japan. According to the Population Census in 2010, the number of households (excluding the dormitories, boarding houses, hospitals, schools, hotels, companies, factories, offices, etc.) was 51,055,000 and 31,594,000 were owner-occupied, that is, 61.9% of the whole dwellings.

The percentage of home ownership has hardly changed since 1990 and it has been around 60%. This fact is often explained as the result of aspiration for home-ownership in Japan, but it is also the reflection of the fact that there is no other choice but to buy houses if they want to have good quality dwellings for families.[7]

The average price for a custom-built house (cost for building and price of the land) was JPY 41,540,000, the one for a house or an apartment built-for-sale was JPY 38,070,000, and the one for a used house was JPY 21,360,000 in 2011.[8] The share of own equity in the total cost was 37.3% (custom-built), 28.7% (built-for-sale), and 41.1% (used) respectively. In other words the share of loan for each category was 62.7% (custom-built), 71.3% (built-for-sale), and 58.9% (used). The largest share of loan was private mortgage based loan for all the three categories of home ownership, 59.1% (custom-built), 67.2% (built-for-sale), and 52.9% (used), and the rest was a mixture of public loan, workplace loan, personal loan (family, relatives, friends), and others, which percentages are for each category 3,6% (custom-built), 4.1% (built-for-sale), and 5.7% (used).

- Intermediate tenures

There is no cooperatives in a strict European sense in Japan. However, there are 'cooperative houses' (Japanese English) which emerged around in the 1970s. But there are not so many cooperative houses and they are around 10.000.[9] A cooperative house is built by a group of people (a cooperative association) who are interested in building their own dwellings in a building, although there are cases of detached houses in a community. With coordinators, including an architect, future dwellers gather and discuss the design of the building, cost, location, etc., while each individual dweller can decide the layout of their own dwelling. The number of cooperative houses which are promoted by professional coordinating companies with ready-made-concepts has increased. The difference between European cooperatives and the Japanese cooperative houses is that each dwelling becomes not a rental apartment, but a property of the dweller in Japan. In this sense the Japanese cooperative house is a building cooperative and there is actually no difference from ownership of an apartment or a condominium. It is also similar to the ownership of an order-made apartment, although active participation in building it and its community atmosphere in the former are not comparable to the latter.

Another point worth mentioning may be 'time-shared housing' which recently emerged. Time-shared housing is a system to sell a right to use a dwelling or a room for a certain period in a year, either in a fixed period, in a period with a reservation, or in different periods with using points which are distributed to the users (the number of points is different in high and low seasons). Time-shared housing is used often as a second house or a villa in a resort area and it is equipped with furniture, electric apparatuses, and dishes. It will be cleaned up after use by the management company. A detached time-shared houses have been also build. One of this type of houses is owned

[7] Sato, 'Jutakuseisaku to Fudosan no Chintaishaku,' 301.
[8] Survey on the Housing Market Trend 2011 by MLIT. See <http://www.mlit.go.jp/report/press/house02_hh_000058.html>.
[9] There is no governmental statistics on the number of cooperative houses. See one website of the coordinator of cooperative houses <http://www.com-planning.co.jp/comstyle/about_cooperative.html>.

by 24 owners and each owner can have a right to use it 14 days in a year.[10] Although time-shared housing has not developed yet, this can be considered as an intermediate tenure in Japan.

It is important to note that condominiums are regarded as home ownership in Japan. Therefore, they are included in the number of the owned dwellings and there is no statistics on the specific number and percentage of the owned condominiums.

- Rental Tenures

Other than home ownership there are 5 categories recognized in the rental tenures in the Population Census in 2010. They are (1) rental dwellings owned by local government, (2) rental dwellings of the UR and of the Housing Supply Corporation (HSC), (3) private rental dwellings, (4) issued housing, (5) rental rooms.[11] Categories (1) and (2) can be recognized as rental tenures with public tasks.

(1) Rental dwellings owned by local government are the dwellings owned by prefectures or cities for the purpose of providing housing with a low rent for the low income tenants. The selection of the tenants is decided by drawing lots. The rent is determined according to the income classification of the tenant. There are specific types of housing suitable for the elderly, single parent families, the physically and mentally challenged, and family with more than 3 children.

(2) Rental dwellings in this category is the dwellings constructed and administered by the UR and by the HSC. The UR is an independent administrative agency of which purpose is to achieve urban renewal.[12] It manages around 770,000 rental properties in 2012.[13] One of its important tasks is promoting the revitalization of existing stocks of rental housing.[14] The merits of the housing offered by the UR are no Reikin (thanks money), no renewal fee, no joint surety, and no commission fee. The first three of them are unique to the Japanese rental housing custom (for the detailed explanation, see 1.5). However, there are several requirements regarding minimum amount of income, family structure, and so forth in order to apply for this housing.

The other corporation in the category (2), the HSC is a public corporation established by a local government, a prefecture or a city with population more than 500,000 based on the Local Housing Corporation Act (Act No. 124 of 1965). Managing rental housing is one of its tasks, which also include developing residential site, constructing and selling houses. The number of HSCs was used to be 57 (all 47 prefectures and 10 cities), but due to the decrease of their importance in the local

[10] Hidetaka Yoneyama, *Shohikoreika Jidai no Jutaku Shijo (Housing market in the era of aging society) (*Tokyo: Nihonkeizaishinbun Shuppansha, 2011), 88-92. See the governmental report on time-shared housing in 2008 <http://www.mlit.go.jp/common/000022776.pdf>.

[11] For the definitions of each tenure type, see <http://www.stat.go.jp/data/kokusei/2010/users-g/word3.htm>.

[12] An independent administrative agency is a legal body of a governmental organization established by a general law as well as a special law (Art. 2 (1) of the Act on General Rules for Independent Administrative Agency, Act No. 103 of 1999). Its purpose is to undertake the operational function of administrative activities by means of private sector managing method and its own discretion on operations and budgets, although the planning function remain left for the governmental ministries and agencies. See the website of Ministry of Internal Affairs and Communications for the definition of an independent administrative agency, <http://www.soumu.go.jp/main_sosiki/gyoukan/kanri/satei2_01_01.html>.

[13] See the pamphlet of UR, <http://www.ur-net.go.jp/profile/english/pdf/profile_en_all.pdf>.

[14] Concerning the goal and the task of the UR, see ibid.

government housing policies and due to several of their bankruptcies, the number is 42 (33 prefectures and 9 cities) in 2013.[15] The number of rental housing which the HSCs supply was 219,670 in 2012.[16]

Although each HSC has its own housing categories, there are 4 types of housing owned and managed by the HSCs according to the Association of the Japan HSCs. They are, (a) general rental housing, (b) specified excellent rental housing, (c) housing for the elderly, and (d) housing for the elderly with care services. (a) The general rental housing has the minimum income requirement (e.g. the monthly salary should be more than 4 times of the rent in case of the Osaka prefectural HSC) or otherwise some other financial requirements per household (saving, etc.). It requires one joint surety, too. If an applicant cannot find a joint surety, an affiliated surety company can become a guarantor.

(b) Specified excellent rental housing is for the family with intermediate income with the minimum and the maximum income levels. This type of housing has been constructed based on the Act on Promotion of Supply of Specified Excellent Rental Housing (Act No. 52 of 1993). This housing type is supplied with rent subsidy. In principle a single person is not admitted as a tenant, although there are some exceptional rental apartments.

(c) Housing for the elderly is the one for the people over 60 years old, which is suitable for the elderly and is designed as 'barrier free' and often with handrails, and other equipment. There is no requirement of minimum income level, but the rent subsidy would be supplied according to each tenant's income level. (d) The housing for the elderly with care services is the housing which is not only designed as barrier free but also provided with other services, such as 24 hours emergency service, medical stuff, help for housework, meal supplies, and etc. One rental housing supplied by the Tokyo Metropolitan HSC cooperating with a social welfare corporation, arranges its tenancy as a lifetime right of use for the elderly over 65 years old, from the life stage of self-support to care and attendance with death.[17] Therefore, the apartment building is divided into two parts, one with the elderly who can live on their own, and the other with the people who need care and medical treatment. The tenants can move from the former to the latter according to their life stage and its attached needs. It is a very luxury type of apartment and thus very expensive.[18]

Among the rental tenures, (3) and (4) and (5) are categorized as housing without public task. (3) Private rental housing is housing other than (1) (2) (4). (4) Issued housing means housing owned and administered by companies, governmental and municipal offices, organizations, etc. rented to meet their work needs or issued as a part of salary and wages. (5) Rental room means the case that one rents a part of the dwelling of all the kinds ((1),(2),(3),(4)) where another household lives.

Until recently rental housing has been typically owned by landlords for an effective use of their land. About 70 % of the rental housing owners are individual

[15] See the website of the Association of the Japan Housing Supply Corporations, <http://www.zenjyuren.or.jp/chihou/tabid/96/Default.aspx>.
[16] <http://www.zenjyuren.or.jp/chihou/business/tabid/102/Default.aspx>.
[17] <http://www.to-kousya.or.jp/asumi/asumitowa.html>.
[18] <http://www.to-kousya.or.jp/asumi/data/jyuyou_setumei.pdf>. A single tenant pays the lump sum payment of amount according to the policy for the lifetime right of use (the average for the ages 65-71 is over JPY 45,000,000 yen and around JPY 80,000 for the monthly use.

owners[19] and especially ordinary workers as landlords have to obtain a loan from a bank to build or buy a building for rent. There are two kinds of loan available, 'apartment loan' and 'housing loan.' The apartment loan is a loan for the purpose of rental housing, shops or offices other than one's own home and its interest rate is around 1%-5% in a year. The assessment by the bank is normally very strict and there are certain criteria to pass the test (the value of the object, yearly income, workplace, working term, assets, debt, age, other real estates, and etc.). The housing loan is a loan for the purchase of one's own house. Its interest rate is lower than the apartment loan up to 2%, a half or less than half of the interest rate of the apartment loan. However, this loan is only used for the rental housing attached to the own dwelling. This has a demerit that one cannot diversify the risk of earthquake or vacancy.[20]

Recently a new type of loan appeared in Japan, namely, 'non-recourse loan,' a loan which is secured by a pledge of collateral (that is, rent, the land and the building), but for which the borrower is not personally liable. If the borrower defaults, the lender can seize the collateral, but the lender's recovery is limited to the collateral. This loan does not require the owner of a rental housing to have other real property or a joint surety.[21] However, this type of loan came to end before it would spread in Japan. It might not have fit the Japanese financial practice, although it is a main type of loan in other foreign countries, for example, the United States.[22]

- What is the market share (% of stock) of each type of tenure and what can be said in general on the quality of housing provided?
  Please consider the following criteria: type of building (single family versus multifamily versus high-rise; plus definition); construction period; number of rooms, number of square metres or average number of rooms or average useful floor area per dwelling and per person; availability of bath/shower, hot running water and/or central heating, etc.)

  - For EU-countries, Housing Statistics in the European Union would be a possible source, although more updated data would be preferred, if available

- Which actors own these dwellings (private persons, profit or non-profit organizations, etc.)?

■ Characteristics and quality of housing according to the tenures

There are differences of the land size of the detached houses according to the tenure types. In the Housing and Land Survey (2008) the share of the owned houses

[19] Yoneyama, *Shohikoreika Jidai no Jutaku Shijo*, 66.
[20] Kazuhiko Kanai, *Zukai Fudosantoshi no Hajimekataga yokuwakaru Hon(Introduction to the Real Estate Investment)* (Tokyo: Shuwashisutemu, 2012), 26, 186.
[21] Yoneyama, *Shohikoreika Jidai no Jutaku Shijo*, 67.
[22] Kanai, *Zukai Fudosantoshi*, 120. For the historical development of the recourse loan in Japan, see Masanori Shibuya, 'Why the Japanese loan did not become non-recourse?', *Nikkei Business*, 22 January 2009, <http://business.nikkeibp.co.jp/article/tech/20090120/183217/?P=2>.

with the land size more than 200 m² was 50.6% of all the detached houses, while the share of the rented houses with the land size less than 100 m² was 52.0%. The average land size of the owned houses was 286 m², twice as large as the average of the rented houses, 134 m². Among all the rental housing tenures, the average size of the issued houses owned by employers was generous as 215 m², while the average size of the rental houses owned by local government was 124 m², that of private rental houses was 129 m², and that of the rental houses owned by the UR or HSC was especially poor, 50 m².

Quality of housing can be assumed by looking at the facilities. Regarding a kitchen 96.7% of all the dwellings have a kitchen exclusively used by the occupying household. The percentage of the dwellings with flush toilets was 90.7%, and 2.3 points increased from 88.4% in 2003. The share of the dwellings with western-style toilets (different from the Japanese-style squat toilets) was 89.6%, and 3.7 points increased from the percentage of 85.9% in 2003. Ninety-three point two percent of the owned dwellings and 91.2% of the rental dwellings had western-style toilets. Within the rental dwelling types, 99.1% of the UR and HSC dwellings, 96.6% of non-wooden private rental dwellings, 93.1% of the issued housing, 90.6% of the rental dwellings owned by local government had western-style toilets, while the percentage of the western-style toilets in the wooden private rental dwellings was 78.0%, which was distinctively lower than the other tenures.

Concerning a bathroom, the percentage of the dwellings with bathrooms was 95.5%. According to tenure types, 99.3% of the owned dwellings, 97.2% of the rental dwellings had bathrooms. Within the rental dwelling types, 99.6% of the UR and the HSC dwellings, 98.8% of the non-wooden private rental dwellings, 98.0% of the issued housing, 97.5% of the rental housing owned by local government had bathrooms, while the wooden private rental dwellings had again the lower percentage, 92.9%.

Traditionally a bathroom (to take a bath or a shower), a toilet, and a lavatory are separate in Japan. A lavatory is the place with an equipment which supplies water exclusively for washing the face and hands. Eighty-nine point five percent of all the dwellings had lavatories, and 1.4 points increased from the last survey in 2003, 88.1%. According to the tenure classifications, 96% of the owned dwellings and 85% of the rental dwellings had lavatories. Among the rental dwelling types, 97% of the UR and HSC dwellings, 92% of the issued housing, 90% of the rental dwellings owned by local government, 89% of the non-wooden private rental dwellings have lavatories. Here the lowest lavatory retention rate was 82% of the wooden private rental dwellings.[23]

The scale of a dwelling is also useful to measure the quality of housing. Dwelling rooms include living rooms, bedrooms, drawing rooms, studies and dining rooms and so forth. However, entrance halls, kitchens, kitchenettes, toilet rooms, corridor, earth floors as well as shops, offices and other rooms used for business purposes are not counted as dwelling rooms in the Survey. Other than that, people in Japan use the number of Tatami units to measure the scale of the dwelling. A Tatami unit is a Japanese floor mat made of straw, in a rectangular shape and measures around 90 cm by 180 cm. There are different types of Tatami mats but two Tatami units are equivalent to 3.3 m².

In average, the number of dwelling rooms per dwelling was 4.65, Tatami units were 32.55, and the total size was 92.49 m². Compared to the data in 2003, 0.08 rooms

[23] Hot running water is the standard in the Japanese housing. And central heating is not in common in Japan except in the northern part of Japan such as Hokkaido.

were reduced, 0.19 Tatami units increased, and 0.22 m² increased in the total size. In comparison between the owned dwellings and the rental dwellings, the average numbers of the dwelling rooms were respectively 5.79 and 2.75, Tatami units were 41.40 and 17.85, and the total size were 120.89 m² and 45.93 m². Within the rental dwelling categories, the numbers of dwelling rooms were 3.41 in dwellings owned by local government, 3.10 in dwellings owned by the UR and HSC, 3.05 in wooden private rental dwellings, 2.38 in non-wooden private rental dwellings, and 2.96 in the issued housing. The number of Tatami units for the same 5 categories were, 19.82 (dwellings owned by local government), 18.87 (dwellings owned by the UR and the HSC), 19.48 (wooden private rental dwellings), 16.22 (non-wooden private rental dwellings), and 19.92 (issued housing). And the total size of dwelling in each category were respectively, 51.42 m², 49.52 m², 52.31 m², 40.39 m², and 51.64 m².

1.5 Other general aspects

- Are there lobby groups or umbrella groups active in any of the tenure types? If so, what are they called, how many members, etc.?
- What is the number (and percentage) of vacant dwellings?
- Are there important black market or otherwise irregular phenomena and practices on the housing market (especially the rental market)?

■ Lobby groups

There is no lobby groups in the sense which is common in the US or in Europe.[24] However, there are pressure groups, for example, the Japan Federation of Housing Organizations (JFHO), which is an industrial association of large house-builders.[25] JFHO presents their policy recommendations.

■ Vacant dwellings: see 1.3.

■ Black market

No materials on the housing black market is found in Japan.

■ Special features in Japan

▪ **A requirement of a joint surety or a guarantor**

The Japanese tenancy law is characterized as tenant-protective. Once a landlord has a tenant, the landlord cannot terminate the contract so easily, even though the tenant does not pay the rent or acts improperly. This means that there is always a

[24] General information on the Japanese lobbying of interest groups, see Hidehiro Yamamoto, 'Riekidantai no Lobbying' in *Gendaishakaishudan no Seijikino*, ed. Y. Tsujinaka (Tokyo: Bokutakusha, 2010), 215. For a picture of the Japanese civil society, see in general, Robert Pekkanen, *Japan's Dual Civil Society: Members Without Advocates* (Stanford: Stanford University Press, 2006).

[25] Eiji Oizumi, 'Transformations in Housing Construction and Finance', in *Housing and Social Transition in Japan*, ed. Y. Hirayama & R. Ronald (London: Routledge, 2007), 66.

significant risk at the selection of a tenant. On this account a landlord tries to reduce this risk by requiring a joint surety or a guarantor for the conclusion of a rental contract.

At the conclusion of a rental contract the seal of either a guarantor or a joint surety is required, but in most of the cases a joint surety is preferred by the landlord. Since a guarantor's liability is ancillary under the Japanese Civil Code (No. 89 of 1896; hereinafter referred to as CC), the creditor should attempt to demand performance of the principal first before the creditor goes to the guarantor (Art. 452 of CC) and the creditor must execute on the property of the principal, if the guarantor has proved that the principal has the financial resource to pay his/her obligation and that the execution would be easily performed (Art. 453 of CC). On the other hand, a surety's liability is joint and primary with the principal (Art. 454 of CC), and therefore, the creditor can collect the debt directly from the joint surety independently of the principal. In other words, the landlord can collect unpaid rent from the joint surety without any trouble to attempt to collect money from the tenant, and thus, the risk mitigation with a joint surety is more certain than the case with a guarantor.

Theoretically a joint surety can be anybody with a capacity to act who has sufficient financial resources to pay the obligation (Art. 450 (1) of CC). However, it is common that a landlord requires a relative within the third degree of relationship for a joint surety, because landlords believes that blood relationship makes the payment and performance of other obligations more certain. In praxis the first choice for a joint surety would be a parent, though this parent must have enough financial resources.

In light of above mentioned praxis in the rental market, it is very difficult for certain groups of people to find a joint surety or a guarantor because of age, alien status, specific circumstances arising from the family relationships, and so forth. However, as a recent development in rental praxis, a new system of using a surety company has appeared. But this system does not help those people completely, because they have to pay for such a service as long as they dwell in that apartment and often they cannot afford that cost.

There are also number of support systems undertaken by local governments and other organizations. For instance, the Foundation for Senior Citizen's Housing becomes a joint surety to guarantee unpaid rent maximum 12 months and recovery fee, in total for 2 years (renewal is possible) in a rental contract between a tenant and a landlord who agreed not to avoid the elderly, the handicapped, households with small children, foreigners, households who were evacuated due to the loss of job.[26] Certain number of local governments have also support systems to let a surety company to become a joint surety in a rental contract between a local citizen and a landlord, based on an agreement between that local government and the surety company. In some cases the local government supports a part of the surety fee, or the local government itself becomes a guarantor for an elderly household[27] (hereinafter the word 'guarantor' is mainly used because it has a broader sense including 'joint surety' in general usage, unless the difference between the two is significant).

[26] <http://www.koujuuzai.or.jp/html/page02_02.html>.

[27] For the former case, see Chofu city in Tokyo, <http://www.city.chofu.tokyo.jp/www/contents/1176118905485/index_p.html>; for the latter, see Kokubunji city in Tokyo, <http://www.city.kokubunji.tokyo.jp/kourei/5921/005604.html>.

- **Peculiar monetary customs for a rental contract**

There are several peculiar customs in the rental market in Japan, that is, Shikikin (security deposit), Reikin (thanks money)/Kenrikin (premium), and renewal fee. At the conclusion of a rental contract Shikikin is often paid by the tenant. Under the name 'deposit', normally the rest of the deposit should be returned to the tenant at the termination of the contract after the necessary cost has been deducted. However, there is a custom of 'special agreement of non-refund (Shikibiki)' by which the landlord keeps some amount or some percentage of the deposit. Recently many cases regarding 'special agreement of non-refund' have been brought to the court and there have been decisions by the lower courts which found it void in light of Art. 10 of the Consumer Contract Act (Act No. 61 of 2000; hereinafter referred to as CCA). However, the Supreme Court found it valid, unless the amount is too high and there are some significant concerns.[28]

Renewal fee is the fee which is paid at the time of renewal of the contract. This fee will not be returned at the end of the contract and it is written in the contract. Its characteristics are said to be, price for the landlord's waiver of the right of renewal, price for continuing the contract, prepayment/part of the rent. The opinions of the lower courts were divided, but the Supreme Court found it valid (renewal fee was 2 months' rent and the renewed period was 1 year), unless there are some significant concerns, such as that the fee is too high.[29]

Reikin (thanks money), which is also called Kenrikin (money for right to rent the object), is the money paid by the tenant at the conclusion of a tenancy contract. This money will not be refund at the termination of the contract. Characteristics of this money are controversial, such as, gratitude to the landlord, prepayment of the rent, compensation for the vacancy after moving out, or cost for restoration. It is clarified in the contract that Reikin/Kenrikin will not be refund at the end of the contract. There are several cases on this issue, but the lower courts interpreted it as similar to renewal fee and found it not invalid under Art. 10 of the Consumer Contract Act. [30]

Moreover, a management fee (Kanrihi) is normally required to pay monthly in addition to the rent. It is a fee to manage the common area, such as, corridor, stairs, elevator, entrance, etc.

Since those above mentioned fees are not clear to the tenants, the Japan Association of Rental Housing Management made the Table of the Standard Rent which includes management fee, Reikin, Shikibiki, renewal fee, etc.[31]

- **Registered seal and official certificate of the seal impression**

[28] Supreme Court Decision on March 24, 2011, *Minshu*, vol.65, no.2, 903; Supreme Court Decision on July 12, 2011, *Hanreitaimuzu* no.1356, 81.
[29] Supreme Court Decision on July 15, 2011, *Minshu* vol.65, no.5, 2269.
[30] Atsushi Sonobe, *Wakariyasui Shikikinto Henkanfunsokaiketsu no Tebiki*, 2d ed. (Tokyo: Minjihokenkyukai, 2012), 51. About the influence of the Consumer Contract Act on Shikibiki, renewal fee, etc., see Mihoko Sumida, 'Chinshakunin no Shiruetto: Shohishaho no Shiza kara,' in *Fudosanchintaishaku no Kadai to Tenbo (Problems and prospects of the renting immovable properties)* ed. H. Matsuo & A. Yamanome (Tokyo: Shojihomu, 2012), 157.
[31] <http://www.jpm.jp/sta/>.

It is a tradition in Japan that one uses his/her seal in a contract or official documents in addition to the signature. This custom has become formalistic and therefore one can by a seal of his/her last name easily in an ordinary shop. That is why it is required to use the registered seal with an official certificate of the seal impression at the conclusion of a contract or some important legal act in order to avoid fraud.

- People in need

By looking at who has difficulties with regard to housing and how those problems are, one can understand failures of the housing system as well as the problems of society as a whole. The elderly, the physically/mentally handicapped, foreigners and immigrants, households with small children are acknowledged as categories of the people in need.[32] One survey conducted by the Japan Property Management Association showed negative consciousness/attitude of the landlord toward people in such categories as their tenants, that is, 60% of the landlords toward the elderly, 50% toward the handicapped, 70% toward foreigners, and 20% toward families with children.[33] And a recent phenomenon 'housing loan refugees' as a result of the economic crisis may be included in the people in need. Day laborers and homeless have also problems. Except households with small children, the other categories will be discussed below: the handicapped and foreigners/immigrants in this section, the elderly in this section and in 2.1, housing loan refugees in 2.5, and day laborers and homeless in 2.6.

- **The elderly**

Japan has a serious problem of societal aging. Other than the problems of the size of household with the elderly and their demand of suitable rental housing (see 2.1), a specific trouble for landlords related to the elderly tenants is, the risk of 'solitary death (koritsu-shi, kodoku-shi),' dying alone without being known and therefore being left for a considerate period.

The White Paper on Aging Society showed the numbers of solitary death of the elderly.[34] Although they are not the direct numbers of the 'solitary death,' according to the Tokyo Medical Examiner's Office, the yearly numbers of the elderly who lived alone and died at their home in the Tokyo's 23 wards were used to be less than 2000 until 2006, but they were 2,361 in 2007, 2,211 in 2008, and 2,194 in 2009. There are other statistics about the numbers of the people who died without being taken care of in the apartments managed by the UR in 2009 (excluding suicide and murder cases).[35] Within 760,000 rental dwellings, 665 people died alone in total, and within 665, 472 people were 65 or older. The total number of dying alone in 2009 was 3 times larger, the number of the elderly was 4 times larger than the ones in 2000. Although not all the cases above are solitary death cases, it is assumed that many solitary death cases are also included.

[32] See the website of the Housing and Community Foundation which supports those who have difficulties to rent private apartments, <http://www.hc-zaidan.or.jp/anshin/guide/haikei.html>.
[33] This is cited in the governmental document by the MLIT, see <http://www.mlit.go.jp/yosan/yosanH24/gaisan/nihonsaisei/24113.pdf>.
[34] Cabinet Office, *Koreishakai Hakusho* (*White Paper on Aging Society) 2011*, 69.
[35] Ibid.

In case of solitary death, there are special troubles in addition to the general troubles to deal with a solitary person's death (such as, necessity to report to the city government, disposition of the things in the room, arrangement of a funeral, etc.). Special difficulties caused by solitary death are, namely, bad sanitary conditions, offensive smell, damages to the dwelling due to the long left dead bodies, and moreover, psychological negative influence, like aversion or reluctance toward the said dwellings in potential tenants' feelings. Therefore, solitary death functions similarly as other incidents, like suicide and murder, which make apartments become 'accident articles (jiko bukken)' (see 6.5 Disruptions of performance). The values of those accident apartments will become enormously lower, and therefore, they cannot be rented for a normal rent or would be vacant for a long time. A typical example of this kind of defect and its consequent decrease of value is shown by the 'special offer of the dwelling' made by the UR. The accidental object, 'where former tenants died in the dwelling' is rented for a half of the normal price for a certain period time, normally one year.[36]

In Japan the demand of rental housing for the households with the elderly, especially for the small size of the elderly households is expected to become bigger, while the Japanese rental custom would prevent the private landlords from meeting this demand (see 2.1). That is why many of the governmental countermeasures contain the use of public housing, or the use of private housing for the public purpose. The problems of the housing for the elderly (including reluctance of landlords to choose the elderly as their tenants) have long been recognized by the government and other private organizations. There are a number of public and private housing assisting programs for the elderly (see 3.3).

Necessary support types can be, finding an apartment, negotiation with the landlord, securing a joint surety or introducing a surety company, assistance at the governmental procedure and at signing a contract, and help at moving. After the elderly tenant's moving into, management of money, watching by calling and visiting, consultant, housework assistance, help in case of declining health, disposition of personal goods in case of hospitalization are also considerable supports. In case of death, report to the city office, informing the family and relatives, and an arrangement of a funeral may also be necessary.

A possible strategy to solve the problem with the elderly tenants is a coordination of various supporting bodies and organizations (e.g. real estate agencies, welfare organizations, and communal organizations) in order to optimize the support using a range of experiences and know-hows, as well as to develop a foundation to accept the elderly tenants in the private rental market. The role of the government is also expected.

- **The handicapped**

According to the statistics of the Ministry of Health, Labor and Welfare, the total number of physically handicapped in 2006 was 3,663,000, within this number, those who were at home were 3,576,000 and those who were placed in institutions were 87,000. More than 97% of the physically handicapped were at home. The intellectually retarded people in 2005 were 547,000, and among them, those who were at home were 419,000

[36] See the website of the UR, < http://www.ur-net.go.jp/kanto/tokubetsu/>.

and those who were in group homes[37] were 128,000. The mentally handicapped were 3,233,000 in 2008 based on the number of people who visited medical center, although they may include the people who were temporary mentally ill, but have no serious problems in daily life. Among them 2,900,000 were outpatients and 333,000 were hospitalized.[38]

Aging process is also seen among the handicapped people, especially in the physically handicapped and the mentally handicapped. Among 3,576,000 physically handicapped people at home, 2.6% (93,000) was under 18 years old, 34.6% (1,237,000) was aged from 18 to 64, 61.8% (2,211,000) was aged 65 or older and 49.6% (1,175,000) was aged 70 or older. The transition of the share of the people aged 65 or older increased rapidly. In 1970 it was around 30%, but in 2006 it reached 60%. The ratio of the physically handicapped aged 65-69 in 1000 persons in the population in 2006 was 58.3 persons, while aged 70 or older was 94.9 persons. Since the ratio of the physically handicapped is higher in older age, it is assumed that the number of physically handicapped will become larger, as the society is aging.[39] As for 2,901,000 mentally handicapped who were outpatients, 6.1% (173,000) was aged under 20, 62.3% (1,808,000) was aged 20-64, and 31.5% (915,000) was aged 65 or older. Within 6 years from 2002 to 2008, the percentage of those who were mentally handicapped and aged 65 or older increased from 27.2% to 31.5%.[40]

As for the housing situation of the handicapped aged 18 or older, 81.7% of the physically handicapped dwelled at home owned either by themselves (51.7%) or by the family (30.6%) in 2006.[41] The percentages of rental housing were relatively small (6.4% for private rental housing, 7.6% for public rental housing). Eighty-two percent of the intellectually retarded people dwelled at family home, but 8.9% lived in group homes with support for the retarded people in 2007. In 2003, 76.8% of the mentally handicapped people lived with their family, 17.9% lived alone and 3% lived in group homes with assistance. Although most of the handicapped people live at home with their family, more of them may live in share-houses (to share one apartment with other people) or rental housing in the future. Especially an increase of the intellectually retarded and the mentally handicapped is expected in the future, as the governmental policy to move the handicapped from the institutions to the local communities.[42]

According to the report on the assistance for the tenants of private housing published by the General Incorporated Foundation, Housing and Community Fund,[43] there are various difficulties according to the type of handicap. The handicapped who need wheelchairs find few apartments which are designed or can be reformed suitable for them. Even though they have found suitable apartments, it would be difficult to reach a monetary agreement on rent or reform cost, since many of them are low income

[37] A kind of institution with housing where the intellectually handicapped live together with professional support.
[38] Cabinet Office, *Shogaisha Hakusho (White Paper on the Handicapped) 2012*, 19.
[39] Ibid, 20.
[40] Ibid, 22. The same trend is not seen in the intellectually retarded people, because the symptoms appear in the early stage of the life and are not correlated to aging. That is why it is not much influenced by aging population. Ibid, 21.
[41] Ibid, 26.
[42] See the homepage of the Ministry of Health, Labor, and Welfare for the explanation of this policy, <http://www.mhlw.go.jp/seisaku/2009/11/04.html>.
[43] <http://www.hc-zaidan.or.jp/anshin/guide/taishosha.html>; <http://www.hc-zaidan.or.jp/publish/study_shien.html>.

households. The hearing impaired, the speech impaired, and the visually impaired have anxieties about communication possibilities at moving into and thereafter. As common difficulties for all the handicap types are, landlords' lack of understanding of handicaps, limited choice of affordable rental dwellings, and anxieties about fleeing at emergency.[44]

The above said report on the assistance for tenants of private housing refers to possible assistance for the handicapped. As for the types of assistance applying to all the categories of handicap are: providing information on the landlords who are willing to take the handicapped as tenants or to permit a reform of an apartment; looking for an apartment; negotiation with the landlords about the reform plan and its cost; attendance at the conclusion of a tenant contract; securing a joint surety or introducing a surety company; and support of moving before moving into an apartment. After moving in, continuous assistance is also necessary, such as, consultant, watching (calling, visiting, sending emails to check how the condition is), and dealing with troubles. Some specific support for the physically handicapped includes to obtain professional advice of an architect or a welfare housing coordinator in order to make a reform plan suitable for the specific type of handicap, since the handicapped often do not know themselves what they would need to live alone because of lack of experience. They are, for example, setting up a flash bell which functions as an alarm for the hearing/speech/ visual impaired in case of fire. Those people need a translator or an assistance of communication, such as the one with a sign language. For the intellectually retarded or the mentally handicapped who have had no experience to live alone, a trial stay over night is effective to take an gradual step for independence.

There are many problems which have not been solved yet. Regarding the physically handicapped, there are a limited number of estate agents which are friendly for wheelchairs. At the end of the rental contract, restoration is necessary, especially in case of a reform in a dwelling. A tenant need a place to store the equipment (doors, bathroom's instruments, etc.) until she/he restore the dwelling. Also restoration obligation itself should be relieved in some cases, in which the value of the dwelling increased by the reform, such as, conversion a tatami-mat Japanese room to a wooden floor room, or installment of a shower toilet. The retarded have difficulties to become independent due to the objection of their family. The governmental assistant system enabling them to rent private dwellings is not well established. Concerning as to the mentally handicapped, they are often faced with rejection, ‘tenancy discrimination.’ There must be some type of anti-discrimination ordinance which recognizes this case as infringement of right. It would be ideal for the above mentioned two types of the mentally impaired, if they can live with care and support. Therefore, the realization of the network of medical, welfare, communal support systems is necessary.[45]

- **Foreigners and Immigrants**

Foreigners who entered Japan (including those who re-entered Japan with re-entry permission) in 2011 were 7,135,407, within those, newly arrivals were 5,448,019. Compared to the previous year of 2010, the total number decreased by 2,308,289 (-

[44] <http://hc-zaidan.or.jp/anshin/guide/file/shintai.pdf>.

[45] See three reports on the assistance for the handicapped tenants by the Housing and Community Fund, <http://hc-zaidan.or.jp/anshin/guide/file/seishin.pdf>; <http://hc-zaidan.or.jp/anshin/guide/file/chiteki.pdf>; < http://hc-zaidan.or.jp/anshin/guide/file/shintai.pdf>.

24.4%) and the number of newly arrivals decreased by 2,471,707 (-31.2%). This decrease may be due to the Great East Japan Earthquake on March 11, 2011 and the subsequent disaster at the Fukushima Daiichi Nuclear Power.[46]

In 2011 the largest number of foreigners came from the Republic of Korea, 1,919,876, that is, 26.9% of the total number of foreign nationals coming to Japan. Korea was followed by China, Taiwan (recognized as China), the US, Hong Kong (recognized as China), and the Philippines. Sixty-one point one percent of the total number of foreigners who entered Japan in 2011 came from Japan's three neighboring countries or regions, namely, Korea, China, and Taiwan (China).[47]

Regarding foreign residents in Japan, the number of registered foreigners may show the aliens who stay in Japan for a relatively long period of time for such purposes as employment, study or cohabitation and those who have gotten settled in the local community, since the number of registered foreigners with the status of residence of 'Temporary Visitor' is small. The registered number of foreign nationals with the status of residence of 'Temporary Visitor' was only 1.2% of the total number of registered foreigners as of the end of 2011.[48] The number of registered foreigners as of the end of 2011 was 2,078,508, decreased 55,643 (2.6%) compared to the end of 2010. However, it has increased by about 1.2 times compared to the end of 2001 and continued to increase in the long term. The percentage of registered foreigners in the total population of Japan was 1.63% as of the end of 2011. The ratio decreased by a basis point 0.04% from 1.67% at the end of 2010.[49] The largest share of the foreigners residing in Japan used to be 'Special Permanent Residents'[50] until 2006 and especially from the time right after the WWII until 1955 it occupied around 90%. However, the number of 'Special Permanent Residents' has declined and the number of foreigners with various purposes, has been increasing, such as, foreigners of the Japanese descent from South America, so-called 'newcomers' whose status is 'Long-term Resident'.[51] With this residential status one can work without any limit. In line with this tendency, those with the status of

[46] JAPAN Immigration Bureau of the, Ministry of Justice, *2012 Immigration Control*, <http://www.moj.go.jp/content/000105779.pdf> (English), 5.
cf. For the whole report, see <http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri06_00025.html>.
[47] Ibid. 3.
[48] Ibid. 22.
[49] Ibid. According to the Act to Amend the Immigration Control Act (2009), the Alien Registration Act forming the basis of the alien registration system was abolished and a new residency management system was introduced in July 2012. Under this system information on foreign nationals residing in Japan for a mid to long term will be precisely kept and will be reflected in the Basic Resident Registration for Foreign Nationals in municipalities, which will be newly established in accordance with the Act for Partial Amendment of the Residential Basic Book Act. This new system is explained in 26 languages in the website of the Ministry of Justice. See <http://www.immi-moj.go.jp/newimmiact_1/index.html>.
[50] Foreigners with the status of "Special Permanent Resident" (Article 5 of the Special Law on Immigration Control of Inter Alias) are those who had been Japanese nationals in the Japanese colonies in China and Korea and who lost Japanese nationality on the basis of the "Peace Treaty with Japan" (Treaty No. 5 of 1952) on April 28, 1952. *2012 Immigration Control*, 31.
[51] There are many Japanese immigrants in the South America, the north America, Australia, etc. and those people in the South America who come to Japan to work and stay are mainly called 'newcomers.' c.f. The website of the Association of Nikkei and Japanese Abroad, <http://www.jadesas.or.jp/en/aboutnikkei/index.html>. Due to the amendment of the Immigration Control and Refugee Recognition Act in 1989, the status of 'Long-term Resident' was established and since then foreigners with Japanese descent up to the third generation have been allowed to work in Japan. This amendment was undertaken at the time of the bubble economy in Japan.

'Permanent Resident'[52] (excluding Special Permanent Resident) were the largest group as of the end of 2011, that is, 598,440, accounting for 28.8% of the total number of the registered foreigners. This was an increase of 33,351 (5.9%) from the end of 2010.

As for the immigrants and immigration, Japan has been reluctant to accept immigrants. According to the OECD, the percentage the immigrants in the total population in 2010 was 1.7% and it is one of the lowest in the OECD countries and the Russian Federation.[53] Although the official policy of Japan is to deny unskilled workers, many foreign residents (mostly from South America, e.g. Brazil) of Japanese descent ('new comers') are working as unskilled workers in the factories of the automobile industry, the electronic industry, or bento (lunch box) factories and industrial waste disposal factories.[54] Local governments of the cities where many of those new comers live initiated 'the Conference of the Cities with Foreign Residents' for the purpose of integration of foreign residents.[55] The national government started the measures, such as, the "Basic Policy on Measures for Foreign Residents of Japanese Decent" in 2010, which was followed by the Action Plan in March 2011.[56] However, the impact of the economic crises was seen in 2009. In 2008, 312,582 Brazilians and 59,723 Peruvians were registered, but in 2009 the numbers were 267,456 (-14,4%) and 57,464 (-3.8%) respectively.[57] Since many of them had worked as non-skilled workers at the factories of manufacturing industries where the impact of the crisis was great, they lost their jobs and had to leave Japan.

Regarding the housing situation of foreigners, especially foreign students, there are data on international students in Japan. According to the Japan Student Service Organization (JASSO),[58] there were 138,075 international students in 2011. Among them 109,735 persons (79.5%) lived in private housing and the rest, 28,340 persons (20.5%) lived in the accommodation for international students, such as, students residents set up by the universities.[59] While international students normally less problems to find their rental dwellings thanks to the support by the universities, workers and foreigners whose spouses/family are Japanese, etc., have difficulties to conclude rental contracts, because landlords are not willing to have foreigners as tenants and not every estate agent can communicate foreign customers in English.[60] Lack of understanding of the rules for renting apartments and every day custom (e.g. how and when to bring a garbage to the garbage spot) is also a cause of these difficulties. In

[52] This status is given to foreign residents who have stayed in Japan more than 10 years and meet some other conditions. Immigration Control and Refugee Recognition Act, Art. 22 and 22-2 (Cabinet Order No. 319 of 1951). For the guidelines for permission for permanent residence, see <http://www.moj.go.jp/content/000099622.pdf> (English).

[53] <http://www.oecd.org/els/mig/keystat.htm>.

[54] Yasuyuki Kitawaki, 'Nihon no Gaikokujin Seisaku,' in *Multilingual Multicultural Society: Research and Practice* 1 (2008): 14.

[55] <http://www.shujutoshi.jp/index.html>.

[56] Cabinet Office, <http://www8.cao.go.jp/teiju-portal/eng/>. See, the country note on Japan in *The International Migration Outlook 2012* (OECD), <http://www.oecd.org/els/mig/IMO%202012_Country%20note%20Japan.pdf>.

[57] Cabinet Office, Basic Policy on Measures for Foreign Residents of Japanese Decent (Cabinet Office, 2010).

[58] <http://www.jasso.go.jp/study_j/sgtj_e.html>.

[59] <http://www.jasso.go.jp/study_j/documents/sgtj2012chap04_e.pdf>.

[60] Housing for many of foreign residents of Japanese descent was offered by the business operators who dispatched foreign workers to the factories. Cabinet Office, Basic Policy on Measures for Foreign Residents of Japanese Descent.

particular, some specific customs in the rental housing market is a big obstacle for foreigners, such as, requirement of a guarantor for the conclusion of a rental contract, the initial cost of a deposit (Shikikin) or Reikin (thanks money) mentioned in 1.5.

These difficulties for foreigners in the rental housing market have been acknowledged by the government and other organizations. The government started the Trusted Renting Support Business for the people who have problems at renting private housing (the elderly, foreigners, the handicapped, and families with small children) and issued a guideline on smoothing of foreigners' renting apartments (however, it was abolished; see 3.3)[61] In addition, 'Apartment Search Guidebook' is also available in the five languages.[62]

Summary table 1 Tenure structure in Japan, in 2010 (the Population Census)

(1000 units)

Home ownership	Renting					Total
31,594	19,460					51,055
	Renting with a public task		Renting without a public task			
	Rental housing owned by local government	Rental housing owned by the UR and HSC	Private rental housing	Rental housing owned and magaged by employers	Rental rooms	
	2,153	917	14,371	1,442	577	
61.9	4.2	1.8	28.1	2.8	1.1	100%

The assumption is that the overall tenure structure is based on the stock of non-vacant principal dwellings. If this is not the case in your country, please specify what type of accommodation the numbers include (think of holiday dwellings, second homes, collective homes, hotels, caravans, ships, vacant dwellings, non-permanent habitation). Moreover, please mention if the numbers are not based on dwelling stock, but on households.

2 Economic urban and social factors

2.1 Current situation of the housing market

[61] Examples of documents such as an application are available in the internet site in English, Chinese, Korean, Spanish and Portuguese. MLIT, <http://www.mlit.go.jp/jutakukentiku/house/jutakukentiku_house_tk3_000017.html>.

[62] Ibid.

- What is the current situation of the housing market? Is the supply of housing sufficient/ insufficient and where is this the case (possibly in terms of areas of scarcity of dwellings in growth areas versus shrinkage areas)? What have been the effects of the current crisis since 2007?
- How is the demand for housing expected to develop? What is the expectation about the growth and decline in number of households in the future in a scenario of average economic development? Is there a year forecasted where growth in number of households will stabilize or will start declining?
- What is the number/percentage of families/households depending on rental housing (vs. owner-occupancy and other forms of tenure)? What is the number/percentage of immigrants among them?

■ Home ownership

As described shortly in 1.2, Japan had to meet the demand for housing after the World War II. The way how the government pursued this political goal was encouraging the home ownership rather than building public housing. During the high-speed economic growth in the 1950s and 1960s, the demand for housing became larger, because of the population inflow into the urban areas and socio-cultural change of the family style, that is, from the extended family to the nuclear family. The mass construction of housing based on encouraged home ownership met this demand and it was one of the main drive-forces in the Japanese economy.[63] This explains also the characteristic of the Japan's 'scrap and build,' the short cycle of construction and demolition of housing.[64] Combined with the governmental mainstreaming of the home ownership[65] and the constant economic growth, the prices of land and housing rose rapidly and the ownership of home and land gave owners considerable capital gains.[66] This was also one of the factors which stabilized home ownership as the main housing tenure in Japan.

However, Japan experienced the bubble economy and its collapse. The bubble economy started with an extreme rise in land and housing prices in the latter half of 1980s and it collapsed at the beginning of 1990s. At the time of bubble burst the owner-occupied housing suffered from its capital loss. The stability and credibility of the housing market were shook at the same time. From the 1990s to the early 2000s, Japan experienced the worst economic recession after the Word War II and the 1990s is called

[63] Yosuke Hirayama, *Jutakuseisaku no Dokoga Mondaika (What are the problems of the housing policy)* (Tokyo: Kobunsha, 2009), 33.
[64] The average age of the Japanese housing is only 30 years. Yoneyama, *Shohikoreika Jidai no Jutaku Shijo*, 20.
[65] Hirayama names this aspiration and its system regarding housing, 'housing ladder,' in which people (try to) move from a rental dwelling to an owner-occupied dwelling, and from a condominium to a single-family home. The top of the housing ladder, namely, a single-family home with garden. Yosuke Hirayama, 'Reshaping the Housing System: Home Ownership as a catalyst for Social Transformation,' in *Housing and Social Transition in Japan*, ed. Y. Hirayama & R. Ronald (London: Routledge, 2007), 18.
[66] Ibid.

'lost decade.'[67] The government, however, continued to encourage housing construction and home ownership to stimulate the economy after the bubble economy, by expansion of the supply of mortgages, improvement of lending conditions of the GHLC, and generous income tax deduction for home obtainment in the 1990s.[68] Since the middle of 1990s, however, the government turned its policy to the neoliberal direction, including housing, such as, reducing the role of the government and deregulating the private mortgage. According to this policy direction, the GHLC (a public institution) which had offered housing loan with a low interest rate, was abolished and the private lending institutions replace in the housing loan market.

The economic crisis after the Bankruptcy of the Lehman Brothers in 2008 influenced the housing market, too, although this influence was not the direct one, but the one through the general impact on the Japanese economy, like a sudden decline of the price of shares, a steep rise in the exchange rate of yen, and an economic downturn. Therefore, the Japanese experience was not in line with the global trend of the housing market. Since Japan suffered from the economic depression after the bubble burst, Japan experienced the housing deflation during the 1990s, which did not fit the global trend of the housing inflation. The subprime mortgage problem in the USA had a great impact on the Japanese financial sector, but it was relatively weak compared to other countries. One of the reasons was the delay in the liberalization of the financial market and therefore the mortgage market was still conservative at that time. The interest rate for housing loan by the private institution was not liberated until 1994. Securitization of housing loan began in the end of 1990s. The private mortgage market expanded due to the abolition of the GHLC, and its successor, the Housing Finance Agency (HFA) has been supporting securitization of housing loan. In other words, the HFA treats the secondary market of mortgage securities. However, the scale of the mortgage market is still small in comparison with other Anglo Saxon countries. In short, the conservative mortgage market due to the delay of liberalization worked as a defense against the subprime mortgage problems in Japan.[69]

Due to the economic crisis as well as Japan's serious problems of societal aging, new housing construction declined drastically in 2009, that is, 25.4% decrease from the previous year and the total number was 780,000.[70] However, recently the number has increased from 2010 until 2012. In 2012 the total number of the newly constructed dwellings was 882,797 and 5.8% increase from 2011. Houses for one's own use were 311,589, 2.0% increase from 2011; rental dwellings were 318,521, 11.4% increase, namely, the first increase after 4 years; houses/condominiums for sale were 246,810, 5.2% increase. Within the number of houses/condominiums for sale, condominiums were 123,203, that is, 5.5% increase and detached houses were 122,590, that is, 5.0% increase.[71]

- Rental Housing Market

[67] Y. Hirayama & R. Ronald, 'Introduction: Does the Housing System Matter?' in *Housing and Social Transition in Japan*, ed. Y. Hirayama & R. Ronald (London: Routledge, 2007), 3.
[68] Hirayama, 'Reshaping,' 23-24.
[69] Hirayama, *Jutakuseisaku*, 126-127.
[70] Yoneyama, *Shohikoreika Jidai no Jutaku Shijo*, 14.
[71] Statistics on construction in 2012 (MLIT).
<http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001106391>.

As mentioned in 1.3, in 2010 the number of housing stock was larger than that of households and the number of vacant dwellings was 7,560,000. The ranking of the high percentage of vacant dwellings in 47 prefectures was Yamanashi, 20.3%, Nagano, 19.3%, Wakayama, 17.9% in 2008.[72] Within those vacant dwellings 4,090,000 were private rental dwellings (54.1% of all the vacant dwellings) and 340,000 (4.5%) were dwellings for sale. The vacancy percentage in the rental housing stock in the urban areas was around 10% and lower than that in the rural areas, which was up to 30%.[73] And there is a correlation between the population decreasing rate and the vacancy increasing rate, that is, if the population declines rapidly, then the vacant dwellings increase.[74] In any event, there is sufficient market supply of rental housing in Japan.

However, it is too early to judge those numbers as an indication of the optimal situation of the rental housing market, because the quality of those vacant dwellings has not been taken into consideration: for instance, whether they have any individual toilets, bathes, or face washing rooms, etc. In that case those dwellings are not really suitable or desirable for living in light of the present living standard in Japan. In addition, since Japan is notable as a land of earthquake, it is especially important that the dwellings are earthquake resistant. The dwellings which are old, or lacking in seismic capacity are included in the number of the vacant dwellings. Keiichi Sato assumed that around 79.3% of the resided dwellings and 88.5% of the vacant dwellings were earthquake resistant in 2008 based on the data of the Housing and Land Survey. The reason why the percentage in the category of resided dwellings was higher was that there were more detached houses which lacked seismic capacity in the category of resided dwellings than that in the category of vacant dwellings.[75]

The problem of dwellings with lack of quality is tightly related to the problem of people in need, that is, those who are rejected to sign rental contracts. Those people in need tend to end up in old dwellings without appropriate equipment which the landlords were/are not willing to invest money to. The landlords of old rental apartments, therefore, are apt to compromise to take risks attached to those tenants. This problem is, however, not directly caused by lack of vacant dwellings. But it is caused by various reasons, such as, financial status of tenants, prejudice against certain group of people, cultural differences, and so on, according to each category of people who are in need. But one reason which can be applied to any kind of category is one of the peculiar Japanese rental contract customs, namely, necessity of a joint surety or a guarantor (sometimes 2 of them) at the conclusion of a rental contract (see 1.5 Special features in Japan).

One of the biggest social problems in Japan which affects the rental housing market is societal aging with declining birth rate. The population in Japan will be much smaller in the future. According to the survey and estimation done by the National Institute of Population and Social Security Research (2012), [76] the average life expectancy for male was 79.64 years and 86.39 years for female in 2010, and 50 years

[72] The Housing and Land Survey 2008 (MLIT).
[73] Hidetaka Yoneyama, 'Akiyaritsu no Shoraitenbo to Akiya Taisaku (Prospect of the vacancy rate and countermeasures to vacant dwellings),' *Kenkyu Report* No. 392 (Fujitsu Research Institute, 2012): 6.
[74] Ibid. 8.
[75] Keiichi Sato, 'Statistical Analysis for Anti-seismic Reinforcement of Japanese Housing,' in *Research Paper* no. 28 (Statistical Research and Training Institute, Ministry of Internal Affairs and Communications, 2011): 39.
[76] National Institute of Population and Social Security Research, *Nihon no Shorai Suikeijinko (Estimated Population of Japan in the Future) 2012*. < http://www.ipss.go.jp/syoushika/tohkei/newest04/gh2401.pdf>.

later they will be 84.19 years for male and 90.93 years for female in 2060. The total fertility rate was 1.39 in 2011 and it will be 1.35 in 2060. The population in Japan in 2010 was 128,057,000 and it will be 8,6740,000 in 2060. But the percentage of the population of the people aged 65 or older will be much higher than the present. It was 23.0% (29,480,000) in 2010, but will be 39.9% (34,640,000) in 2060.

The problems in Japan are not only the high percentage of the elderly, but also the type of their household. According to the Housing and Land Survey (2008), the households with the elderly aged 65 or older were 18,210,000, 36.7% of all the households in Japan. It was an increase of 1,800,000 (10.9%) compared to the year of 2003. In 2008 single elderly households were 4,140,000, 22.7% of all the households with the elderly and it was the highest percentage until that time. The elderly couple households were 5,110,000, 28.1%, and the total percentage of the both types of households was 50.8%, which was 3.1 points increase from the last survey in 2003. Among the households with the elderly, the increase of the single elderly households (one elderly person aged 65 or older) in the period between 2003 and 2008 was most salient, which was a 22.4 % increase (760,000 households increase), compared to other types of household with the elderly. The elderly couple households, of which at least one person is aged 65 or older, increased by 15.1% (670,000 households increase) and the rest of the households with the elderly, which consist of the elderly and other members, increased by 4.3 % (370,000 households increase). This shows that the elderly households tend to become smaller these days and the large households with the elderly, that is, the traditional type of extended family is not the trend in Japan corresponding to the general tendency of nuclear family.

Seventy-nine point one percent of the whole households with the elderly lived in the detached houses, while 17.8% lived in apartments in 2008. That means, the households with the elderly live mostly in the detached houses. However, if the elderly lives alone, the percentage of apartments became higher, that is, 34.9% of single elderly households lived in apartments in 2008. Regarding the tenure types, 83.4% of the whole households with the elderly live in the owned dwellings, in contrast with 64.9% of the single elderly households, which was 18.5 points less than the percentage of the total households with the elderly. In other words, more than one third of the single elderly people live in the rental dwellings. Within the rented dwellings of the single elderly households, 12.3% is the public rental housing and 21.5% is the private rental housing. Regarding homelessness, among 9,576 homeless people in 2012, the share of those aged '60-64' was 25.6%, '55-59' was 18.1%, '65-69' was 16.4%, that is, more than 70% of homeless people were aged 55 or older. And among those who had been homeless more than 3 years, 33.8% is the people aged 65 and older. [77]

From these statistics it can be assumed that a fair number of elderly people need or will need rental dwellings in the future in Japan. However, owners of rental dwellings are not willing to rent their apartments to the elderly people, especially in the urban areas. There are several reasons for the landlords' unwillingness, such as, difficulty to secure a personal guarantor or emergency contact person of a single elderly tenant, possible accidents due to the old age, careless handling of fire, trouble with neighbors at

[77] Minitry of Health, Labor and Welfare (MHLW), Homuresu no Jittai ni Kansuru Zenkokuchousakentokai, 'Homuresu no Jittai ni Kansuru Zenkokuchousakentokai Hokokusho (Report on the situation of the homeless people),' 2012.

the onset of Alzheimer's disease, potential inability to continue to pay rent, and so forth (see 1.5 People in need).

There is no available information on the demand of foreigner or immigrants for housing, although the problems for foreigners to access rental housing has been recognized and the governmental countermeasures have been undertaken.[78]

2.2 Issues of price and affordability

- Prices and affordability:
  - What is the typical cost of rents and its relation to average disposable income (rent-income ratio per household)? (Explanation: If rent is 300€ per month and disposable household income 1000€ per month, the rent-to-income ratio is 30%).
  - To what extent is home ownership attractive as an alternative to rental housing
  - What were the effects of the crisis since 2007?

The Family Income and Expenditure Survey in October 2012[79] conducted by the Ministry of Internal Affairs and Communications every month shows housing related expenditure and its relation to the income. The results are classified according to the tenure types which are used in the previous section. The ratio of homeownership was 74.4% and the ratio of homeownership with housing loan was 38.4% in this survey (51.6% of homeownership is with housing loan). The average disposable income of all over the workers' households[80] with two or more persons was JPY 482,101. The average disposable income according to the tenures, that is, homeownership, private rental housing, public rental housing, and rental housing owned and managed by employers, are respectively, JPY 504,551 (JPY 531,777 is the average of the homeownerships with housing loans within this category), JPY 412,523, JPY 312,702 and JPY 513,919. The average costs of the rent based on the tenure types are, JPY 61,524 (private rental housing), JPY 35,088 (public rental housing), and JPY 27,743 (employees' housing). The rent-to-income ratios are respectively, 14.9%, 11.2%, and 5.4%.

There is no official statistic on the cost of rents and family types. Yet, two surveys would give some impression of the recent rent-income ratio. One is the Survey on the Housing Market Trend conducted by the MLIT in 2011. According to this Survey, the average annual income of the tenants was JPY 4,170,000 and divided by 12, the average monthly income was supposed to be JPY 347,500. The average monthly rent

[78] <http://www.mlit.go.jp/common/000990496.pdf>.
[79] Ministry of Internal Affairs and Communications, *Kakeichosa Nenpyo H24 (The Family Income and Expenditure Survey 2012)*, <http://www.stat.go.jp/data/kakei/2012np/>.
[80] Workers' households are households whose heads are hired by companies, public offices, factories, schools, and etc., and do not include households with heads who are presidents, board members, or directors of companies.

was JPY 73,783. Then the rent-income ratio in 2011 was 21.2%. Fifty-two percent of the tenants felt that the rent was a little burdensome.[81]

There is another private survey on rent-to-income ratio of single households residing in rental housing (300 men, 300 women, age from 18 to 39 in 2009).[82] The overall average disposable income was JPY 211,722. The average disposal income in the Tokyo metropolitan area (391 samples) was JPY 218,775, the one in Nagoya and around area (61 samples) was JPY 188,033 and the one in the Kyoto-Osaka-Kobe area (148 samples) was JPY 202,851. The overall average of the rent was JPY 66,434, the average rent in the Tokyo area was JPY 70,391, the one in the Nagoya area was JPY 54,579, and the one in the Kyoto-Osaka-Kobe area was JPY 60,867. The disparity between the average rent in the Tokyo area and the one in the Nagoya area was JPY 15,000. The rent-to-income ratio in average based on the answers of samples was 34.7%; 35.5% in the Tokyo area, 33.1% in the Nagoya area, and 33.3% in the Kyoto-Osaka-Kobe area.

From relatively high ratio of homeownership in Japan, it may be understood that the homeownership is attractive and is dreamed of. The above survey on young single people shows almost half of the samples (298) were interested in buying a house or a condominium. Fifty-five percent of those single people who had interest in homeownership would like to buy a newly built detached house, 27.9%, a newly built condominium (an apartment), 13.4%, a second-hand apartment, 11.4%, a second-hand detached house. However, 38.9% of the samples (198) in the Tokyo area would like to buy a newly-built detached house, lower percentage than the percentages of the other 2 areas, 64.3% (the Nagoya area, 28 samples) and 54.2 % (Kyoto-Osaka-Kobe, 72 samples).

For reference, there are data on average rental costs according to the number of rooms in private rental housing in October, 2012.[83] The most expensive rents are found in Tokyo, JPY 69,993 for a one room apartment, JPY 87,792 for 2 rooms, and JPY 96,581 for 3 rooms. In comparison, rents in Ehime prefecture, one of the lowest ranked prefectures with the lower rents, JPY 37,302 for 1 room, JPY 48,758 for 2 rooms, and JPY 54,156 for 3 rooms. In average the rent costs in Ehime only 61% of that in Tokyo.

Regarding the effect of the economic crisis, Jun Todoroki, a councilor of the Cabinet Office analyzes and predicts the trend of rent.[84] According to that paper, the rent has been declining since 2000 and after the middle of 2011 this tendency has become greater, except the period from 2007 to 2008, in which the rent in Tokyo went up a little and in other places leveled off according to the consumer price index (CPI) published by the Ministry of Internal Affairs and Communications.[85] Although the influence of the crisis on the housing market alone is not so obvious, the long-term deflation causes the

[81] <http://www.mlit.go.jp/common/000226241.pdf>.
[82] <http://www.athome.co.jp/news/at-research/vol01/images/at-research-vol01.pdf>.
[83] The National Association of Rental Housing Management Business, <http://www.pbn.jp/useful/rent_trand/1210.html>.
[84] Jun Todoroki, 'Kinnen no Yachin no Doko ni tsuite (The recent trend of the rent),' *Monthly Topics*, No.009, 23 July 2012 (Cabinet Office). <http://www5.cao.go.jp/keizai3/monthly_topics/2012/0723/topics_009.pdf>.
[85] The IPD/Recruit published the housing index which is on the rent of the new concluded rental contracts about existing mansion (upgraded apartments different from the normal flats). It showed that the rent in the Kansai area (Osaka and around) increased since the middle of 2011. Todoroki assumes that it was because of the population influx from the east into the west after the Tohoku Earthquake, although one cannot say the reason exactly. Todoroki, 'Kinnen', 2-3.

constant decrease of the rent. On the other hand, the IPD/Recruit published the housing index on the rent of the new concluded rental contracts about existing mansion (condominiums=upgraded apartments) and therefore that index is supposed to predict the trend in 6-8 months according to Todoroki. Since 2000 the rental housing index in Tokyo was stable but from 2006 to 2008 it increased greatly and afterwards it declined until the middle of 2011. Then it increased a little and then it is again stabilized. Todoroki predicts that the decrease of the rent will stop sometime soon.

According to Todoroki, the supply of the rental dwelling was affected by the economic crisis. The number of construction of the rental apartments increased until 2006, but it decreased drastically, because of the amendment of the Building Standard Act (Act No. 201 of 1950) with strict rules in 2007 as well as the Lehman shock in 2008. The demand was also influenced by the economic crisis. The population movement into Tokyo exceeded the population movement out of Tokyo until 2006-2007 because of the time of economic expansion, but the inflow decreased greatly in 2009 and then it became stable but in a low level until 2011. The demand in Tokyo seems to have decreased recently.[86]

2.3 Tenancy contracts and investment

- Is the return (or Return on Investment (RoI)) for rental dwellings attractive for landlords-investors?
  - In particular: What were the effects of the crisis since 2007?
- To what extent are tenancy contracts relevant to professional and institutional investors?
  - In particular: may a bundle of tenancy contracts be included in Real Estate Investment Trusts (REITS) or similar instruments?
  - Is the securitization system related to tenancies in your country? Are commercial (or other) landlords allowed to securitize their rental incomes? If yes: Is this usual and frequent?

Although there are limited data on return on investment, one can assume that rental property investment is an attractive one among other investments for individuals, especially ordinary workers. Because of the long-lasting deflation and falling wages, general pessimism and anxiety spread in Japan. In this situation people prefer a real estate investment to other kinds of investments, since it has middle risk and middle return. After the economic crisis in 2007, the stock price fell down drastically but the rental price did not decline so much.[87] There are also some other merits in real estate investments.

Firstly, one can obtain a loan to make an investment, because a real estate investment is categorize as a rental dwelling business, not just an investment. Therefore, one can start an investment with not so much of his/her own money. Secondly, one can obtain tax deduction because of the expense regarding the business. This affects the

[86] Todoroki, 'Kinnen,' 7.
[87] Kanai, *Zukai Fudosantoshi*, 30-31.

ROI in a positive way. Inheritance tax will be also reduced, if the asset is real estate for renting under the Exemption of the Small Scale Land for Housing.[88] Thirdly, one should often buy a life insurance in case of death or disease, when he/she obtains a loan from a bank for the purchase of a land. This gives an investor a security.

According to the survey done by Nomura Real Estate Urban Net in 2012 (749 respondents among 16,721 members of the website), 78.7% of the respondents thought that it was the best time or it would come soon the best time to purchase a real estate. Fifty percent of the respondents were content with the results of the real estate investment (27.1% for bonds, 20.5% for foreign currency deposit, 16.3% for FX) and 69.4% wanted to invest in real estate within 1 year. Among the respondents 45.7% were ordinary workers. The same survey was done also in May, 2011, right after the Great East Japan Earthquake, 66.7% of the respondents (total 577 respondents) did not change their mind and attitude to real estate investments.[89] It seems that the anxiety for the future is stronger than the risk of the damage caused by the earthquake, which drives individual investors to make real estate investments.[90]

However, the situation of rental housing is difficult since the crisis in 2007. The economic shrinkage caused the declining of the rent and the first fees (Shikikin, Reikin, Hoshokin=deposit, etc.). Around 70% of the owners who own rental housing are individuals and construction by individual owners declined compared to that by companies.[91]

Securitization of real estate is a large market in Japan. The number of properties which were newly securitized was at the peak, 2,168 in 2006 and the amount of those properties was at the highest, JPY 8.9 trillion in 2007. However because of the economic crisis the number and the amount went down drastically in 2008-2009, 326 und JPY 1.8 trillion respectively. Since then both recovered gradually and the number was 576 and the amount was JPY 2.3 trillion in 2011, which were constant increase from 2009.[92] Within JPY 2.3 Trillion, JPY 1.8 trillion was from the properties securitized by financial institutions, specific purpose vehicles (SPVs).

There are four schemes for securitization of real estate according to law: (1) the TMK (Tokutei Mokuteki Kaisha) scheme[93] under the Act on the Securitization of Assets (so-called, SPC Act, Act No.105 of 1998), (2) the J-REIT scheme under the Act on Investment Trusts and Investment Corporations (Act No. 198 of 1951), (3) the GK-TK (Godo kaisha-Tokumei Kumiai) scheme[94] under the Financial Instruments and Exchange

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[88] See the website of the Tax Agency, <http://www.nta.go.jp/taxanswer/sozoku/4124.htm>.
[89] <http://www.nomu.com/pro/news/index.html>.
[90] Kanai, *Zukai Furosantoshi*, 24.
[91] Yoneyama, *Shohikoreika Jidai no Jutaku Shijo*, 66-67.
[92] MLIT, *Press Release* on 29 May 2012. <http://tochi.mlit.go.jp/wp-content/uploads/2012/05/h23shokenka.pdf>.
[93] The TMK is a special purpose securitization vehicle (the TMK vehicle) which issues either corporate bonds or equity in the form of preferred shares. The TMK vehicle acquires the real estate asset and outsources the operation of the real estate to an asset manager and distributes any profit to the investors. If certain requirements are met, such distributions are tax deductible for the TMK vehicle. Pricewaterhouse Coopers, 'The Growth of J-REITs in the Japanese Real Estate Market and Real Estate Investment Structures: An Overview,' (2006). <http://www.pwc.com/jp/ja/tax-global-highlights/assets/vol29_finance_e.pdf>. See the explanation by the MLIT, <http://tochi.mlit.go.jp/chiiki/securitization/doc1-3.html>.
[94] The GT-TK structure is a partnership of the limited partner (TK investor) which invests in an unrelated special purpose vehicle (GK) structured to be bankruptcy remote. GK obtains trust beneficiary rights with

Act (Act No. 25 of 1948), and (4) the Real Estate Specified Joint Enterprise scheme[95] based on the Commercial Code (No. 48 of 1899), the Companies Act (Act No. 86 of July 26, 2005) and the Real Estate Specified Joint Enterprise Act (Act No. 77 of 1994). The ratio of the amount of newly securitized properties among the above four schemes in 2011 was, J-REIT 34% (JPY 792 billion), GK-TK 32% (JPY 741 billion), TMK 27% (JPY 625 billion), and Real Estate Specified Joint Enterprise 8% (JPY 183 billion). The purposes of use were offices (24.3%), residence (19.3%), commercial facilities (14.7%), and warehouses (10.1%) in 2011.[96]

Regarding J-REIT (Japanese REIT), Japan has had this system since the Tokyo Stock Exchange created a listing system for REITs in 2001 due to the amendment of the Act on Investment Trusts and Investment Corporations (Act No. 198 of 1951, amendment in 2000) to expand the allowable use of capital by investment trusts to include real estate. It started with 2 REITs and it has 44 REITs as of February, 2014.[97] The properties for rental housing of REITs concentrate in the Tokyo area. In 2008 REITs had 600 rental housing buildings in Tokyo and its percentage in the rental housing stock reached 15-30% in Chiyoda, Chuo, Minato wards.[98] Although the properties which REITs possess are mostly new buildings, there are cases of obtaining existing properties. REITs purchase properties without regard to the age of the building, if they yield profit, for example, rental buildings with a low risk of vacancy.[99]

It is also allowed to securitize rental incomes in Japan. There is, however, no official information on the scale and frequency of such transactions. In the process of the amendment of the law of obligation in CC, which is now undertaken, this topic is actively discussed. The committee within the Association for Real Estate Securitization of which purpose was to submit the demands from the securitization branch to the related ministries, made a survey on this issue in 2010.[100] The questionnaire was addressed to the 31 securitization related companies, of which 10 real estate companies, 11 real estate management companies (including REITs), 3 trust banks, and 7 banks and stock companies are. Twenty nine companies answered the questionnaire, but no companies made a business by the securitization of the claim on rental incomes. One company gave a comment on this business: 'A claim on rental income has the value in the probability of the long-term cash-flow, similar to the value of a corporate bond. If this value is more than the value of the real estate itself, there will be a possibility for a business of securitizing the claim on rental incomes.' From the result of the survey and this comment, it is assumed that securitization of the claim on the rental income has not developed yet in Japan.

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real estate through the investment of the TK investors and non-recourse loan by the financial institution. The GK operates the property and it distributes to the TK investor an annual percentage allocation of any profit. Ibid.

[95] The Real Estate Specified Joint Enterprise scheme is the one where investors invest in the real estate specified joint enterprise (real estate agent, etc.) which makes real estate transactions, such as, acquisition, lease, or sale of the real estate. Ibid.

[96] MLIT, *Press Release*, 29 May 2012.

[97] See the website of the Tokyo Stock Exchange, <http://www.tse.or.jp/rules/reit/meigara.html> (February, 2014).

[98] Yoneyama, *Shohikoreika Jidai no Jutaku Shijo*, 60.

[99] Ibid.

[100] The result is in the internet site of the Ministry of Justice, <http://www.moj.go.jp/content/000055990.pdf>.

2.4 Other economic factors

- What kind of insurances play a role in respect to the dwelling (e.g. insurance of the building, the furniture by the landlord; third party liability insurance of the tenant?)?
- What is the role of estate agents? Are their performance and fees regarded as fair and efficient?

■ Insurance

There are several kinds of insurances with regard to renting a dwelling. It is mostly required to buy a 'dwelling fire insurance,' which covers the damage of household goods in case of fire. However, it does not cover the room or the building. A tenant has an obligation to restore the dwelling to its original condition and if the tenant cannot perform that obligation, the landlord can claim for the damage (Art. 415 of CC). Therefore, an optional contract of tenant's compensation (tenant's liability insurance) attached to the said fire insurance is preferably required by the landlord. This insurance will cover the damage of the apartment or the building, when a fire or other kinds of damages occurs because of the tenant's negligence.

A third party liability insurance (individual liability insurance), which is also an optional contract attached to the main dwelling fire insurance, applies to the case in which, for example, the neighbor's house was burned down because of the fire arising from the tenant's intentional act or gross negligence. Although Art. 709 of CC rules damages arising from tortious act, the Act on the Liability of Accidental Fire (Act No. 40 of 1899) exempts the tortfeasor's liability for the damages of the neighborhood except it occurred because of the tortfeasor's intention or gross negligence.[101]

In addition, there is an optional contract attached to the main fire insurance, that is, 'the Spreading fire insurance for the goods in the neighborhood.' Even though the tortfeasor is not liable for the damage of the neighbors under the Act on the Liability of Accidental Fire, it would destroy the relationship in the neighborhood, if he/she does not do anything with the neighbors' loss. This insurance compensates the neighbor's loss with new value of the lost goods or the difference between the loss and the amount that neighbor's insurance pays, while an individual liability insurance covers only the current price of the lost goods in case of an intentional act or a gross negligence of the tortfeasor.

The earthquake insurance exists in Japan. This insurance is also an optional contract attached to the main fire insurance. According to the General Insurance Rating Organization of Japan, the earthquake insurance attachment rate (the ratio of the earthquake insurance attachments to all the fire insurances) among all the prefectures in average in 2011 was 53.7%, but the ratio of the earthquake insurance holders to all the

[101] Smoking in the bed (Tokyo District Court Decision on October 29, 1990, *Hanreijiho* no. 1390, 95), leaving a pan with a lot of Tempura oil on the stove (Tokyo District Court Decision on March 29, 1982, *Hanreitaimuzu* no. 474, 124), having an electronic stove switched on near the bed while sleeping (Sapporo District Court Decision on August 22, 1978, *Hanreijiho* no. 926, 97), etc. were recognized as 'gross negligence'.

households in Japan was 26%.[102] After the Great East Japan Earthquake, there was a great increase of attachment of the earthquake insurance especially in the disaster areas, for instance, more than 80% of the attachment rate in the Miyagi prefecture in 2011.[103] The earthquake insurance covers only the goods in the dwelling in case of tenancy. The premium is relatively expensive in contrast to the coverage and that is why it is not so common for a tenant to buy this insurance. The survey conducted by the the General Insurance Rating Organization of Japan in 2009 showed only 14.8% of the earthquake insurance holders were tenants.[104]

- Estate agents

There are 3 business areas of estate agents in relation to rental housing. They are intermediary, management and sublease. As an intermediary or an agent of the landlord, an estate agent assesses the value of the object and determines the rent, deposit, and Reikin (thanks money), recruits the tenants together with the landlord, shows the rental housing to applicants, intermediates the negotiation between the landlord and the applicant, selects the tenant, lets a real estate transaction specialist explain the important things as to the object and the condition of the contract (Art. 35 of the Building Lots and Buildings Transaction Business Act, Act No. 176 of 1952), [105] concludes the contract, and gives the key the tenant's moving. At the conclusion of a rental contract, the estate agent can receive the fee from the landlord and the tenant, but it must be less than 1 month's rent in total.[106] This whole fee was used to be paid by the tenant when the rental housing supply was scarce, but there are many estate agents who take only half or no fee from the tenant in the age of excessive supply of rental housing. The Building Lots and Building Transaction Business Act rules only this field of business of estate agents.

After the conclusion of a rental contract, the same or other estate agent manages tenants (collecting rents, take complaints from the tenants, etc.) or the building (maintenance, cleaning, etc.) or both of tenants and the building based on a management agreement between the estate agent and the landlord.

Sublease business is the system that an estate agent rents the rental housing in order to manage it, from recruiting the tenants, leasing, to maintaining the building.

As to sale of housing and land by an estate agent, the agent sells the object directly or intermediates between a landlord and a buyer. In the latter case, the agent can receive the intermediary fee up to 'purchase price x 3.15% + JPY 63,000' if the purchase price is more than JPY 4,000,000.[107]

According to a survey on the degree of satisfaction of 1800 housing and land purchasers conducted in 2010, 57% of them thought the fee was adequate, but 39% thought it was too expensive. As the internet has become widespread and people can search housing on their own, their expectations are about estate agents' professional knowledge, disclosure of the information on the object including deficits, and safe

[102]< http://www.giroj.or.jp/disclosure/toukei/toukei_h23_02.pdf>
[103] Ibid.
[104] <http://www.giroj.or.jp/disclosure/q_kenkyu/No21_2.pdf>.
[105] A real estate transaction specialist is an official status given to a person who passed the state examination.
[106] Ministry of Construction (the present MLIT) (Notice No. 1552 of 1970).
[107] Ibid.

transactions. The survey concluded that this expectations were not fulfilled and therefore, it is reflected in the degree of satisfaction.[108]

2.5 Effects of the current crisis

- Has mortgage credit been restricted? What are the effects for renting?
- Indicate the current figures on repossession (seizures of houses in case of mortgage credit default of the buyer)? Have repossessions affected the rental market?
- Has new housing or housing related legislation been introduced in response to the crisis?

As the enhancement of the housing market had been used as a stimulation national economy (see 3.1), it was encouraged to obtain mortgage credit (housing loan) even after the current crisis. Although deduction of housing loan had existed previously, the government expanded its scale in 2009 in order to enhance home ownership.

However, the number of 'housing loan refugees' who lost their home because of housing loan defaults increased after the recent economic crisis. The number of houses or condominiums which were sold at public auction was 60,000 in 2009, a 30% increase compared to the previous year 2008.[109] The number of pieces of land, buildings, buildings with land, condominiums sold at public auction though the Tokyo District Court in the first period of 2009 (from April to September) was 2,795 and it was more than twice as many as the one in the second period of 2007 (from October, 2007 to March, 2008), 1,259.[110] Another survey also showed the increase of the public auction cases undertaken by the District Courts in the three metropolitan areas (Tokyo, Nagoya and Osaka) from the second period of 2008 to the first period of 2009. The total number in the second period of 2007 was 2,704, in the first period of 2008 was 3,279, in the second period of 2008 was 4,746, and the first period of 2009 was 5,271.[111] People try to sell the house in case of a credit default through private sale contracts instead of through public auctions, since the price through the former method is higher than the latter. Because the housing loan in Japan is the 'recourse loan' and a borrower should pay the rest of the loan from other financial resources even though he/she has lost the home, it is helpful if the sale price is higher. For this reason, the number of sale through private sale contracts increased in the period between 2008 and 2009, though there is no official statistics on it.[112]

The number of repossession has decreased these days. According to the Estate Times, a company dealing with the statistics on the auction information, the number of real estate sold at public auction in Tokyo was 1,635 in 2012, 1,716 in 2011 and 2,059 in

[108]< http://www.jresearch.net/house/jresearch/chukai/pdf/chukai.pdf>.
[109] Shin Matsuura, 'Murina Loan, Ie Ushinau', *Asahi Newspaper*, 14 August 2010, page 1, 6.
[110] Hironori Yoshida & Soichi Furuya, 'Jutaku Loan Hensai, Sodan Kyuzo', *Asahi Newspaper*, 25 January 2010, page 5.
[111] Takeshi Suzuki, 'Jutaku Loan Taino, Fueru Ninibaikyaku', *Asahi Newspaper*, 9 January 2010, page 35.
[112] Ibid.

2010. This phenomenon can be also seen in the other prefectures around Tokyo (Kanagawa, Saitama, and Chiba prefectures).[113] One can assume that the reason why the number of auction cases has decreased should be the enactment of SME (=Small and Medium-sized Enterprise) Finance Facilitation Act in 2009 (Act No. 96 of 2009).[114] This act requires financial institutions to comply with borrowers' (like small and medium-sized companies and housing loan borrowers) requests to restructure the loan terms, such as extension of the payment period. Under this Act financial institutions have obligations to report the status of implementation. However, this Act was valid until the end of March, 2013.

It may be a logical consequence that the demand of rental housing has been increasing as the more people lose their homes due to their credit defaults. However, there is no data on the effects of repossession on the rental market.

2.6 Urban aspects of the housing situation

- What is the distribution of housing types in the city scale (e.g.: are rented houses mainly in the city centres and owner occupied in the suburbs?) vs. the region scale (e.g.: more rented houses in the big cities, less in the villages?)
- Are the different types of housing regarded as contributing to specific, mostly critical, "socio-urban" phenomena, in particular ghettoization and gentrification
- Do phenomena of squatting exist? What are their – legal and real world – consequences?

There are no statistics to specify whether the distribution of housing types in the city scale or in the region scale, because the Housing and Land Survey conducted by the MLIT in 2008 (see 1.3)[115] showed the distribution based on prefectures and metropolitan areas. The percentage of home ownership was the highest in Akita prefecture, 78.4%, in Toyama, 77.5%, in Fukui, 77.4%, in Yamagata 75.5%, and both in Niigata and Gifu 73.9%. High percentage of home ownership is found in the agricultural regions in the side of the Japan Sea. On the contrary, the lowest percentage of home ownership was in Tokyo, 44.6%, in Okinawa, 50.2%, in Osaka, 53% and in Fukuoka, 53.6%. As for the 3 metropolitan areas, the percentage of homeownership was in Kanto 55.1%, in Chukyo, 60.6%, in Kinki, 58.7% and the average of the three areas was 56.9%, which was 4.2 points lower than the national average, 61.1%.

The percentage of private rental housing was the highest in Okinawa, 40.4%, in Tokyo, 37.1%, and in Fukuoka, 31.5%. The lowest was in Fukui, 14,9%, and both in Akita and Toyama, 15.7%. As to metropolitan areas, the percentage of private rental housing was in Kanto 30.6%, in Chukyo 27.1%, in Kinki 27,0%, and the average of the three areas was 29.1%, which was 2.2 points higher than the national average 26.9%.

[113] Estate Times, *Press Release*, August 31, 2012. <http://www.atpress.ne.jp/view/29670>. Estate Times, <http://www.estatetimes.jp/index.html>.
[114] For an English explanation on this Act, <http://www.fsa.go.jp/en/refer/diet/173/01.pdf>.
[115] <http://www.stat.go.jp/data/jyutaku/2008/>.

From those statistical results, it can be assumed that home ownership is dominant and rental housing is less in the regional areas and vice versa in the city areas, although Okinawa, a southern island prefecture is an exceptional case.

The above explained distribution of housing types is a general overview and therefore, it does not explain why some socio-urban phenomena, such as ghettoization and gentrification, occur in certain areas. Moreover, it is difficult to say whether there are ghettos or slums in Japan in light of the definitions and phenomena in other countries. However, it is worth mentioning it as a relevant issue that there are 3 big "inns towns" (Doya gai) which are located in Tokyo, Yokohama and Osaka. Characteristics of those towns are as follows. Firstly, simple inns with low price concentrate in those areas. Secondly, historically those towns appeared from the gathering of day laborers who sought work and simple inns. Thirdly, the population of people living on livelihood protection in those twons is large.[116] A difference from the so-called "slum" or "ghetto" may be that other middle class people live also in those areas. Since those towns historically emerged from the industrial needs of day laborers (often the needs from the construction industry in the metropolitan areas) as well as those day laborers' circumstance, it is uncertain to say whether those simple inns (regarded as housing for poor people) are contributing to this phenomenon or this phenomenon is contributing to concentration of those simple inns.[117]

Gentrification is seen in the central areas of large cities, especially in Tokyo. In the late 1990s the government started 'urban renaissance' in order to stimulate national economy which was at that time still suffering from the post-bubble recession. This was put into practice through enhancement of housing construction and urban redevelopment as well as deregulation of urban planning.[118] Symbolic buildings of gentrification are towered condominiums and this kind of condominium is called 'Oku shon ("Oku" (= JPY 100 million) + "(man) sion," which means a luxurious apartment),' a condominium of million Euro. A towered condominium building is segregated from the ground level and its neighborhood, and is secured with many surveillance cameras. Residents can use services and various facilities in the gated site. Those towered buildings and their sites are not open for the neighborhood and people outside cannot enter the sites.[119] This phenomenon does not seem to be the result of the high percentage of rental housing in the city areas, but, at least partially, a consequence of the governmental policy to promote urban redevelopment and its measures to pursue this policy aim.

As for squatting, there is no information on this issue in Japan. As a note, Individual squatting exists in Japan and it is regulated by law. Art. 162 of CC rules acquisitive prescription of ownership: a person who possesses any property of another for 20 years peacefully and openly with an intention to own shall acquire the ownership

[116] Yoshihito Honma, *Kyoju no Hinkon*, (Tokyo: Iwanamishoten, 2009), 35-39.

[117] For a sketch of the situation of 'slums' before and after the Wars, see Toshio Mizuuchi, 'Suramu no Keisei to Kuriaransu karamita Osakashi no Senzen Sengo (Formation and Clearance of Slum in Osaka, from 1910 to 1975)' in *Ritsumeikan Daigaku Jinbunkagaku Kenkyusho Kiyo* No. 83 (2004). Poverty, low quality housing, squatting were found in the 'slums' (the author uses this term as a broad sense, "low quality housing concentrated area"). Those slums were overlapped with the areas of 'Hisabetsu Buraku (modern-day descendants of Japan's feudal outcast group created in the Edo period)' 'Korean residents (Korean people who came to Japan based on the Japan's colonial ruling)' and 'day laborers.'

[118] Hirayama, 'Reshaping,' 34.

[119] Ibid, 35; Honma, *Kyoju no Hinkon*, 40-42.

thereof; and if a person was without knowledge and was not negligent when the possession started, 10 years possession is enough to acquire the ownership. Art. 235-2 of the Penal Code (Act No. 45 of 1907) states that A person who unlawfully takes possession of the real estate of another shall be punished by imprisonment with work for not more than 10 years. As an urban phenomenon homeless people having their tents in the public space like parks and streets can be interpreted as squatting. However, according to the precedent public space such as street cannot be acquired through acquisitive prescription and homeless people have been expelled by the local governments with expulsion orders.

2.7 Social aspects of the housing situation

- What is (are) the dominant public opinion(s) towards certain forms of rental types or tenure forms? (e.g. is renting considered as socially inferior or economically unsound in the sense of a "rental trap"?) In particular: Is only home ownership regarded as a safe protection after retirement?
- What is the typical attitude of tenants towards different forms of tenure (e.g. owners of privatized apartments in former Eastern Europe not feeling and behaving as full owners)

As Yosuke Hirayama calls the Japanese society 'homeowner society,'[120] people try to climb up the 'housing ladder' in which people (are expected to) 'move from a rental dwelling to an owner-occupied dwelling, and from a condominium to a single-family home', especially with garden.[121] During the high-speed economic growth in the 1960s and early 1970s, the 'feeling of middle-classness' pervaded and the expansion of homeownership played a great role of this pervasion. People who own their family home could claim that they were the mainstream in the society.[122] Home ownership had not only a material meaning, but also symbolized social cultural positive meanings, that is, social status, middle or high level income, stable employment and credibility, and property ownership. With a promise of increase of the value of housing property based on increasing income and rising real estate values in spite of the burden of a housing loan, property in the form of housing was regarded as a safe protection in people's old age.

This tendency to value or even worship home ownership is still widespread in Japan, although people have known that there is no guarantees of capital gains due to the sharp drop in land and housing prices after the burst of the economic bubble in 1990s. According to the Survey on People's Consciousness about Land Issues conducted by the MLIT in 2012,[123] the ratio of those who wanted to own land and a house was 81.6%.[124] Regarding the desirable type of possession, ownership of a detached family home was 70.6%, while the category that either a detached house or an

[120] Hiyarama, 'Reshaping,' 28.
[121] Ibid, 18.
[122] Ibid, 21.
[123] <http://tochi.mlit.go.jp/wp-content/uploads/2012/05/498571baa643ceebc122ed310859a0171.pdf>.
[124] Ibid, 8.

apartment is fine was 18.1% and the category of apartment was 8.5%.[125] On the other hand, the ratio of the people who thought that land was a more secure asset than saving was 33.9%, which was in the same level in the previous years since the drop after the high percentage, 61.9% in 1994. In addition, the percentage of those who thought that a building was a more secure asset than saving was 21%. From those results one can assume that the value of home ownership as a security in their old age has declined, while people's aspiration for home ownership has not changed. Although the high percentage of the desire for homeownership could be interpreted as the sign of social inferiority of renting, there is no specific survey that indicates people's such consciousness.

With respect to the attitude of tenants, one survey on Needs of Tenants conducted by Sekisui House (a house builder company) in 2011 [126] is available. According to this survey, 54.4% of the tenants wanted to continue to live in rental housing, for 28.4% of them either type (rental housing or owned home) was Okay, and 17,2% of them, if anything, wanted to buy a home. The ratio of the tenants who wanted to live in the same rental dwelling longer was 71.0%, the one of those who will move to another rental dwelling every 2-3 years was 10.4%, while the percentage of those who answered that there were not so many good quality rental dwellings where they would like to live longer was 30.2%. According to 'the Survey on the Consciousness of Tenants of the City Housing (public housing) and Citizens' conducted in 2009,[127] the ratio of those who did not know about public housing so well, and those who did not heard about it at all was 41.4% among those who live in owned home, and the ratio of such people was 47.2% among those who live in private rental housing. However, the main part of this survey was directed to the people who have already lived in rental housing with a public task, their opinion on renting with a public task cannot be count as tenants' opinion (see below).

Summary table 3

	Home ownership	Renting **with a public task**	Renting **without a public task**	Simple inns (Doya gai)
Dominant public opinion	Desirable	No information; but people might not have so much knowledge on it	No information	Averted
Contribution to gentrification?	-Yes: Oku-shon -No: owned luxurious home in suburbs	No	Yes; Luxurious tower condominiums	No
Contribution to ghettoization?	No	Yes	No	Yes but vice versa

[125] Ibid, 18.
[126] <http://www.sekisuiheim.com/info/press/20110927.html>.
[127] <http://www.city.yao.osaka.jp/0000008505.html>.

3 Housing policies and related policies

3.1 Introduction

- How is housing policy related to the structure and concept of the (national) welfare state, to other welfare policies and the tax system?
- What is the role of the constitutional framework of housing? (in particular: does a fundamental right to housing exist?)

Article 25 of the Japanese Constitution states that "all people shall have the right to maintain the minimum standards of wholesome and cultured living' and that 'in all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health.' This article is considered as an expression of right to life in the Constitution of Japan. However, it is interpreted by the courts as a programmatic declaration rather than a concrete right. That is, the right symbolized in Article 25 does not enable a citizen to sue the government in case the government infringes his/her right. Instead, it is a programmatic declaration which guides the legislature to promote this right. In the leading case, Asahi v. Japan[128] the Supreme Court held that Article 25 'merely proclaims that it is a duty of the State to administer national policy in such a manner as to enable all the people to enjoy at least the minimum standards of wholesome and cultured living, and it does not grant the people as individuals any concrete rights'[129] and affirmed the previous ruling that application of the law was left to the minister. This ruling has been maintained until now. In general, the right to life, of which a right to housing a subcategory is, has a weak legal basis to protect a citizen's life in an adequate dwelling in Japan, although this ideal is shown in the housing statute.[130]

In addition to the weakness of the constitutional protection of right to housing, there are several points to be mentioned regarding the Japanese housing policy. Firstly, home ownership has been the focus in the housing policy in Japan and the government has supported this tenure with public housing loans or sale of houses and lots through the public housing corporations. The governmental encouragement of home ownership has been based on the conservative family ideal and the company seniority system in a steady economic development. That is, a man and a woman get married and then have children; the salary of a husband increases constantly as the length of his service becomes longer; as a family is formed and gets bigger, a dwelling should get bigger as well; they are supposed to move from a small rental apartment, to a bigger apartment, then to purchase a detached house as a final goal. It has been a dream for Japanese to buy a house, climbing up to the top of the 'housing ladder'[131] (see 2.1 and 2.7). This consciousness of people has been enhanced and supported by tax deduction of housing

[128] Supreme Court Decision on May 24, 1967, *Minshu* Vol.21, No. 5, 1043.
[129] The translation of this court decision is taken from the article, Amelia S. Kegan, 'As a Negative Right, Article 25 Can have a Positive Effect Combating Japan's Poverty,' *Pacific Rim Law & Policy Journal* 17, no. 3 (2008): 747.
[130] The Basic Act for Housing (Act No. 61 of 2006).
[131] Hirayama, *Jutakuseisaku*.

loan and public housing loan at very low interest rate. Thus, the national aspiration for home ownership has been not simply there, but urged by the governmental policy.

Secondly, the Japanese administrative, bureaucratic sectionalism has affected the housing policy. This distinguished Japanese interministerial rivalry prevents the government from making cooperative policies over the related ministries. For the concern here, the competent ministry for the hosing policy is the Ministry of Land, Infrastructure, Transport and Tourism (the former name was the Ministry of Construction), while the competent ministry for the welfare policies is the Ministry of Health, Labor and Welfare (the former name was the Ministry of Welfare) after the World War II.[132] Because of this rigid division of those two policies, housing policy has not been recognized as a part of welfare policy or as related to labor policy, instead it has been treated as a matter of construction as well as a part of economic policy to stimulate the national economy.[133] That is why the provision of public housing has been marginal and the support for the low income households is insufficient, exemplified by the lack of housing allowance for private rent.

Thirdly, there was a turning point of the Japanese housing policy to move to the market. Since the middle of 1990s the government has emphasized the role of the market[134] (see 2.1). In 2006 the new statute, the Basic Act for Housing (Act No. 61 of 2006) was established following the abolition of the previous statute, the Housing Construction Plan Act (Act No. 100 of 1966). The Basic Act for Housing states the responsibilities of the private sector for housing in addition to those of the government, and illustrates a housing system based on the housing market. The three pillars of the post-war housing policies (see 1.2) were substantially dissolved. As for the public housing, new construction was not undertaken. The Japan Housing Corporation was reorganized several times (in 1981 the Housing and Urban Development Corporation, in 1999 the Urban Development Corporation) and in 2004 was transformed into the Urban Renaissance Agency (UR), which decreased its housing construction task. The GHLC was abolished in 2007 and its succeeding agency, the Japan Housing Finance Agency (JHFA) withdrew from the direct housing loan business and now deals only with the secondary market of mortgage securities.[135] In conjunction with the above mentioned home ownership encouragement policy, the government made housing as a private matter, which the state does not have to take responsibilities for, therefore, the government can reduce the expenditure for housing security.[136]

Fourthly, in line with the basic policies of political economy since the end of the twentieth century, namely, expansion of market economy and deregulation, the central government required local governments to be fiscally independent and to participate in competitions among the local governments.[137] Through 'the Trinity Reform' by the prime minister Junichiro Koizumi (2004), (1) a cut in conditional transfers known as the national treasury disbursements, (2) another cut in unconditional transfers called the local allocation tax, and (3) a change of tax collecting authority from the central

[132] Before the WWII, housing policy was governed by the Ministry of Welfare. See Honma, *Kyoju no Hinkon*,101.
[133] Hirayama, *Jutakuseisaku*, at 265. The cycle of construction and demolition of housing (scrap and build) supported the Japanese economic development. Ibid, 36-38.
[134] Hirayama and Ronald, 'Introduction,' 4.
[135] Hirayama, *Jutakuseisaku*, 70-71.
[136] Ibid, 41.
[137] Ibid, 266.

government to local governments were promoted.[138] Thus the fiscal assistance of the central government for the local government has diminished. This reform, however, had a great impact on the local government's housing policy, especially for the people lacking in adequate dwellings. Local governments are not willing to construct new public housing for low income households, since public housing will draw low income people who do not contribute to the revenues, as well as it will expand expenditure on welfare related matters. Therefore, public housing has been even more marginalized in housing policy in Japan.

Finally, the role of the company housing system should be emphasized in Japan. In order to compensate for the insufficient governmental support for housing, the company housing system has played a great role. Large corporations provide housing allowances and possess housing for employees with a lower rent. In Japan belonging to a large company has given housing security both for achievement of home ownership and for rental housing.[139]

In short, the Japanese housing policy can be characterized as the following key words: the privilege of home ownership, the governmental passive provision of and support for public housing, lack of housing allowance, privatization of housing security and contribution of the company housing system.

3.2 Governmental actors

- Which levels of government are involved in housing policy (national, regional, local); what are they called; how many are there of each?
- Which level(s) of government is/are responsible for designing which housing policy (instruments)?
- Which level(s) of government is/are responsible for which housing laws and policies?

The MLIT of the national government determines the whole housing policy, such as, national land planning, urban planning, construction regulations, land housing laws and policies, taxation, and etc. Especially the Housing Bureau of the Ministry undertakes housing issues. Local governments are also involved in housing policy. There are 47 prefectures and within those prefectures there are cities, towns, villages, and Tokyo wards in total 1,742 as of January 1, 2014.[140]

Although the national government used to have a very strong power to pursue housing policy according to the needs and demands of the nation, it has handed over the power to the local government, as the overall national policy goes to the direction of deregulation, marketization, competition, and more independence of local governments (see 3.1). The basic national housing plan was the Five Year Housing Construction Plan, which existed for 8 periods, from 1966 until 2005. The national government planned the amount of construction of private housing and public housing for 5 years, on which

[138] Sayuri Shirai, 'Growing Problems in the Local Public Finance System of Japan,' *Social Science Japan Journal* 8, no.2 (2005): 215.
[139] Hirayama, *Jutakuseisaku,* 50-55.
[140] Local Authorities Systems Development Center, <https://www.lasdec.or.jp/cms/1,19,14,151.html>.

prefectural local governments should base their own plans. Through this top-down system, the national government tried to achieve the amount of dwellings and their quality. However, as the housing market matured and the population decreased, this top-down system which emphasized the new construction of housing did not fit the need of the recent situation in Japan, becuaswe this Five Year Housing Construction Plan was aimed at the housing supply after the WWII and at promoting high growth of the national economy.[141] The direction of the national housing policy was then changed to the one which emphasized the usage of existing housing stock and private sector in the housing market with the governmental safety-net for the people in need. In 2006 the Basic Act for Housing was enacted. Based on it both the national government and the prefectural governments cooperate and plan the basic plans, that is, the National Plan and Prefectural Plans. The local governments try to achieve the policy target figures according to the National Plan. The National Plan in 2006 included the targeted ratios of, for example, housing safety regarding earthquake resistance, universal design in the dwellings for the elderly, reforms of the existing dwellings, adequate housing for households with children, or renovation of the dwellings for an energy purpose. In short, the national government determines the national housing policy and the local governments implement the said policy with the range of discretion according to the specific local situations.

Among their responsibilities, the local governments play an important role especially in the areas of housing with a public task. Firstly as for public housing, local governments (prefectures and municipalities) construct public housing with the national government's subsidies as well as buy and lease private housing in order to supply housing for the lower income households. Secondly, the local governments supply housing to the middle class households. Under the Local Public Housing Corporation Act (Act no. 124 of 1965) prefectures and cities with the population of more than 500,000 designated by prefectures or governmental ordinances are allowed to establish local public housing corporations with more than half of the investment of the local government. The number of those local public housing corporations was 57 in 2008, but present number is 42 in 2013 due to changes of local governments' housing policies or bankruptcies (see 1.4 Rental tenures) [142] Those local public housing corporations construct, sell, and lease housing for the middle class households. There are difficulties for local governments to maintain the level of housing supply with their own revenues, as it was explained in 3.1. Whereas, the national government is involved in renting housing to the middle class households through the UR, an independent administrative agency, within the national housing policy of urban renewal (see 1.4 Rental tenures).

3.3 Housing policies

- What are the main functions and objectives of housing policies pursued at different levels of governance?

[141] Yoneyama, *Shohikoreika Jidai no Jutaku Shijo*, 242.
[142] See the homepage of the Association of National Public Housing Corporations, <http://www.zenjyuren.or.jp/chihou/about/tabid/96/Default.aspx>.

- In particular: Does the national policy favour certain types of tenure (e.g. rented housing or home ownership (owner-occupation)?
- Are there measures against vacancies (e.g. fines or forced assignments of vacant houses)?
- Are there special housing policies targeted at certain groups of the population (e.g. elderly people, migrants, Sinti and Roma etc)?

■ Favoured tenure in the housing policies

As emphasized many times so far, it is very obvious that the national housing policy favors home ownership in post-war Japan (for an overview, see 3.1). The housing system to expand home ownership was established in the 1950s and 1960s, in the period of high-speed economic growth.[143] Japan tried to stabilized socio-economic conditions by supporting middle class and by encouraging home ownership after the WWII. During that time, the number of households which needed homes increased due to the transformation of the dominant household from an extended family to a nuclear family. To meet the demand of those families, the mass construction of housing was undertaken.[144] Mass dwellings in the suburbs of Tokyo, Osaka and Nagoya (three big urban cities), so-called, 'new towns" were constructed from 1950s to 1980s.

Policy measures through which the government facilitated homeownership were as follows. Local Public Housing Corporations which supplied rental housing since 1950s began to sell houses and land in lots based on the Local Public Housing Corporation Act in 1965. This accelerated home ownership among middle class families.

In addition, there were two other policy instruments: one was the GHLC housing loans with a long term and a very low fixed interest rate, and the other was generous tax deductions. As for the former, these loans were directly lent by the GHLC. The interest rate was fixed for maximum 35 years and other conditions such as income, the length of service, or ratio of the down payment were more relaxed than private financial institutions, as well as there were no requirements of guarantor and guarantee fees. This direct lending offered by the GHLC does not exist any more due to the abolishment of the GHLC in 2007. However, the same kind of system ('Flat 35') exists through a cooperation between private financial institutions and the JHFA, the succeeding Agency of the GHLC. The JHFA buys the mortgage-backed securities issued by private financial institutions.

As for the latter, the government used tax deduction of housing loan to give people an incentive to build their own houses with a purpose of stimulating the national economy, and it continues until today. For example, one recent cabinet decision on 'Outline of Revision of the Tax System' (January 29, 2013) includes a great scale of housing loan deduction which is mainly aimed at acquisition of new homes and not at

[143] Hirayama, 'Reshaping,' 18.
[144] Ibid.

buying existing homes.[145] Since acquisition of new homes may contribute to the national economy more than that of existing homes, the government encourages the former.

As a result of those governmental policies, the percentage of home ownership was 22.3% in 1941, but it increased rapidly and became 67% already in 1948. It has been stabilized around 60% since the latter half of the 1960s.[146] On the other hand, housing supply for low income households remained residual in the governmental housing policy.

- Measures against vacancies

The vacancy rate in the housing stock was 13.1% in 2008 (see 1.3). Vacant dwellings have risks of collapse and its resulting danger to people and neighborhood (especially in case of natural disasters), arson, crime, and negative influences on the neighborhood. The grounds for high rate of vacant dwellings are the real estate tax system,[147] the land use regulation,[148] unknown owner (the dwellings are too old and no information on the owner in the register book), disputes arising from a succession, and so forth.

In order to deal with the problems of vacant dwellings more than 50 municipalities have Vacant Dwellings Management Ordinances. Some municipalities can recommend the owner to remove the dwelling and give subsidies for it (e.g. Adachi ward in Tokyo). Some municipalities exercise a physical enforcement, after all the measures have been exhausted, that is, advice, recommendation, public announcement of recommendation with the name and the address of the owner, and order (e.g. Daisen city, Ichikawa city).

The national government has the project to enhance long-life quality housing and encourages local governments to make re-use of vacant dwellings. Local governments or other private entities buy and renovate old vacant housing and reuse for various purposes. Or they remove vacant housing and use the land for other purposes, such as parks. For those projects the national government gives subsidies.[149] Another example of the national government's effort to use vacant houses is to encourage "trans-housing" or "second home."[150]Semi-nonprofit (semi-commercial)-corporations and organizations rent vacant houses from home owners who are mostly the elderly, and then sublease those houses to, for example, families with small children. The rent is guaranteed by the said local government in case of its vacancy. The national government made the fund to guarantee the rent to the home owners for some emergency cases in which the number

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[145] Cabinet Decision, 'Outline of Revision of the Tax System on December 24, 2013, <http://www.mof.go.jp/tax_policy/tax_reform/outline/fy2013/250129taikou.pdf>.

[146] Hirayama, *Jutakuseisaku*, 21-22.

[147] If an owner of the house and the land removes the building from the land, the real estate tax will be 6 times as much as the land with the building, since tax benefit for the land smaller than 200m^2 with a house (tax reduction to 1/6 of the normal real estate tax) does not apply to the said land any more. The tax burden in the urban areas is so high that land owners are reluctant to remove the buildings. Art. 349-3-2 (2) of the Local Tax Law (Act No. 226 of 1950).

[148] Art. 43 of the Building Standard Act (No. 201 of 1950) rules that the land for housing should be adjacent to the legally prescribed street at least 2 meters. There are wooden housing concentrating areas in Japan and the land in those areas, even though homes are vacant, cannot be used for rebuilding houses again according to this Art. 43 of the existing building standard. Therefore, the owners leave vacant housing as it is.

[149] <http://www.mlit.go.jp/jutakukentiku/house/jutakukentiku_house_tk3_000011.html>.

[150] <http://www.mlit.go.jp/jutakukentiku/house/torikumi/sumikae/sumikae_top.htm>.

of vacant homes are high. Municipalities and prefectures of which population decreases give also information on vacant dwellings to the people who might have interest to move to the country side by establishing 'Akiya bank (vacant dwellings bank)' in the internet. The ratio of the cities which had Akiya bank was 54.5% and the ratio of the prefectures was 25.7% in 2010.[151] However, the actual achievement of Akiya bank is not significant.[152]

■ Targeted groups in the housing policies

The national government recognizes certain groups of people as targeted groups of housing policy. The Basic Act for Housing was enacted in 2006 and the Housing Safety-net Act (Act No. 112 of 2007) was enacted in 2007 based on the Basic Act for Housing. The purpose of the Housing Safety-net Act is to enhance the provision of rental housing to the people who have difficulties to find private rental housing. The Housing Safety-net Act enumerates the groups of such people as 'low income workers,' 'victims of natural disasters,' 'the elderly,' 'the handicapped, and families with children', but does not limit those categories (Art. 1). In addition, as mentioned in 3.2, the national government makes the National Plan with the goal for a 10 year period and reviews it every 5 years based on the Basic Act for Housing. The recent cabinet decision on the National Plan was made in 2011 (5 years after the last decision in 2006) and one important policy aim was to build a safely-net for those people with public housing and rental housing.

As to the elderly, the Act for the Stability of Housing for the Elderly was enacted in 2001 (Act No. 26 of 2001) and revised in 2011. With this revision, the former different housing systems for the elderly was unified and a ministerial joint system of housing with services for the elderly was introduced under the supervision of the MLIT and the MHLW. In this new system rental housing which meets the requirements, such as, the space of more than 25 m^2, separate toilet and a washing basin, barrier free, at least with a service of checking conditions of the tenants and consulting about everyday life etc. is registered. The government give support to the owners, enterprises and other organizations of such rental housing through the subsidies for construction and reform, tax deduction, preferable conditions for loans by the JHFA.

Other categories, such as the handicapped, families with children, and low income workers are targeted in the governmental promotion project of safety-net by utilizing private rental housing which launched in 2011.[153] This is a subsidy project for renovation of vacant dwellings which will be used for the dwellings for such groups of people. There are restrictions of the renovated dwellings, such as, maximum rent, as well as the condition that it will be rented for victims for natural disasters. Public housing is also used for those people and there are prioritized criteria for people in those categories (see 4.3). However, the policy direction seems to emphasize the utilization of existing rental housing.[154]

[151] Yoneyama, 'Akiyaritsu,' 15.
[152] Ibid, 16.
[153] <http://www.minkan-safety-net.jp/>
[154] For the explanation of this project, see <http://www.mlit.go.jp/yosan/yosanH24/gaisan/nihonsaisei/24113.pdf> (2011).

Another project to deal with such groups of people, the MLIT started the Trusted Renting Support Business in 2006. This project was a cooperative work among local governments (prefectures and municipalities), landlords, estate agents, and supporting organizations. Rental dwellings, estate agents, and supporting organizations were registered by the prefectural local governments, and local governments, especially municipalities give such information to the potential tenants with difficulties and support them to rent apartments smoothly. Although this project conducted directly by the MLIT was abolished in 2010, the project exists continuously in each prefecture since 2011. With respect to foreigners, there are multi-languages translations of a sample of contract and related documents[155] and those of the apartment search guidebook[156] available in the MLIT's website.[157] One can find also a Guideline for Renting Dwellings to Foreigners made by the Japan Property Management Association (2009) in the website of the MLIT.[158]

In addition, many local governments have support systems for the people with difficulties in the rental market, such as, local governments becoming joint sureties or their cooperation with other surety companies (see 1.5). One can access the information in the websites of those prefectures and municipalities.

3.4 Urban policies

- Are there any measures/ incentives to prevent ghettoization, in particular
- mixed tenure type estates[159]
- "pepper potting"[160]
- "tenure blind"[161]
- public authorities "seizing" apartments to be rented to certain social groups

Other "anti-ghettoization" measures could be: lower taxes, building permit easier to obtain or requirement of especially attractive localization as a condition to obtain building permit, condition of city contribution in technical infrastructure.

- Are there policies to counteract gentrification?

[155] <http://www.mlit.go.jp/common/000990496.pdf> (English version).
[156] <http://www.mlit.go.jp/common/000990502.pdf> (English version).
[157] <http://www.mlit.go.jp/jutakukentiku/house/jutakukentiku_house_tk3_000017.html>.
[158] Ibid.
[159] Mixed tenure means that flats of different tenure types: rented, owner-occupied, social, etc. are mixed in one estate, it is the simplest way of avoiding homogenized communities, and to strengthen diversification of housing supply.
[160] This mechanism is locating social housing flats among open market ones, so as not to gather lowest income families in one place. The concept is quite controversial, however in English affordable housing system was used for a long time to minimize the modern city ghettos problem.
[161] This is a mechanism for providing social housing in a way that the financial status of the inhabitants is not readily identifiable form outside. It is used to avoid/minimize stigmatization and social exclusion which could be caused by living in a (openly identifiable) social stock.

- Are there any means of control and regulation of the quality of private rented housing or is quality determined only by free market mechanisms? (does a flat have to fulfil any standards so that it may be rented? E.g.: minimum floor area, equipment, access to technical and/or social infrastructure and/or public transport, parameters such as energy efficiency, power/water consumption, access to communal services such as garbage collection. If so: how are these factors verified and controlled?)
- Does a regional housing policy exist? (in particular: are there any tools to regulate housing at regional level, e.g.: in order to prevent suburbanization and periurbanization? Is it possible to distribute local taxes so that villages can afford the limitation of housing areas?)

There is no information on the measures by the national government to prevent ghettoization. Although there are some documents on social housing[162], and social mixture especially in context of 'regeneration of housing complex'[163] found in the website of the MLIT, ghettoization does not seem a central policy issue in Japan, since there is seemingly no ghetto in an ordinary sense.

There is no information on policies to counteract gentrification.

With regard to the control of the quality of rental housing, the National Plan in 2011 based on the Basic Act for Housing stipulates several standards, that is, the Technical-Functional Standard, the Housing Environment Standard, the Space Guiding Standard, and the Minimum Space Standard.[164] The Technical-Functional Standard is a guideline for the good housing stock. It sets the standards and goals for rooms and equipment (e.g. a dwelling must have a flush toilet, a washing basin, and a bath; a high apartment house should have elevators), adequate earthquake resistance, light, sound insulation, suitable equipment for the elderly, energy-saving and so forth.

The Housing Environment Standard is the guideline set by prefectures and municipalities. This has four areas, that is, 1) security and safety, 2) scenery, 3) continuity of communities and city areas and 4) access to services, especially for the elderly and families with small children.

The Space Guiding Standard is the one set in order to raise the quality of housing. There are two subcategories of the General Type Space Guiding Standard and the Urban-living Space Standard. The former is for housing in the suburbs, mainly, detached

[162] Council for Social Infrastructure, 'Committee on Public Housing' (June 13, 2005), <http://www.mlit.go.jp/jutakukentiku/house/singi/koutekishoui/gijiroku03.pdf>.

[163] See several project examples done by municipalities which mixed public housing with other rental housing for the middle class households (e.g. Toyama city) in MLIT, Land Policy Research Institute, Tatsuya Yamaguchi et.al, 'Kyojusha no Tayosei wo Koryoshita Kyojuseikatsu ni Kansuru Kenkyu (Report on life considering diversity of residents)' *MLIT Public Policy Studies* 94 (2010), <http://www.mlit.go.jp/pri/houkoku/gaiyou/pdf/kkk94.pdf>. But those projects seem to be not so successful. This report referred to the social mix projects in France and England. See also MLIT, 'Report on Promotion of Area Management' (March, 2008), <http://tochi.mlit.go.jp/tocsei/areamanagement/19_chousa/pdf/19_chousa_S01.pdf>.

[164] <http://www.mlit.go.jp/jutakukentiku/house/torikumi/jyuseikatsu/kihonkeikaku.pdf>.

houses, and the latter is for housing in the urban areas, mainly, apartments. All the dwellings should meet the Technical-Functional Standard and the following space standard for each category. According to the General Type Space Guiding Standard, 55m^2 for a single person, and 25m^2 x number of the members in the household + 25m^2 for a household with more than 2 persons. According to the Urban-living Space Standard, 40m^2 for a single person and 20m^2 x number of the members in the household + 15m^2 for a household with more than 2 persons.

Lastly, the Minimum Space Standard is the one mainly for public housing. Same as the Space Guiding Standard, provided that the Technical-Functional Standard is met, the minimum space for public housing should be 25m^2 for a single person and 10m^2 x the number of the members in the household + 10m^2.

As for the quality control, the Act for Promotion of Sustainable Quality Housing was enacted in 2008 (Act No. 87 of 2008). According to this Act, housing with required qualifications, such as, durability of the building, earthquake resistance, barrier-free structure, and energy-saving structure, can be approved as 'sustainable quality housing' and tax benefits are given to the owner as well as the builder. Since such an application is submitted to the competent authority in the local area, the local governments can regulate the quality of housing and its location, for example, by approving those dwellings in a certain residential area in the municipality. Access to technical and social structure or public transport is not explicitly regulated by law, though, as mentioned above, the Housing Environment Standard stipulates the those items generally. Roughly speaking, communal services are well organized in each municipality, although there are different degrees of convenience according to each local area.

Local governments have their own policy targeted to specific problems. For example, promotion of social mixture, revitalization of city centers, as well as renovation of subsidized apartment complexes in context of the aging process are undertaken by local governments.[165] There is no information on the measures against suburbanization and periurbanization.

3.5 Energy policies

- To what extent do European, national and or local energy policies affect housing?

The national government has long emphasized energy saving since the Oil Shock occurred in 1973 and the Act on the Rational Use of Energy was enacted in 1979 (Act No. 49 of 1979). Under this Act the rationalization of energy use was aimed firstly at the industries and then at domestic electrical appliances. In 1998 the Top Runner System launched. The government sets the goal of energy reduction in certain items (TV, air-conditioner, etc.) which consume energy, for those manufacturers and importers, requests reports, and confirms their achievements after the determined period. In 2008 several regulations regarding housing were introduced according to the amendment of the Act on the Rational Use of Energy (see the summary table 4 below). In addition, the

[165] See several project examples in MLIT, Land Policy Research Institute, 'Kyojusha'.

housing eco-point system began in 2009 (but ended in 2011)[166] and the tax deduction for eco-housing renovation has been also undertaken (see 3.7).

However, the turning point for the national energy policy was the Great East Japan Earthquake and its subsequent suspension of the nuclear power plants in 2011. In the summer of 2011 the planned power outage was implemented and in the summer and winter of 2012 the target amount of power was set up in some areas. In 2012 the Act for Promotion of Low-carbonization in the Cities was enacted (Act No. 84 of 2012). The background concerns were change of energy supply situation, aging population, financial difficulties of the country, and ecological environment. The purpose of this Act is to promote low-carbonization of the transportation systems and of the cities, and rationalization of energy use, so that the elderly and families with small children can live comfortably in the cities without cars and the housing market will be stimulated. The basic policy is determined by the Ministers of the MLIT, of the Ministry of Environment, and of the Ministry of Economy, Trade, and Industry (METI). Under this Act deduction of income tax regarding low-carbonized houses has been introduced. Municipalities are encouraged to make Master-Plans [167] for low-carbonization in the cities through consolidation of city-functions (hospitals, welfare facilities, apartment complexes, etc.), restructuring of pedestrian/bicycle ways and streets with barrier-free, enhancement of public transportation and restriction of CO^2 emission, promotion of low-carbonized houses and buildings, as well as encouragement of tree planting and alternative energy, etc. [168]

The White Paper on Energy Use (2012) mentioned the policy direction of energy use with regard to the reform bill of the Act on Rational Use of Energy which was submitted to the 180th ordinary Diet session in 2012. The above mentioned Top Runner System would be expanded to the items which do not consume energy themselves, but which contribute to the efficient use of energy. The important items are those which are used in the housing and building section, such as windows, heat insulation board, materials for water plumbing, etc.[169] This bill was not enacted, but the government would not change the policy direction, assumed by other energy policies regarding housing, such as, sustainable quality housing and low-carbonized housing.

Summary table 4

	National level	2nd level (prefectures	Lowest level (municipalities)
Policy aims	1) Energy saving 2) Environment 3) Reduction of	Same as the national policy aims	Same as the national policy aims

[166] Eco points were given to construction of new houses and renovation of existing houses with certain ecological qualifications. Those points could be exchanged with some goods. Eco points for certain categories of houses are still available, such as, building houses in the Great East Japan Earthquake disaster areas and housing buildings with more than 11 stories. <http://jutaku.eco-points.jp/>.
[167] Art. 18-2 of the Act of Urban Planning Act (Act No. 100 of 1948). A Master Plan is a basic policy of a municipality as to the city planning.
[168] Good examples of municipalities' Master Plans are in the website of MLIT, <http://www.mlit.go.jp/toshi/city_plan/toshi_city_plan_tk_000010.html>.
[169] METI, *The White Paper on Energy Use 2012*, 26.

	CO^2 emission 4) Renewable energy		
Laws	1) Act on the rational use of energy 2) Act for promotion of low-carbonization in the cities	Prefectural ordinances with regard to energy/environment /renewable energy →Basic Plans	Energy/environment Protection ordinances. The first natural/renewable-energy basic ordinance of Konan-city in Shiga prefecture, 2012) →Basic Plans
Instruments	1) Report system of energy saving equipment at the construction of certain size of building and housing; housing developers' obligation to improve energy-saving in detached houses in sale (2008 amendment of the Act on the rational use of energy) 2) Top Runner System 3) Tax deductions (owner) and subsidies (housing companies) for sustainable quality housing and low-carbonized housing 4) Subsidy for solar power generation system	1) Subsidies for eco-oriented construction and renovation of wooden houses with use of wood in the prefecture (Nagano prefecture) 2) Loan for eco-oriented renovation of houses (Kyoto prefecture)	1) Subsidies for solar power/biomass generation systems; home compost devices, etc. 2) Subsidies for eco-oriented renovation of houses (mainly for renovation, not so many for new construction) 2) Loan for eco-oriented renovation of houses (Kyoto city)

3.6 Subsidization

- Are different types of housing subsidized in general, and if so, to what extent? (give overview)

- Explain the different forms of subsidies for tenants, (certain) landlords and, if relevant, housing associations or similar entities acting as intermediaries (e.g. direct, by means of investment loans, tax privileges). Which level of government is competent to assign the subsidies? Is there a subjective right to certain subsidies or does the public administration have discretion in whom to assign the subsidy?

- Have certain subsidies been challenged on legal grounds (in particular: on the basis of competition law or budget law)?

As partly mentioned above, there are several types of housing subsidies directed to owner-occupiers, landlords, and tenants given by the national government, prefectures, and municipalities. As to the subsidies for owner-occupiers and partly landlords, five grounds can be recognized. (1) Reflecting the past housing policy of scrap and build and its (partly) subsequent result of the excess of housing stock, the government tries to use the existing housing as well as to promote sustainable quality housing. Subsidy programs then go to sustainable quality housing, purchase of existing housing, renovation of existing housing, and so forth. After the Great East Japan Earthquake, (2) the concerns with energy, as well as, (3) earthquake resistance are significant. Energy focused subsidies are directed to eco-oriented renovation, net energy zero houses (the primary energy consumption per year is zero), solar power generation systems, and other ecological devices. And reform and new construction with earthquake resistance are also subsidized. (4) the social problem of falling birthrate and aging population gives the government an incentive to subsidy barrier-free renovation of dwellings, especially reform of the existing rental housing in the context of the governmental project of Safety-Net by utilizing private rental housing (see 3.3). Companies, especially specialized with the elderly housing, receive subsidies for construction of the rental housing for the elderly as well as subsidies as a form of rent allowance in some municipalities. (5) For the purpose of stimulating the local economy, housing with use of local materials (e.g. wood) is also a target of subsidization. It is assigned by each local government.

With regard to the subsidies for tenants, there are not so many of them, since Japan does not have a system of rent allowance in general and if applicable, the rent allowance is included in the social welfare program. However, there are subsidies by municipalities for the tenants who rent ‘good quality housing’ or ‘rental housing for the elderly,’ those who move into the city center, young couples, and families with small children. The last is based on the purpose of support young families which will contribute to the finance of the said city in the future, in other words, it is done from a perspective of financial management of the municipality.[170]

The national government advertises subsidy programs, such as, ‘Strengthening the basis of housing Safety-Net’ (rental housing assist programs) ‘Strengthening the technical basis in the housing market’ (strengthen wooden housing, energy saving, etc.), ‘Housing with services for the elderly,’ and the like.[171] Other subsidies for renovation with earthquake resistance, barrier-free, ecological equipment, etc. are assigned by local

[170] Hiramaya, *Jutakuseisaku*, 268-269.
[171] <http://www.mlit.go.jp/jutakukentiku/house/jutakukentiku_house_tk4_000020.html>.

governments. The selection of recipients is done through the requirements for each subsidy program.

There is no information on legally challenged subsidies in Japan.

- Summarize these findings in tables as follows:

Summary table 5

Subsidization of landlord	No differences among tenure types
Subsidy before start of contract (e.g. savings scheme)	[Name] 'Enhancing the Safety-Net by Using the Private Rental Housing.' [Content] A direct subsidy from the government for a reform of an apartment building which has more than one vacant room: earthquake resistance reform, barrier free reform, energy saving reform; One third of the all the cost (there is a limit); The landlord has to meet the requirements after the construction, such as not to refuse a tenant in need. [Aim] To offer adequate rental dwellings by using the private rental housing stock to the people who have difficulties to find rental dwellings, because of age, handicap, children, and low income.
Subsidy at start of contract (e.g. grant)	--
Subsidy during tenancy (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee)	--

Summary table 6

Subsidization of tenant	HSC rental housing	Private rental housing with a subsidy	Private rental housing with a local government subsidy
Subsidy before start of contract (e.g. voucher allocated before finding a rental dwelling)	--	[Name] Livelihood protection measure: a general welfare including rent assistance	--
Subsidy at start of contract (e.g. subsidy to move)	--	[Name] Livelihood protection measure might provide moving cost, depending on the case	--

Subsidy during tenancy (in e.g. housing allowances, rent regulation)	[Name] Specified excellent housing [Content] Rent assistance [Aim] To support middle class families	[Name] Livelihood protection measure including rent assistance	[Name] Rent assistance for specific households, such as student, single worker, family with small children, newly-wed couple, etc., according to each municipality

Summary table 7

Subsidization of owner-occupier	Newly built house	Used house
Subsidy before purchase of the house (e.g. savings scheme)	[Name] Flat 35 S housing loan (JHFA: Japan Housing Finance Agency) [Content] 0.3% reduced interest rate from the normal interest rate of the Flat 35 for buying better quality housing, such as energy saving or earthquake resisting housing	--
Subsidy at start of contract (e.g. grant)	1.[Name] Zero energy house assisting business [Content] Direct subsidy to purchase 2. [Name] Excellent quality housing with local materials (=wood) [Content] Direct subsidy to build a house with local wood; it should be built by one of the designated companies	[Name] Enhancement of existing housing and its reform [Content] Direct subsidy to reform
Subsidy during tenure (e.g. lower-than market interest rate for investment loan, subsidized loan guarantee, housing allowances)	1. [Name] Long-term quality house reform [Content] Direct subsidy: MLIT's recognition is necessary 2. [Name] Local governments' subsidy for earthquake resistance reform, barrier free reform, energy saving reform	1. [Name] Housing reform for the elderly [Content] Direct subsidy to reform a dwelling for the elderly categorized as 'Care needed' based on the Nursing Insurance 2. [Name] Local governments' subsidy for earthquake resistance

	3. [Name] Housing reform for the elderly [Content] Direct subsidy to reform a dwelling for the elderly categorized as 'Care needed' based on the Nursing Insurance	reform, barrier free reform, energy saving reform

3.7 Taxation

- What taxes apply to the various types of tenure (ranging from ownership to rentals)? In particular:
  - Tenants: Do tenants also pay taxes on their rental tenancies? If so, which ones?
  - Homeowners:
    - Income tax of homeowners: is the value of occupying a house considered as a taxable income?
    - Is the profit derived from the sale of a residential home taxed?
- Is there any subsidization via the tax system? If so, how is it organized? (for instance, tenants being able to deduct rent from taxable income; landlords being able to deduct special costs; homeowners being treated favourably via the tax system)
- In what way do tax subsidies influence the rental markets?
- Is tax evasion a problem? If yes, does it affect the rental markets in any way?

There are various taxes applied to home owners and landlords. Firstly, for home owners: (1) at point of acquisition: stamp tax (for a contract form), registration and license tax, and real estate acquisition tax (prefecture); (2) during tenure: municipal property tax, municipal city-planning tax, but the value of occupying a house is not considered as a taxable income; (3) at selling: tax on the profit from sale, and (4) at succession: inheritance tax.

Subsidization through the tax system can be recognized in: (a) income tax deduction, such as, home loan tax deduction, tax deduction of the loan for barrier-free renovation, and tax deduction of the loan for energy saving renovation; (b) special income tax deduction, such as, tax deduction of new construction of sustainable quality housing, and tax deductions of renovations for barrier-free, energy-saving, and earthquake resistance, although those special income tax deductions (=b) cannot be coexistent with home loan tax deduction (=a), except the tax deduction for earthquake resistance reform. (c) Special benefit is given to the land for housing with regard to municipal property tax. Based on the estimated value of a housing site, the municipal property tax becomes 1/6 if it is less than 200m,^{2} and 1/3 if it is more than 200m^2. (d)

Special benefit is given to the newly built housing as to municipal property tax, too. The value of the housing which is less than 120m^2 is calculated as 1/2 for either 3 years or 5 years according to the requirements of the structure and stories. (e) Earthquake resistance reformed house is also the target of the municipal property tax reduction to 1/2 up to for 3 years. (f) Barrier free reformed house (not applicable to rental housing) and (g) energy-saving reformed house are also the targets of the municipal property tax reduction. At sale, If the object is owner-occupied house, up to JPY 30,000,000 is admitted as a deduction from the profit. At inheritance, if the scale of land is small (240 m^2) for a continuous family use, the taxable value is 80% reduced from the original evaluated price

Secondly, for landlords: basically the taxes are the same for home owners. However, (2) during possession, two taxes are additionally imposed, that is, income tax and residents' tax based on the income from real estate. This income is the rest after the necessary expenditure (repair costs, municipal property tax, interest of the loan, depreciation cost, etc.) is deducted from the whole rent income. In addition to that, (3) sole proprietorship tax as a prefectural tax is also imposed, if, for example, the owned building has more than 10 rooms under Art. 72-2 of the Local Tax Act (Act No. 226 of 1950).

Subsidization through the tax system can be recognized in: (a) municipal property tax, if the average land for each apartment room is less than 200m^2, the estimated value of the land is reduced to 1/6; (b) municipal property tax, if each apartment room is between 40m^2 and 280m^2 , the estimated value of the building is calculated as 1/2 for either 3 years or 5 years according to the requirements of its structure and stories; (c) municipal property tax for newly built housing (rooms should be between 30m^2 and 240m^2) with services for the elderly for 5 years (but only about the rooms up to 120m^2). At sale, if the landlord sells a property for a business purpose, including rental housing in a certain designated area and buys a new property in a certain designated area within a certain period, a part of the profit will not be immediately taxed, but it will be postponed to the future. At inheritance, if the land has rental housing on it and up to 200 m^2, a 50% reduction from the original evaluated price is permitted.

In comparison, since apartment loan for landlords is not the target of housing loan deduction in the income tax, homeowners are treated favorably through the tax system. This is, however, no surprise in light of the Japanese housing policy overall, as explained previously in this section.

Tenants do not pay taxes on their rental tenancies in Japan.

Since tax subsidies are favorable to homeowners, people tend to buy homes instead of renting dwellings of which quality is any way not good, and which are not suitable for families. Landlords may not be willing to invest money to rental housing because of lack of tax subsidies, while there is a way to receive home loan tax deduction through building an apartment building which is also use for own use. Tax subsidy for housing with services for the elderly may positively affect the construction of rental housing for the elderly, who have difficulties to rent apartments in the private rental housing market.

Tax evasion regarding real estate business has decreased in 2011 compared to the previous years due to the social economic situation in Japan according to the national tax agency.[172]

Summary table 8

	Home-owner		Landlord of private rental housing		Tenant
Taxation at point of acquisition	1) Stamp tax 2) Registration and license tax 3) Real estate acquisition tax		1) Stamp tax 2) Registration and license tax 3) Real estate acquisition tax		Not necessary to pay taxes on their rental tenancies
Taxation during tenure	1) Municipal property tax 2) Municipal city-planning tax	Income tax deduction: a) home loan tax deduction b) new construction of sustainable quality housing, renovations for barrier-free, energy-saving, earthquake resistance Municipal property tax reduction c) for land, if the land is used for housing, and it meets certain requirements d) for newly built housing e), f), g) for reformed housing for the purpose of earthquake	1) Municipal property tax 2) Municipal city-planning tax 3) Income tax 4) Residents' tax 5) Sole proprietorship tax (prefectural tax) if the building has more than 10 rooms	Municipal property tax reduction a) for land b) for housing c) newly built housing with services for the elderly	No taxes

[172] <http://www.nta.go.jp/kohyo/press/press/2012/sasatsu_h23/>.

		resistance/barrier free/energy-saving			
Taxation at the end of occupancy	1) Sale: tax on the profit from sale /residents' tax 2) Inheritance: Inheritance/ transfer tax	1) If the object is owner-occupied house, up to JPY 30,000,000 is admitted as a deduction 2) At inheritance: if the scale of land is small for a continuous family use, the taxable value is 80% reduced from the original evaluated price	Same as home-owner	1) If the landlord sells a property for a business purpose (including rental housing) in a designated area and buys a new property in a designated area within a certain period, a part of the profit will not be immediately taxed, but it will be postponed to the future. 2) At inheritance: if the land has rental housing on it, 50% reduction from the original evaluated price is permitted	No taxes

4 Regulatory types of rental and intermediate tenures

4.1 Classifications of different types of regulatory tenures

- Which different regulatory types of tenure (different regulation about contracts and tenant security) do you classify within the rental sector? What are their shares in dwelling stock (compare summary table 1)?

There are 5 regulatory types of tenure within the rental sector. There are three categories in rental housing with a public task, that is, (1) rental housing owned by local government based on the Public Housing Act (Act No. 193 of 1951), (2) rental housing owned by the HSC based on the Local Housing Corporation Act (Act No. 124 of 1965), (3) rental housing owned by the UR based on the Act on the Independent Administrative

Institution for Urban Redevelopment (Act No. 100 of 2003); and two categories in the rental housing without a public task, that is, (4) private rental housing including rental rooms, and (5) rental housing owned and managed by employers. Their shares in the rental sector are following based on the Population Census in 2010 (see Summary table 1): (1) 11.1%, (2)+(3) 4.7% (separate number for each is not available), (4) 76.8%, (5) 7.4%.

4.2 Regulatory types of tenures without a public task

- Please describe the regulatory types in the rental sector in your country that do not have a public task. This category may be called private or market rental housing.[173]
  - Different types of private rental tenures and equivalents:
    - Rental contracts
      - Are there different intertemporal tenancy law regimes in general and systems of rent regulation in particular?
      - Are there regulatory differences between professional/commercial and private landlords?
        - Briefly: How is the financing of private and professional/commercial landlords typically arranged (e.g. own equity, mortgage based loan, personal loan, mix, other)
      - Apartments made available by employer at special conditions
      - Mix of private and commercial renting (e.g. the flat above the shop)
    - Cooperatives
    - Company law schemes
    - Real rights of habitation
    - Any other relevant type of tenure

Housing without a public task in the private rental sector has two categories: one is private rental housing and the other is rental housing owned and managed by employers.

(1) Private rental housing is based on free contractual relationships, although it is regulated by the Act on Land and Building Leases (Act No. 90 of 1991; hereinafter referred to as ALBL) and the Civil Code (No. 89 of 1896, referred to as CC). There is no regulatory differences between professional, commercial landlords and private landlords. Mix of private and commercial renting is possible according to the Building Standard Act, but it subjects to the area restrictions stipulated in Art. 9 of the City Panning Act (Act No. 100 of 1968). For instance, certain kinds of business are not allowed in apartment buildings in the residential area.

(2) There is company housing as a particular section in the Japanese housing system. Since public housing has been residual area in the Japanese housing policy

[173] Market rental housing means housing for which the rent price determines the conclusion of contracts and not some social rules of allocation based on need.

and historically other kinds of housing with a public task, such as cooperatives, did not develop, company housing system has played an important role to fill the gaps in the whole housing system. Backed up by the long-term employment system and the seniority wage system, Japanese companies have provided their employees with generous company welfare, including low-cost rental housing and financial assistance in a form of loan with low interest rate to obtain their own homes. Because the national housing policy after the WWII was promoting "self-help" housing construction, the government welcomed companies' construction of company housing and supported it by financing them through the GHLC. In addition, the companies' assistance of employees to acquire owned homes, fitted with the national housing policy to orient people toward homeownership in order to stabilize the middle class.[174] Employees live first in a company dormitory or in a private apartment with the company's rent allowance when they are single, they move to the company's housing when they get married, and they use the company housing loan to obtain a house. However, such company housing welfare is shrinking in the context of economic recession and its subsequent result of the collapse of the whole company system, that is, the long-term employment system and the seniority wage system.[175]

As mentioned above, company housing is a part of company welfare. Companies construct company housing or rent apartments in order to sublease them to employees with low rental cost. Thus, if employees lose their jobs, they lose their homes. Moreover, the company often has power to evict employees in certain circumstances, such as a transfer order. ALBL and CC govern this type of rental tenure, although it depends on how high the rent is (see 6.3).

4.3 Regulatory types of tenures with a public task

- Please describe the regulatory types of rental and intermediary tenures with public task (typically non-profit or social housing allocated to need) such as
  - Municipal tenancies
  - Housing association tenancies
  - Social tenancies
  - Public renting through agencies
  - Privatized or restituted housing with social restrictions
  - Public entities (e.g. municipalities) taking over private contracts, typically for poor tenants to counteract homelessness
  - Etc.

- Specify for tenures with a public task:
  - selection procedure and criteria of eligibility for tenants
  - typical contractual arrangements, and regulatory interventions into rental contracts
  - opportunities of subsidization (if clarification is needed based on the text before)

[174] Iwao Sato, 'Welfare Regime Theories and the Japanese Housing System,' in *Housing and Social Transition in Japan*, ed. Y. Hirayama & R. Ronald (London: Routledge, 2007), 79-80.
[175] Ibid, 84-85.

- from the perspective of prospective tenants: how do I proceed in order to get “housing with a public task”?

There are three regulatory types of rental tenures with a public task, (1) rental housing owned by local governments, (2) rental housing owned by the HSC, and (3) rental housing owned by the UR.

(1) Rental housing owned by local government means public housing owned by prefectures and municipalities. Public housing is constructed by local governments with subsidies from national government as well as bought and leased by local governments. The standard personal criteria to become a tenant in this type of public housing are: an applicant should be 20 years and more and will live with relatives within the 3rd degree of relationship; has low household income and has difficulty with the present dwelling; an applicant should already live in the place (e.g. in the prefecture for the prefectural public housing) for a certain period of time; prospective dwellers should be no members of the gangsters (Boryokudan, Yakuza); an applicant has to have a joint surety preferably of a relative and has to pay a deposit of 3 months’ rent at the beginning. As to the cohabitation requirements, engaged couples and couples without being married are allowed (However, engaged couples should officially get married by the designated moving day, and cohabitant couples should submit the residential registration stating their cohabitation status), but ‘intentionally unnaturally separated family, such as separate living of a couple or parents’ is not allowed to apply to the public housing. Selection of tenants is done by lottery, although categorical priorities are given to the elderly, the handicapped, single parents, the ill with specific diseases, victims of domestic violence or other criminal offenses, family with the elderly and children, the family with the public aid, sufferers from natural disasters, and the like. Recently public housing dwellings are open for single persons, but the requirement is often having a certain categorical attribution, such as, the elderly, the handicapped, victims of domestic violence, etc. In other words, young single persons are not allowed to live there. Regarding foreigners, in addition to the normal requirements, a foreign national should have a visa status with a period of more than 3 month or more than 1 year according to the local government, should be registered in the said municipality as a foreign resident and should live or work in the said municipality in order to apply for public housing. Subsidization for a tenant is possible in the form of rent assistance as part of the livelihood protection measures provided under the public aid system, if the said tenant meets requirements to receive a welfare benefit.

The rent is determined according to the income, the area, the size of the dwelling, and the construction period of the building. In case of sudden unemployment or disease, there is also the system of reduction of the rent. On the other hand, if the income exceeds the certain amount of the income regulated by law, the tenant should pay the rent equivalent to the rent of neighborhood (market rental price). If the income is recognized as “high income,” the government can order the tenant to move out. If the tenant does not move out longer than 6 months, the government can collect the rent twice as much as the market rental price according to the law. The national government requires local governments to undertake stricter enforcement of those two measures. Although CC and ALBL govern the contractual relationship in public housing after the tenant has been selected, eviction as an administrative disposition due to the excess of the income does not need to have a ‘just cause’ which is ruled by ALBL.

The procedure to rent a dwelling of public housing is slightly different according to the local government. Each local government which has public housing posts the information on the website and advertises vacant dwellings. An example of the procedure of the Osaka city public housing for general households is: An applicant fills out the application→submits the application to the office→first screening with the application→receives the allocated number for the lottery, if qualified to apply (a household with more than 3 children can get two numbers, so that the probability rate becomes higher)→lottery→second screening with other official documents→conclusion of a contract; deposit and an official certificate of the seal of the joint surety should be submitted→moves in.[176]

(2) Rental housing owned or managed by the HSC is for middle class households and has two basic subcategories. One is general rental housing (a) and the other is specified excellent housing (b). Both types of housing are not available for the 'unnaturally separated household.'

(a) General rental housing does not have rental assistance. This housing is available for a single tenant and sometimes also for house-sharing with non-family/relative members, as well as for employees' housing in some cases (e.g. Osaka City HSC). An applicant should be 20 years old or older, a Japanese national or a foreign national with the visa status of permanent resident, special permanent resident or intermediate-long term residential permission of more than 3 months, and should have minimum income or minimum amount of saving. An applicant should have had no troubles in the public housing or the HSC housing in the past, such as, arrear with rent or forced eviction, and should behave as a good neighbor, if he/she gets a dwelling. The purpose of renting a dwelling is for his/her own use. This requirement may be no ownership of another house by an applicant or cohabitants. An applicant has to have a joint surety or otherwise an agreement with the designated surety company. An applicant and cohabitants should not be gangsters and have nothing to do with them. Estate agent fee, Reikin, and renewal fee are not required, but a 3 months' deposit is necessary. The allocation system is basically 'first-come, first-serve' system except newly built housing (in that case, by lottery). However, priorities for the elderly, family with small children, the handicapped may be considered, for example, through 7 days earlier application (Tokyo).

(b) Specified excellent housing is housing with rent subsidy. This type of housing may be owned either by the local government or a private landlord. The private rental housing may be rented and subleased by the local government, or only managed by the local government for the purpose of the HSC. The contract is concluded, therefore, between the tenant and the local government in the former case, and between the tenant and the landlord in the latter case. The amount of rent is called 'contracted rent' which is as equivalent to the neighborhood market rental price. However, the actual rent which the tenant has to pay is determined based on the income classification which he/she belongs to, and it increases by some percent each year according to each public body. Requirements for an applicant are the same as the HSC general rental housing (minimum age of 20, a deposit of 3 months' rent and no other fees like estate agent fee, Reikin, and renewal fee, a guarantor, no-arrear with rent in the public housing or the HSC housing in the past or no forced eviction, being a good neighbor, and no gangster

[176] <http://www.city.osaka.lg.jp/toshiseibi/cmsfiles/contents/0000161/161799/flow.pdf>.

members), but the income should fall in between the minimum and maximum levels. The allocation system is basically 'first-come, first-serve' system.[177]

In addition, the HSC has often housing for the elderly. This type of housing may not have a requirement of the minimum income and it has a rent subsidy according to the income classification. An applicant should be 60 years old or older, have to have a contact person, and can receive care if necessary, in addition to the general requirements for the HSC housing as mentioned above.

The procedure may be: application→screening with the required documents and explanation on the contract→submission of the contract and other related documents, at the same time, payment of the deposit, rent, fee for the common area, etc.→conclusion of a contract (the issue date) and handing over the key→submission of new residential registration of all the dwellers within 20 days after the issue date.

(3) The UR rental housing is offered to the middle class households. That is why there is an income requirement with the minimum income. The monthly income should be more than the standard monthly income, that is, at least 4 times as much as the rent or more than JPY 330,000 (if the rent is more than JPY 200,000, the income should be more than JPY 400,000), or the saving should be more than 100 times as much as the rent. The elderly, the handicapped, single parent family, and students older than 18 years old can apply, even though the income is less than the standard. However, such an applicant should have a support obligator of lineal relative by blood or relative within the 3rd degree whose monthly income is more than the standard income or the saving said above. And this support obligator should sign the contract to become a joint surety for the said tenant's obligation with the registered seal of the obligator and an official certificate of the seal impression, and should submit an official document, such as 'family register,' to prove the blood relationship.

An applicant should be a Japanese or a foreign national with the visa status of permanent residence, special permanent residence, and intermediate-long term residential permission with more than 3 months. The purpose of renting a dwelling is for his/her own use. The family should not be unnaturally separated. Prospective dwellers should not be gangsters and should have nothing to do with them. A person who has debt due to arrear with rent to the UR in the past cannot apply to the UR housing. Being a good neighbor requirement is also a criterion.

The advantage of the UR housing is that there are no requirements of Reikin, estate agent's fee, renewal fee, and especially no requirement of joint surety. However, the deposit fee of 3 months' rent is required. And the allocation system is basically not the lottery but 'first-come, first-served' system except newly built dwellings.

The procedure is as follows: An applicant checks vacant dwellings in the UR's website→applies either in the internet or in the UR service offices→preliminary check of the dwelling→submits the required documents, such as, the application, residential registration certificate (or alien registration in case of a foreigner) and income certificate of all the prospective dwellers→conclusion of a contract with the registered seal of the tenant, an official certificate of the seal impression is also required→moves in.

- Draw up summary table 9 which should appear as follows:

[177] See for example, Osaka-city HSC, <http://www.osaka-jk.or.jp/chintai/jutaku_type_03.aspx>.

Summary table 9

Rental housing **without a public task**	Main characteristics • Types of landlords • Public task • Estimated size of market share within rental market • Etc.
1) Private rental tenancy 2) Company housing	1) Landlords are private persons. Its share in the rental sector is 76.8%. 2) Company housing as a part of company welfare system. Its market share is 7.4%.
Rental housing for which a **public task** has been defined	
3) Prefectural/municipal public housing 4) HSC housing 5) UR housing	3) Housing for low income households. Its share is 11.1%. 4) 5) Housing for middle class households. The accumulated share of both is 4.7%. 4) One type of rental contract in this category has rent subsidy.

Private rental tenancy is the main tenure type of renal housing and therefore, the questions in the legal part (starting below) will be basically answered for this type of tenancy.

5 Origins and development of tenancy law

- What are the origins of national tenancy law and where was and is it laid down (civil code, special statute, case law)?
- Who was the political driving force? Was it based on a particular legal philosophy (e.g. socialism)? Is there a particular philosophy behind the rules (e.g. protection of the tenant's home as in Scandinavia vs. just a place to live as in most other countries)
- What were the principal reforms of tenancy law and their guiding ideas up to the present date?
- Human Rights:
    - To what extent and in which fields was tenancy law since its origins influenced by fundamental rights enshrined in
        - the national constitution
        - international instruments, in particular the ECHR
    - Is there a constitutional (or similar) right to housing (droit au logement)?

The Japanese national tenancy law is comprised of the general provisions on lease in the section of obligation in the Civil Code (Act No. 89 of 1896; CC) and the special act, the Act on Land and Building Leases (Act No. 90 of 1991; ALBL). ALBL is the primary act applied to the tenancy cases first and it is tenant protective. In addition to those two laws, case law has had also an influential power for the development of tenancy law, especially by using general clauses, such as, "just cause" or "destruction of the mutual trusting relationship." In this sense, the courts have played a role of compensating for the lack in the housing policy.

Originally the protection of tenants was only covered by CC and it was very weak.[178] Art. 605 of CC states the countervailing power of a tenant, if the right of lease is registered. However, a tenant does not have a right to claim for the registration and such a registration depends on the will of the landlord. Therefore, the status of a tenant was not stable in the sense that he/she had to move out the dwelling, if the third person bought the dwelling and demanded the vacation of it.

The maximum duration of a lease contract is 20 years under CC (Art. 604 of CC), while there is no restriction regarding the term of the lease contract of dwellings as well as of land. Therefore it was possible to conclude a short term contract such as of 2 or 3 years under CC. Moreover, if a contract was unlimited in time, then the landlord could terminate the contract at any time (Art. 617 of CC) and even if a contract was limited in time, the landlord could terminate the contract at will provided that the landlord reserved the right to termination in the contract (Art. 618 of CC). In addition, transfer and sublease of the right of lease needs a permission of the landlord and if a tenant transfers or subleases the leased thing, the landlord could cancel the contract (Art. 612 of CC). In short, the provisions on lease in CC did not protect the benefit of the tenant. Yet, this insufficiently tenant-protective law was faced with disputes between landlords and tenants during the WWI (1914-1918).

The development of capitalism triggered by the WWI and its subsequent population flow into the cities caused the scarcity of housing and rent increase. On this background landlords tried to increase rent by refusing renewal of the contract and terminating it in order to conclude a new contract with a higher rent or tried to enforce rent increase by threatening the tenants with those possibilities. Therefore, the Act on Building Lease was enacted in 1921 (Act No. 50 of 1921) at the same time of the enactment of the Act on Land Lease (Act No. 49 of 1921). However, the protection of tenants was not strong enough. New rules to protect tenants were introduced, such as, countervailing power of a tenant by actual transfer of the dwelling (Art. 1 (1) of the Act on Building Lease), extension of the notice period for a termination of the contract from 3 months (Art. 617 (1) of CC) to 6 months (Art. 3 of the Act on Building Lease), right to request purchase of interior decorations and fixtures (Art. 5 of the Act on Building Lease), and both parties' right to request rent increase or decrease in case of circumstantial change (Art. 7 of the Act on Building Lease). However, the landlord's right to refuse renewal of the contract and freedom to terminate the contract remained as they had been. That is, the Act on Building Lease was not aimed at the protection of dwellings of tenants.

[178] Description of the historical development of the tenancy law in Japan is based on, Iwao Sato, 'Nihon Minpo no Tenkai (2): Tokubetsuho no seisei, Shakuchishakkaho,' ed. T. Hironaka & E. Hoshino, *Minpoten no Hyakunen I* (Tokyo: Yuhikaku, 1998), 231-274.

The drastic reform of the national tenancy law was made in 1941. Its aim was, however, not protection of tenants, but removal of social uncertainty which would hinder the conduct of the war (The China-Japanese War and the WWII). At that time a large number of workers moved into the cities to produce military materials and there was a great shortage of housing for those workers. Thus, the rent increased drastically and landlords evicted tenants in order to seek for better tenants who would pay higher rents and consequently, many disputes between landlords and tenants arose. The government feared social unstableness and anxiety, which would prevent the successful conduct of war, as well as too much financial burden of the workers which would threaten the income control policy under the wartime economic regime. Therefore, in 1939 the Decree on Land and Housing Rent Control was proclaimed to prohibit rent increase (Imperial Decree, No. 704 of 1939). However, this new Decree did not work well, since landlords were allowed to terminate the contract or refuse renewal of the contract under the 1921 Act on Building Lease to enforce the black rent increase with the threat of eviction due to possible termination or non-renewal of the contract. That is why the 'just cause' provision was introduced into the Act on Building Lease in 1941 (Art. 1-2 of the Act on Building Lease). This clause stated that a landlord could terminate the contract or refuse the renewals of the contract, only when he/she needed for his/her own use or otherwise he/she had a just cause.

Although the original purpose of the introduction of the 'just cause' provision in 1941 was not stabilizing the tenants' living and life, this just cause doctrine had a great impact on the development of the national tenancy law in the direction of tenants' protection after the WWII. The intention of the legislature which enacted this Act was literally to permit a landlord to terminate the contract or to refuse the renewal, if he/she had a need the dwelling for his/her own use or had a just cause.[179] Yet in the background of housing problems during and after the WWII, the Supreme Court decision in 1944[180] and the following court decisions added the balancing principle to the judgment of the existence of the landlord's just cause. That is, the existence of the landlord's just cause is now determined by balancing the needs and other circumstances between the landlord and the tenant. Since the tenant's circumstances are to be considered, the landlord's just cause has become hardly admitted in the cases, which has led to the firm protection of tenants under the national tenancy law. It is also important to point out that the tenants' protection through the just cause system was correlated with the passive role of the governmental housing policy at the time of housing shortage after the WWII. In other words, the government did not supply low-price, good quality public housing, but depended on private self-help housing construction of owned home. And this tendency of the national housing policy has remained until today (see 1.2).

The strong protection of tenants corresponded with an academic argument for 'right of lease as a property' from the pre-war period to the post-war period until the mid of 1960s.[181] The task of this academic argument was to give a legal basis to the various protection of right of lease (such as, protection of continuous habitation through the just

[179] Ibid. 246.
[180] Daishin-in Decision on September 18, 1944, *Horitsujiho* no. 717, 14.
[181] Sato, 'Nihon Minpo no Tenkai,' 251; Nobuhisa Segawa, 'Fudosan no Chintaishaku: Sono Gendaiteki Kadai,' in *Fudosanchintaishaku no Kadai to Tenbo (Problems and prospects of the renting immovable properties)* ed. H. Matsuo & A. Yamanome (Tokyo: Shojihomu, 2012), 2-3.

cause system) by strengthening the right of lease with an analogous power of property right. It had a role to mitigate the disparity of wealth in the scarcity of housing after the WWII by giving burden on landlords, especially using the just cause system.[182]

However, after the mid of 1960s this academic argument of 'right of lease as a property' lost its power both as a guiding force in the housing policy and as a legal theory by the 1980s, when the housing situation became better, the rental housing share became smaller and the rent control was abolished in 1986. In 1980s Japan experienced real estate bubble era and there was a huge demand of efficient use of land in the cities. The court decisions appeared, which admitted the just cause of landlords if they pay compensation for eviction, or in which the court decided the amount of compensation fee beyond the amount offered by the party.[183] And in this bubble era building lease became a big rental business and a target for investment, which would later become problems of sublease after the bubble burst.

In 1991 the Act on Building Lease was reformed and the Act on Land and Building Leases (Act No. 90 of 1991; ALBL) was enacted. It was comprised of the three former acts, the Act on Building Lease, the Act on Land lease, and the Act on Building Protection (Act No. 40 of 1909). In this reform, the elements for judging a 'just cause' were clarified in Art. 28 of ALBL (the Art. 1-2 of the former Act on Building Lease): A termination of a building lease contract or a refusal of renewal may not be made, 'unless it is found, upon consideration of the prior history in relation to the building lease, the conditions of the building's use, the current state of the building and, in cases where the building lessor has offered payment to the building lessee as a condition for surrendering the buildings or in exchange for surrendering the buildings, the consideration of said offer, that there are justifiable grounds for doing so in addition to the circumstances pertaining to the necessity of using the buildings on the part of the building lessor and the lessee.' At the same time the Civil Conciliation Act (Act No. 222 of 1951) was reformed and it set up 'the conciliation first principle' for the cases of rent and land rent increase and decrease (Art. 24-2 of Civil Conciliation Act) as well as the system of the decision of the conciliation committee, in which the conciliation committee can settle the case, if both parties have agreed to follow the committee's decision in writing (Art. 24-3 of Civil Conciliation Act).

Two characteristics of this reform in 1991 should be pointed out related to the national economic circumstances and arising demands.[184] The first point is liberalization of land and building lease. The fixed term land lease (Art. 22 of ALBL) was introduced and it served purposes of the developers to supply owned houses based on the land lease in the suburb of the metropolitan cities. In addition, the fixed term rental contract which was in the period of absence of the landlord (Art. 38 of ALBL), and which was about the building to be demolished (Art. 39 of ALBL). This liberalization is also considered as the opposite direction from the legal development of tenants' protection until that time. The second point is that there was a discussion on the introduction of 'efficient land and building use' as an element to judge a 'just cause' although it was not realized. In order to enhance urban development in 1980s, the difficulties or impossibilities to terminate the lease contract was a great obstacle. That was why 'efficient land and building use' was considered to be written as one just cause in ALBL,

[182] Segawa, 'Fudosan no Chintaishaku,' 2-3.
[183] Ibid, 3.
[184] Sato, 'Nihon Minpo no Tenkai,' 256-261.

but the counterargument was too strong for it to be realized. Instead, 'the conciliation first principle' was introduced to balance the interests between the landlord and the tenant.

The most recent revision of ALBL was made in 1999. In this revision fixed term rental contract, that is, the building lease limited in time without renewal protection, was introduced (Art. 38 of ALBL) in the political milieu at that time which enforced general liberalization of the market. The purpose of this reform was to balance the interests between landlords and tenants, so that it would promote supply of good quality, large-size rental housing, since too much protection of the tenants through the just cause system (that is, de-facto no possibility to terminate a contract) had made landlords reluctant to invest money to build good quality, large-sized rental housing. This became the third choice of a rental contract in the rental housing market. Now the three contract types are: **rental contract unlimited in time**, **rental contract limited in time with renewal protection**, and **fixed term rental contract**.

As it has been reviewed above how the tenancy law has developed, the guiding idea especially in the post war era was to intervene in freedom of contract in order to protect tenants as the weak. Protection of the weak tenants, or protection of tenancy continuation through the just cause system was strong, but it has lost their theoretical power, since it has become difficult to recognize the weak tenants due to the change of the circumstances in the rental market, such as, more supply of rental housing, decrease of the number of tenants who stay in the same place longer, increase of the number of young tenants, and so forth.[185] Since the introduction of fixed term rental contract, different interpretations of protection of tenancy continuation have been discussed, such as, considering protection of rental continuation as the one based on mutual agreement, because re-conclusion of a rental contract aimed at the same object is possible after the contract term is expired in the fixed term rental contract.[186]

As for influences of fundamental rights, Art. 25 of the Constitution has a weak influence on right to housing as discussed in 3.1. Moreover, the influence of the Habitat II, the Istanbul Declaration of Human Settlements which Japan adopted in 1966 is scarcely significant.[187] As a result, the Basic Act for Housing enacted in 2006 does not declare the fundamental right to housing and has an ambiguous explanation of the duty of the national and local governments. This governmental attitude which does not take housing as an issue of the fundamental rights is reflected in the policy design in which housing policy has been treated not as a social policy but as an economic policy (see 3.1).

6 Tenancy regulation and its context

6.1 General introduction

- As an introduction to your system, give a short overview over core principles and rules governing the field (e.g. basic requirements for conclusion, conditions for

[185] Yasuhiro Akiyama, 'Sonzokuhosho no Konnichiteki Igi,' *Fudosanchintaishaku no Kadai to Tenbo (Problems and prospects of the renting immovable properties)* ed. H. Matsuo & A. Yamanome (Tokyo: Shojihomu, 2012), 55.
[186] Ibid, 65.
[187] Honma, *Kyoju no Hinkon*, iv.

termination of contracts by the landlord, for rent increase etc.; social orientation of tenancy law in force; habitability (i.e. the dwellings legally capable of being leased))

With regard to central rules of the tenancy law in Japan, there are several points to point out. Firstly, rental contract is a consensual contract which can be concluded without transferring an object. There must be an agreement over two elements in a contract: (1) the landlord lets a tenant use the specified object (=dwelling) and profit from it, and (2) the tenant pays rent for it (Art. 601 of CC).

Secondly, the duties arising from a rental contract are as follows. The landlord (1) is obliged to transfer the object to let the tenant use and take the profits from it, and (2) has a duty to keep the object suitable for use and taking profits. On the other hand, the tenant must make use of and take the profits of the object in compliance with the method of use specified by the contract or by the nature of the object which is the subject matter of the contract (Art. 616 →Art. 594 (1) of CC).

Thirdly, if there is a breach of duty in a rental contract, a party can claim for a damage (Art. 415 of CC). If the landlord does not pursue an obligation to repair the object (Art. 606 (1) of CC) and the tenant cannot use and take the profits, the tenant can claim for a damage. Whether the tenant can refuse to pay rent in case of the landlord's breach of duty to repair is disputable. However, the tenant has a right to reduce the rent in case of partial loss of the object (Art. 611 (1) of CC). In case of partial loss of the object without the tenant's fault and consequent impossibility to achieve the purpose of use with the remaining portion of the object, the tenant may cancel the contract (Art. 611 (2) of CC).

If the tenant breaches a contractual duty, such as, if the tenant does not pay rent (Art. 541 of CC) or if the tenant subleases the object without obtaining a permission of the landlord, the landlord can cancel the contract (Art. 612 (2) of CC). However, it would be too harsh for the tenant, if the rental contract can be cancelled based on a small default under the general civil law rule on cancellation (Art. 612 (2) of CC), since the object is a foundation for the tenant's life or business. Therefore, the doctrine of 'destruction of the mutual trusting relationship' has been introduced by the court. In other words, the degree of the said breach of contract is evaluated according to the judgment, whether it damaged the relationship of mutual trust between the landlord and the tenant. Only if it damaged the mutual trust, a cancellation is valid.

Fourthly, the conditions for termination of contracts by the landlord are different among different contract types. As mentioned above in 5, there are three types of rental contract in Japanese tenancy law: (1) rental contract unlimited in time, (2) rental contract limited in time with renewal protection, and (3) fixed term rental contract.

(1) In case of rental contract unlimited in time, either party may request to terminate it at any time, if the parties do not specify the term of a rental contract. And a rental contract will be terminated 3 months after the request (Art. 617 of CC). However, ALBL adds restrictions in order to protect tenants: the landlord should have a "just cause" (Art. 28 of ALBL); the termination of the contract will be 6 months after the request (Art. 27 (1) of ALBL); and if the tenant continues to use the said property after the expiration date and if the landlord fails to make an objection without delay, the termination is not valid (Art. 27(2) and Art. 26 (2) of ALBL).

(2) A contract limited in time with renewal protection should be longer than 1 year. If the term is shorter than 1 year, it will become automatically “unlimited in time.” Neither of the parties can terminate the contract before the expiration date (Art. 618 of CC). However, if one party or the both parties reserve the right to terminate the contract during that period, the contract can be terminated 3 months after a request of termination as the case of a contract unlimited in time (Art. 617 of CC).

There is a possibility for the both parties to renew the exiting contract, when it has expired. As for this possibility ALBL provides protection for tenants. In order not to renew the contract, the landlord should give a notice of not renewing the contract between one year and six months before the expiration date (Art. 26 (1) of ALBL). Otherwise, the contract will be automatically renewed with conditions identical to those of the existing contract, but the period will be unlimited in time (statutory renewal).

Yet, this refusal of renewal is not valid, if the landlord does not have a “just cause.” A just cause can be recognized by the court mainly through a comparison of the needs and necessities of the landlord and those of the tenant. Main elements to decide a just cause are: previous history of the said contract (e.g. existence of renewal fee, arrears of rent, etc.); conditions of the building (e.g. deterioration of the building which needs a reconstruction, effective usage of the land); and a landlord’s offer of monetary compensation or/and that of an alternative dwelling. Even though the landlord gives a notice of refusal of renewal, however, the contract is deemed to be renewed, if the tenant uses the said property after the expiration date and if the landlord fails to make an objection without delay (Art. 26 (2) of ALBL).

Different from the above explained general rental contract, (3) fixed term rental contract expires definitely at the end of the period of the contract. Under this contractual scheme the period of the contract can be less than 1 year which is different from the general rental contract. If the period is shorter than 1 year, the contract will be automatically terminated at the date of expiration. If it is 1 year or longer than 1 year, the landlord should notify the tenant between 1 year and 6 months before the expiration (notice period) that the said rental contract will be terminated by reason of the expiration of the period; otherwise, the landlord may not assert that termination against the tenant. However, if the landlord gives a notice after the notice period and it has passed 6 months after that notice, the landlord can assert that termination against the tenant.

Fifthly, both parties have a right to request increase or decrease in rent according to Art. 32 (1) of ALBL in certain conditions: when the building rent becomes unreasonable, as a result of the increase or decrease in tax and other burden relating to the land or the buildings, as a result of the rise or fall of land or building prices or fluctuations in other economic circumstances, or in comparison to the rents on similar buildings in the vicinity, provided that there are no specific clauses that the rent should not be increased for a fixed period. If the both parties cannot reach an agreement on rent increase, they have to go to the summary court for an conciliation (Art. 24-2, 3 of the Act for Conciliation of Civil Affairs, Act No. 222 of 1951). If they cannot reach an agreement in the conciliation, the case will go either to the summary court or the district court according to the amount of the claim and the court will render the adequate rent. However, Art. 38 (7) of ALBL state that in cases of a fixed term rental contract the provisions of Art. 32 shall not apply in cases where there are special clauses pertaining to rent revision. This will be explained below (see 6.4).

Sixthly, there are several regulatory law requirements. Habitability is regulated by law. However, it is not regulated by the tenancy law, but by the Building Standard Act

and the Enforcement Order of the Building Standard Act (Cabinet Order No. 338, 1950; the latest amendment in 2013). The Building Standard Act stipulates structural safety, fire safety, hygienic safety and the Enforcement Order rules technical requirements.[188] The Enforcement Order regulates habitable rooms with specific rules of natural lightning, ventilation, construction materials, height of the ceilings, height of floors, sound blocking of the separation walls, etc. If a room is rent for tenants in an inadequate way—e.g. too many people in a room, a room without windows, with flammable walls, or improper emergency exit—then it is not a violation of the tenancy law, but a violation of the Building Standard Act. There are many illegal renting rooms in Japan and the government tries to obtain information by encouraging reports from the public.[189] There are promotional standards for desirable housing environments according to housing categories (see 3.4), but they are neither mandatory nor specifically directed to rental housing.

- To what extent is current tenancy law state law or infra-national law (if legislative jurisdiction is divided: what is the allocation of competencies and for which subject matters)
- Is the position of the tenant also considered as a real property right (and therefore also governed by property law) or (only) as a personal (obligatory) right?

The Japanese national tenancy law is comprised of the general provisions on lease in the section of obligation in CC and the special act, ALBL. Since the provisions on tenancy law are written in the section of obligation in CC, the position of the tenant is considered as a personal, obligatory right, although there was once a theoretical movement to promote the strength of this personal right to that of property right (see 5). ALBL is the primary act applied to the tenancy cases first. In other words, CC as the general private law is applied, unless ALBL as the special act does not modify the general civil law rules. Application of CC is specifically ascribed in ALBL, such as, Art. 29 (2) (period of building lease; Art. 604 of CC does not apply) and Art. 31 (2) (3) (perfection of the building lease through registration; relationship with Art. 566 and Art. 533 of CC).

- To what extent is the legislation divided up into general private law and special statutes? To what extent are these rules mandatory and dispositive? Does the relationship between general and special rules work properly so as to create legal certainty?

With respect to legal certainty, the coordination between CC and ALBL does not seem to be a problem, since the application priority is given to ALBL and it is ruled in ALBL how colliding provisions of ALBL and those of CC should be treated. However, there are a couple of points to be mentioned.

[188] See the English explanation of the construction regulations by the Building Center of Japan, <http://www.bcj.or.jp/c20_international/baseline/src/BSLIntroduction201302_e.pdf>.
[189] <https://www.mlit.go.jp/jutakukentiku/house/jutakukentiku_house_fr_000052.html>.

As it will be mentioned below (see 6.8), it is vague whether an added thing has become a part of the building or not in order to discern Art. 608 (2) of CC and Art. 33 of ALBL: a useful expense under Arts. 608 (2) and 196 (2) is one side, and interior decorations and fixtures under Art. 33 of ALBL is the other. That is, if the object has become a part of the building (=the landlord's property), it is a matter of Art. 608 (2); and if the decoration has not become a part of the building and the tenant can remove it (=the tenant's property), but if it is removed, the value of its utility is lessened (see 6.5), it is a matter of Art. 33 of ALBL. Though Art. 33 of ALBL has been used to cover the cases which do not fall in the category of Art. 608 of CC,[190] this point has been criticized by academics and discussed that both provisions should be consistently interpreted.[191]

Another point is about sublease cases. A series of sublease cases of professional developers were controversial in the point whether ALBL, especially Art. 32 of ALBL (reduction of rent) was applied to those cases, since the type of those sublease contracts seemed not to be a typical contract specified in CC. This type of contract can be understood, for example, as a contract of a joint business by the transfer of the right to rent from the owner to the developer. Those cases questioned what the concept of building lease was and at the same time, which law should be competent for those new type of sublease contracts. However, the Supreme Court rendered the decision that sublease contracts were building lease contracts and therefore, Art. 32 (1) of ALBL which was a mandatory rule should be applied.[192]

- What is the court structure in tenancy law? Is there a special jurisdiction or is the ordinary one competent? What are the possibilities of appeal?

Since Japan does not have a federal system, the current tenancy law is a national law. In Japan there are 438 Summary Courts (if a case is a small claim worth up to JPY 1.4 million), 50 District Courts (the first instance of general jurisdiction), 8 High Courts, and the Supreme Court, which hear the civil cases including tenancy law cases. A party who is unsatisfied with the decision of the District Court can file an appeal to the High Court, and the one who is unsatisfied with the decision of the High Court can appeal to the Supreme Court, but an appealed case can be heard in the Supreme Court only in relation to a violation of the Constitution. If the first instance is the Summary Court, then the next is the District Court, and the same order of appeal follows like the cases starting with the District Court.

- Are there regulatory law requirements influencing tenancy contracts
  - E.g. a duty to register contracts; personal registration of tenants in Eastern European states (left over of soviet system)
  - Regulatory law requirements on - new and/or old - habitable dwellings capable of being rented - e.g. on minimum size, number of bathrooms, other mandatory fittings etc.

[190] T. Ikuyo & T. Hironaka (eds), *Chushaku Minpo (Japanese Civil Law Annotated) Vol. 15 2nd.ed. improved*, (Tokyo: Yuhikaku, 2010), 247 (Watanabe & Harada). Hereinafter *Chushaku Minpo (15).*
[191] Ibid, 243 (Watanabe & Harada), 755-756 (Watanabe & Harada).
[192] Supreme Court Decision on October 21, 2003, *Minshu* vol. 57, no. 9, 1213.

- Regulation on energy saving

Regarding rental contract registration, there is no legal duty to resister a rental contract, but a tenant may do it so that he/she can obtain a countervailing power against the person who acquires the said immovable property (Art. 605 of CC). However, a tenant needs a cooperation of the landlord to register it. In other words, since the right of a tenant is an obligatory right, a tenant cannot claim that the landlord should register the rental contract, unless there is a clause on the landlord's agreement for registration in the contract. As for energy saving, there is a law on energy saving, the Energy Saving Act (Act No. 49, 1979; the latest amendment in 2013), but it is not a mandatory law but a promotional law. With regard to the role of estate agents, see 2.4.

6.2 Preparation and negotiation of tenancy contracts

Table for 6.2 Preparation and negotiation of tenancy contracts

	Main characteristic of tenancy (There is no differences among the three types of tenancy in the preparation and negotiation of tenancy contracts)
Choice of tenant	-Mainly through estate agents -Check points: annual income, workplace, guarantor, and personality -Blacklists by the association of surety companies -Anti-discrimination Law has some effect (compensation for a damage), but no effective force to make landlords not discriminate
Ancillary duties	-Both parties have ancillary duties in the stage of preparation and negotiation based on the good faith principle -Reliable interests (actual cost arising from the reliance) are compensated

- Freedom of contract
    - Are there cases in which there is an obligation for a landlord to enter into a rental contract?

Freedom of contract is one of the basic premises in Japanese civil law as in other liberal states. Basically this concept pervades in rental contract cases. However, this legal concept does not exist purely independent from the social, economic circumstances and therefore it has been modified. Two cases are to be mentioned as ones in which a landlord is obliged to enter into a rental contract.

Firstly, as it has been already discussed in the previous section, in the second category of rental contract, 'rental contract limited in time with renewal protection,' a landlord is almost obliged to enter the contract relationship again with the same tenant at the time of renewal, since renewal is strongly protected through the 'just cause' system and the balancing test. Even though both parties chose 'limited in time' type of contract and the original contract is supposed to end, the concept of freedom of contract is

modified to protect the tenant who is conceptualized as the weaker party through restricting freedom of the landlord to choose no renewal of the contract (=not to enter the contract with the same tenant).

Secondly, there was an act for rental housing in case of disaster, the Act on the Temporary Measures for Land and Building Leases in the Afflicted Cities (Act No. 13 of 1946). Art. 14 ruled that the former tenant had a prioritized right to rent a dwelling, when a new building had been built after the disaster. From the landlord's perspective, the landlord was obliged to lease a dwelling to the same tenant that had lived before the disaster occurred. This Act was, however, not applied to the recent Great East Japan Earthquake, since this Act had been criticized for its several deficits.[193] Therefore, it was abolished in May, 2013 and a new Act was enacted in June, 2013, the Act on Special Measures for Land and Building Leases in the Afflicted Places due to Large Scale Disasters (Act No. 61 of 2013).[194] Art. 8 of the new Act states that a landlord should inform the former tenants whose contact information the landlord knows, if the landlord built or plans to build the same kind of building.[195]

Other than those cases a landlord is free to choose a tenant. The landlord finds a tenant through an estate agent. An apartment seeker goes to an estate agent and the estate agent will show objects. If an apartment seeker likes one object, then the seeker has to apply for it. The necessary information and points to be checked are: annual income (it should be normally more than 3 times as much as the yearly rent), workplace and the length of service, guarantor and the relation to the guarantor (within the second degree of the blood relation is preferable), and personality of the applicant. The estate agent checks the application form and necessary documents, and then the landlord will check them finally.

- Matching the parties
    - How does the landlord normally proceed to find a tenant?
    - What checks on the personal and financial status are lawful and usual? In particular: May the landlord ask for a salary statement? May he resort to a credit reference agency and is doing so usual?
    - How can information on the potential tenant be gathered lawfully? In particular: Are there blacklists of "bad tenants"? If yes, by whom are they compiled? Are they subject to legal limitations e.g. on data protections grounds?
    - What checks may and does the tenant carry out on the landlord (e.g. to avoid being trapped by a swindler landlord)

[193] The original Act was enacted to cope with the chaotic situation after the WWII and therefore it had been criticized that it did not fit the current circumstances. It was applied to the Hanshin Awaji Earthquake disaster (Kobe Earthquake) in 1995, but the tenants did not have so much benefit from it, since, for example, the tenants had no right to determine the building plan or the rent price in the rebuilt building and therefore it was often not affordable. See <http://senben.org/archives/2504>; also <http://www.moj.go.jp/content/000104122.pdf>. .

[194] <http://www.moj.go.jp/MINJI/minji07_00124.html>.

[195] <http://www.moj.go.jp/content/000109773.pdf>.

In order to gather the information on potential tenants, the estate agent might use some company to collect credit information. However, the blacklists made by financial/credit companies are not available for the estate agents. If the estate agent also manages rental buildings, then they may have their own list of bad tenants, such as trouble-makers, claimers, and tenants with the past rent arrears. But each management agent may have its own list and those lists are normally not shared by other estate agents.

However, the systematic data collection has been realized by the association of surety companies, the Leasing Information Communicate Center since 2009.[196] The surety companies (see 1.5 Special features in Japan) share the information of the tenants with rent arrears and make blacklists. A member surety company of this association has a duty to obtain an agreement of an applicant applying for a guarantor (1) that the data on the name, the payment situation and so on will be registered in the association, (2) that the registered data will be used by member surety companies, and (3) the range of the information and the duration of the registration (for 5 years after the evacuation/the complete payment). The problem is, however, that an applicant applying for a guarantor has actually no choice to disagree with the data registration, since he/she needs a surety to apply for a rental dwelling. And once a tenant is on the black list, it is difficult to rent an apartment.

Those lists are subject to data protection law. For instance, a tenant can request disclosure of his/her own data and let the association correct them, if they are not true. However, as long as a tenant does not take such a procedure, the tenant would not know the content of the information and there is always a risk of rejection by the landlord.

Regarding the tenant's check points on the landlord, there is not so much information on it. However, there is a MLIT survey about the elements on which the tenant's choice based on.[197] According to this survey, 27.2 % of the samples thought the name of estate agent important, 18.4% the name of management company, and 20% the name of the landlord.

- Services of estate agents *(please note that this section has been shifted here)*
  - What services are usually provided by estate agents?
  - To what extent are estate agents regulated? In particular: are there rules on how an agent should present a house, i.e. on the kind of information which needs to be given?
  - What is the usual commission they charge to the landlord and tenant? Are there legal limitations on the commission?

Estate agents

[196] <http://jpg.or.jp/>; Hajime Oda & Satoshi Kubo, 'Yachintaino wo Ikkatsukanri', *Asahi Newspaper*, 15 August 2009, page 1.
[197] < http://www.mlit.go.jp/kisha/kisha06/01/010512_2/04.pdf> (2005).

There are 3 business areas of estate agents in relation to rental housing. They are intermediary, management and sublease. As an intermediary or an agency of the landlord, an estate agent assess the value of the object and determines the rent, deposit, and Reikin (thanks money), recruit the tenants together with the landlord, shows the rental housing to applicants, intermediates the negotiation between the landlord and the applicant, selects the tenant, lets a real estate transaction specialist explain the important things as to the object and the condition of the contract (Art. 35 of the Building Lots and Buildings Transaction Business Act, Act No. 176 of 1952),[198] concludes the contract, and gives the key the tenant's moving. At the conclusion of a rental contract, the estate agent can receive the fee from the landlord and the tenant, but it must be less than 1 month's rent in total.[199] This whole fee was used to be paid by the tenant when the rental housing supply was scarce, but there are many estate agents who take only half or no fee from the tenant in the age of excessive supply of rental housing. The Building Lots and Building Transaction Business Act rules only this field of business of estate agents.

After the conclusion of a rental contract, the same or other estate agent manages tenants (collecting rents, take complaints from the tenants, etc.) or the building (maintenance, cleaning, etc.) or both of tenants and the building based on a management agreement between the estate agent and the landlord.

Sublease business is the system that an estate agent rents the rental housing in order to manage it, from recruiting the tenants, leasing, to maintaining the building.

As to sale of housing and land by an estate agent, the agent sells the object directly or intermediates between a landlord and a buyer. In the latter case, the agent can receive the intermediary fee up to 'purchase price x 3.15% + JPY 63,000' if the purchase price is more than JPY 4,000,000.[200]

- Ancillary duties of both parties in the phase of contract preparation and negotiation ("culpa in contrahendo" kind of situations)

Ancillary duties of both parties in the phase of contract preparation and negotiation are recognized by the court. However, there is no specific provision on those duties and damages arising from breach of those duties in CC. Instead it is assumed that those duties stem from the quasi-contractual relationship in the stage of contract preparation and negotiation based on one of the fundamental civil law principle, the good faith principle (Art 1 (2) of CC). The damage covers 'reliable interest.' That is, compensation should be paid to the party who has paid the cost based on the reliance that the contract would be concluded. There have been several cases to acknowledge breach of duties in the contract preparation and negotiation stage. The court tends to require a written document in order to find the contract completed, although a written form is not a requirement for a valid rental contract in the Japanese civil law. In several decisions the court ordered compensation for the damage because of breach of pre-

[198] A real estate transaction specialist is an official status given to a person who passed the state examination.
[199] Ministry of Construction (the present MLIT) (Notice No. 1552 of 1970).
[200] Ibid.

contractual duties, although it denied completion of a contract due to the lack of a written agreement.[201]

6.3 Conclusion of tenancy contracts

Table for 6.3 Conclusion of tenancy contracts

	Main characteristics of rental contract unlimited in time (Type 1)	Main characteristics of rental contract limited in time with renewal protection (Type 2)	Main characteristics of fixed term rental contract (Type 3)	Ranking from strongest to weakest regulation, if there is more than one tenancy type
Requirements for valid conclusion	Consensual agreement without specific formal requirements	Consensual agreement without specific formal requirements	-Notarized written contract (Art. 38 (1) of ALBL) -Additional document to explain about no renewal (Art. 38 (2) (3) of ALBL)	Type 3 → Types 1 and 2
Regulations limiting freedom of contract	-Between 1 year and 6 months' notice period for the termination (Art. 27 of ALBL) -Just cause for the termination (Art. 28 of ALBL)	-A contract clause stating that there is no renewal is invalid (Arts. 26, 28 of ALBL) -A contract clause on contract term less than 1 year is invalid and it will be automatically unlimited (Art. 29 of ALBL) -A contract clause stating that the tenant	-Notice period between 1 year and 6 months prior to the expiration date; but if 6 months passed since the date of notice, the termination is valid (Art. 38 (4) of ALBL)	Type 2 →Type 1 →Type 3

[201] For example, Kyoto District Court Decision on October 2, 2007, H18 (wa) no. 156, <http://www.courts.go.jp/hanrei/pdf/20071030151608.pdf>; Tokyo High Court Decision on March 13, 2002, *Hanreitaimuzu*, no.1136, 195; Sapporo District Court Decision on August 12, 2005, *Hanreitaimuzu*, no. 1213, 205.

		will not claim for a compensation for a removal is invalid (Art. 28 of ALBL)		

Equivalent arrangements to rental housing

- Tenancy contracts
  - distinguished from functionally similar arrangements (e.g. licence; real right of habitation; Leihe, comodato)
  - specific tenancy contracts, e.g. contracts on furnished apartments; student apartments; contracts over room(s) only (e.g. student rooms); contracts over rooms or apartments located in the house in which the landlord lives himself as well. Please describe the legal specificities in these cases.

Japan does not have functionally similar legal arrangements, such as license or real right of habitation, but there are several types rental contract which not ALBL but CC governs. This means, a tenant cannot enjoy the protection stipulated by ALBL, such as renewal, and notice period for termination. Firstly, building lease for the purpose of temporary use is one of them which ALBL does not apply to (Art. 40 of ALBL). Whether a lease contract is one for the purpose of temporary use is determined according to the contract period, purpose and motive of the contract, and other circumstances. For instance, if an object is leased for the limited time and for the limited purpose, such as, a rental villa or a rental office during some specific event, it tends to be recognized as a rental contract for a temporary use.[202]

Secondly, universities' student dormitories or private student rooms with meals ('room and board') are also not covered by ALBL. Since the purpose of this renal contract is only during the study, this type of rental contract falls outside the scope of ALBL and it is governed by CC. That is, the agreement in the original contract has a binding power. For instance, the contract period of student dormitories or student rooms is normally one year and if a student wants to move out of the room, he/she has to pay the rest of the rent of the one year period. Since those rooms are in demand at the beginning of the school year but not in the middle of the year, the landlord cannot receive the rent in the rest of the year, if the tenant is allowed to terminate the contract and does not pay the whole rent of the contractual period. On this ground this type of contract is recognized as a special type of rental contract which ALBL does not cover.

Thirdly, as a similar type of rental contract, there is a rental contract regarding company housing. Large companies often have their own housing for employees and they lease housing for no rent or a lower rent as a part of employees' welfare program. This is mainly recognized as a special contractual relationship as long as the

[202] Keizo Yamamoto, *Minpo Kogi* (Lecture on civil law) IV-1 (Tokyo: Yuhikaku, 2005, 2011), 608.

employment relationship exists and that is why it is based on the rules on the company housing use. The special clause of evacuation due to the loss of the employee's status is arguable and the courts opinions have been divided.[203]However, whether a contract over a company housing is a rental contract covered by ALBL is determined how high the rent is, that is, whether the rent is as high as the market rent.[204] Yet, even though ALBL is applied to this type of contract and if the landlord needs a 'just cause' to terminate the contract, the consequence would not be so different, since the end of the employment contract can be admitted as a just cause for the landlord company.

Fourthly, contracts over rooms of the building where the landlord lives are not governed by ALBL, if the room is not separated from the other part of the building and not exclusively used by the tenant. Conversely, if the room is independent from the other part of the building and is for an exclusive use for the tenant, the contract over that room is covered by ALBL.[205]

Fifthly, furnished apartments used to be uncommon in Japan, but recently they have become popular. They are usually leased as weekly or monthly apartments. According to the type of business, they can be either hotels or rental housing. The former is governed by the Hotel and Ryokan (=Japanese styled hotels) Management Act (Act No. 138 of 1948) and the latter by ALBL. If an apartment for a short-term stay is a hotel according to the Hotel and Ryokan Business Management Act, the contract is an accommodation contract which does not require to make a written contract or does not require a guarantor. Also the owner can enter the room and evacuate the guest easily, if he/she does not pay the fee.

On the other hand, if it is not the case as mentioned above, then it can be a rental contract for a temporary use or a fixed term renal contract. In case of a rental contract for a temporary use, to add 'temporary use' to the title of the contract is not enough to be a rental contract for a temporary use. The actual rental relationship should be recognizable. Therefore, if the rental contract is renewed several times, or if the contractual period is long from the beginning, that contract would not be considered as a rental contract for a temporary use by the court. The other option is to make this type of contract as a fixed term rental contract. The contractual period can be short and tenants have relatively less protection compared to the other two types of rental contracts, although it is ruled by ALBL. However, as it will be explained below, in the case of a fixed term rental contract, the landlord must provide a written statement to the tenant in advance to make sure that there is no renewal (Art. 38 of ALBL).

Sixthly, as mentioned in 2.6, there are simple inns where people, especially those who have low income, such as, day laborers, can stay. Those inns can be the addresses for residential registrations. Since a residential registration is a requirement to receive

[203] Supreme Court Decision on November 16, 1954, *Minshu* vol. 8, no. 11, 2047 (the evacuation clause is valid, because the employee's payment was not rent but a sustainment fee); Supreme Court Decision on November, 16, 1956, *Minshu* vol. 10, no. 11, 1453 (the payment was rent, therefore, this case is governed by the ALBL and the evacuation clause is invalid).
[204] Ibid.
[205] Supreme Court Decision on June 2, 1967, *Minshu* vol. 21, no. 6, 1433 (The Supreme Court found that the room met the requirements to be an object for a rental contract covered by the ALBL, even though the said room was a part of a Japanese styled house which normally did not have complete independent and isolated rooms.).

livelihood protection, homeless people who stay constantly there or plan to stay there may use the address of the inn to obtain their residential registrations.[206] Those simple inns are regulated by the Hotel and Ryokan Management Act.

Requirements for a valid conclusion of the contract

- formal requirements
- is there a fee for the conclusion and how does it have to be paid? (e.g. "fee stamp" on the contract etc)
- registration requirements; legal consequences in the absence of registration

  Note: If relevant, please distinguish the various existing registers, e.g. land register, tax register, register of domicile.

As explained in 6.1, a rental contract is valid without any written form, because it is classified as a consensual contract. Nevertheless, it is common to have a written agreement in practice, as well as the court sees the existence of written form as a proof of the conclusion of a contract in contract unlimited in time and contract limited in time with renewal protection. On the other hand, in case of fixed term rental contract, the written contract should be notarized (Art. 38 (1) of ALBL) and the landlord must provide to the tenant a written document stating that there is no renewal at the end of the contractual period. If the landlord did not explained about that, the agreement of no renewal is invalid (Art. 38 (2)(3) of ALBL). No fee (revenue-stamp duty) for a conclusion of a contract is required, which is different from a contract of land lease.[207] Registration of the contract is also not required, but if the tenant would like to, then he/she can do it, only if the landlord agrees to that (see 6.1). Since the landlord has no obligation to register the rental contract, it is difficult for the tenant to have the rental contract registered and in fact there is few cases of rental contract registrations. According to Art. 605 of CC, the tenant attains the countervailing power against the third party who has acquired the said building, but this provision does not protect the tenant because of actual impossibility to obtain the registration. Therefore, there is a provision regarding the tenant's countervailing power in ALBL. Art. 31 (1) of ALBL rules that 'even if the building lease is not registered, at the time the buildings are delivered, the building lease shall subsequently become effective in respect to the person who has acquired real rights to said buildings.'

Restriction on choice of tenant-antidiscrimination issues

- EU directives (see enclosed list) and national law on antidiscrimination

[206] See the Osaka city office's press release (2007) on the possibility of residential registration using a simple inn in Kamagasaki, Osaka, one of the big inn towns in Japan, <http://www.city.osaka.lg.jp/seisakukikakushitsu/cmsfiles/contents/0000006/6128/2007_03_16.pdf>.
[207] <http://www.nta.go.jp/taxanswer/inshi/7106.htm>.

Antidiscrimination does not seem to be a main issue in the Japanese tenancy law. To whom the landlord leases a rental dwelling is permitted widely under the name of freedom of contract. Rejection because of old age, children, disability, foreign nationality is still normal practices in the rental housing market.[208] Regarding gender, there are female specified apartments. However, there are several cases on whether a landlord has freedom not to choose a tenant with a foreign nationality, especially permanent Korean residents. Discrimination based on race, nation, nationality is forbidden by the Constitution and the International Convention on the Elimination of All Forms of Racial Discrimination. However, it is difficult to apply them to civil relationship and they cannot force landlords to conclude rental contracts with persons of foreign nationalities, because the Constitution is a public law and the International Convention stipulates the duties of member states. In one case the plaintiff was rejected to rent an apartment because of his nationality.[209] The plaintiff claimed that the city government (defendant) did not make an ordinance to prohibit discrimination based on nationality and it violated the International Convention on the Elimination of All Forms of Racial Discrimination (through Art. 1 (1) of the State Redress Law, Act No. 125 of 1947). The court rejected the plaintiff's argument. On the other hand, there is one case in which the court granted compensation for damages arising from the landlord's tortious act of rejecting the tenant based on nationality.[210] There are several ordinances to prohibit discrimination against the elderly, foreigners, the handicapped, etc. to access private rental housing.[211]

Limitations on freedom of contract through regulation

- mandatory provisions in rental contracts, in particular: mandatory minimum requirements of what needs to be stated in a tenancy contract
- control of contractual terms (EU directive and national law); consequences of invalidity of contractual terms
- statutory pre-emption rights of the tenant
- are there provisions to the effect that a mortgagor is not allowed to lease the dwelling (charged by the mortgage) or similar restrictions?

The principle of freedom of contract applies to rental contracts and written agreement is not a requirement to conclude a contract in theory. In practice, however, it is usual that the parties have a written agreement. There is no mandatory requirements of what needs to be stated in a tenancy contract, but the government has made a

[208] See the survey on the landlord's negative attitude to certain group of people as tenants (2006) at the MLIT website <http://www.mlit.go.jp/kisha/kisha07/07/070531_2/01.pdf>.
[209] Osaka District Court, December 18, 2007, *Hanreijiho* No. 2000, at 79.
[210] Kyoto District Court Decision on October 2, 2007, H18 (wa) no. 156, <http://www.courts.go.jp/hanrei/pdf/20071030151608.pdf>.
[211] For example, Kawasaki City Housing Standard Ordinance (Ordinance No. 28 of 2000), Art. 14.

sample of the standard rental contract to avoid disputes arising from many of today's incomplete rental contracts.[212]

There are several mandatory rules stipulated by ALBL. In case of contract limited in time with renewal protection, following clauses are invalid through Art. 30 of ALBL[213]: (1) a contract clause that there will be no renewal after the end of the contract period is invalid (Art. 26 and Art. 28); (2) a contract clause stating that the contract period is less than 1 year is invalid and the period will be automatically unlimited (Art. 29); (3) a contract clause that a tenant will not claim for a compensation for a removal is invalid (Art. 28). In addition, the following rules regarding countervailing power are also mandatory through Art. 37 and contract clauses which are disadvantageous to the building lessee are invalid (a similar provision as Art. 30): (1) the tenant's countervailing power without registration against the new owner of the building (Art. 31); (2) the landlord's mandatory notice period of 6 months before the termination to the sublessee, in case of expiration of the contract or request of termination (Art. 34); and (3) protection of the tenant in the building on leased land (Art. 35).[214] There is no statutory pre-emption rights of the tenant.

In case of contract unlimited in time, a contract clause that the landlord can terminate the contract any time unconditionally is invalid, and the landlord must have a just cause (Art. 30, Art. 28) and should request the termination 6 months before the termination date (Art. 30, Art. 27).

With regard to fixed term rental contract, the landlord should give the notice of termination during the period from 1 year to 6 months prior to the expiration date, if the contract duration is more than 1 year. Otherwise the landlord cannot assert that termination against the tenant. But if six months have passed since the date of notice, the termination is valid (Art. 38 (4)).

As for the mortgage, there are no statutory restrictions about settlement of a mortgage on the building for lease. However, the tenant's countervailing power against mortgagee depends on when the dwelling was handed over to the tenant, in other words, when the tenant moved into the dwelling. If the handover had occurred before the mortgage was settled and registered, the tenant has a prioritized right and therefore he/she cannot be evacuated by the new owner (the successful bidder). On the other hand, if the handover occurred after the mortgage had been set up and registered, the new owner can evacuate the tenant (Art. 95 (2) of the Civil Execution Act (Act No. 4 of 1979)), although the new owner should have a waiting period of 6 months (Art. 395 of CC).[215] Even in this case, if the following conditions are met, that is, (1) the rental contract is registered, (2) all the mortgagees who settled before the registration of the rental contract agree that the tenant has a countervailing power, and (3) this agreement

[212] <http://www.mlit.go.jp/jutakukentiku/house/jutakukentiku_house_tk3_000023.html>.

[213] Art. 30 of the ALBL: Any special provisions that run counter to the provisions of this Section (=Art.26-29) and that are disadvantageous to the building lessee shall be invalid.

[214] Art. 35 of the ALBL: (1) In cases where there is a lease with respect to buildings on land that is the object of a Land Lease Right, when the building lessee must surrender the buildings by reason of the expiration of the Land Lease Right, only in cases where the building lessee was unaware of the expiration of the Land Lease Right at least one year prior to said expiration, the court may, pursuant to a request by the building lessee, grant a reasonable time period for the surrender of the land, not exceeding one year from the day the building lessee was made aware of the expiration of the Land Lease Right.

[215] Kenju Watanabe, 'Tatemonono Teitoken to Chinshakuken tono Yuretsu' in 8 *Fukushima no Shinro*, (2012): 59, <http://fkeizai.in.arena.ne.jp/pdf/seminar/seminar_2012_08_1.pdf>.

is registered, the tenant has a countervailing power against mortgegees and cannot be evacuated from the said dwelling (Art. 387 of CC).

6.4 Contents of tenancy contracts

Example of table for d) Contents of tenancy contracts

	Main characteristics of rental contract unlimited in time (Type 1)	Main characteristics of rental contract limited in time with renewal protection (Type 2)	Main characteristics of fixed term rental contract (Type 3)	Ranking from strongest to weakest regulation, if there is more than one tenancy type
Description of dwelling	1. An estate agent should explain the important matters as to the object before conclusion of a contract (Art. 35 of the Building Lots and Buildings Transaction Business Act) 2. The consequences of the wrong information are reduction of rent and cancellation of the contract (Arts. 565, 563, 564, through 559) and claim for a damage (Art. 563 (3)).	Same as the type 1	Same as the type 2	No difference among the three types
Parties to the tenancy contract	1. General rules on capacity of act: a minor (Arts. 4-6 of CC), (2) an adult ward (Arts. 7-10 of CC), (3) a	Same 1, 2, 3,4,5	Same 1,2,3,4,5 But regarding 3, if tenants are friends,	Type 1 and Type 2 →Type 3

	person under curatorship (Arts. 11-14) and (4) a person under assistance (Arts. 15-18 of CC) 2. Does a change of the landlord affect the position of the tenant? Inheritance: No (Art. 896 of CC) Sale: No (Judicial precedents) Public auction: depends on when the handover occurred 3. Tenant's cohabitants: family members and relatives (Arts. 752, 821, 877 of CC), fiancé can be Okay. 4. Change of tenants -Divorce: new contract, if the tenant left the dwelling -Succession married couple: the left co-dweller succeeds (Art. 896 of CC) non married couple: the left co-dweller obtains some protection but not the right to rent the dwelling (Art. 36 (1) of ALBL) 5. Subletting is allowed with an approval of the landlord (Art. 612		students, same sex couples, they often choose 'room share' or 'share house of which contract is a fixed term rental contract. However, not every fixed term rental contract is 'room share' or 'share house.' Basically rule of 'family and relatives' applies to cohabitants here, too. Regarding 4, there are 2 ways to conclude a contract in case of 'room share': one person is the tenant and the other are cohabitants or all the members are tenants and each has a joint liability.	

	(1) of CC).			
Duration	-No duration	-Mandatory minimum duration of 1 year. If less than one year, it will become automatically 'unlimited in time' (Art. 29 of ALBL) -No maximum duration -Renewal protection, esp. statutory renewal (Art. 26)	-No minimum duration, less than 1 year is possible (Art. 38 (1) of ALBL) -Renewal is not expected though possible through concluding a new contract	Type 2→Type 3→Type 1
Rent	1. No rent control 2. Delayed payment can cause the cancellation by the landlord (Art. 541 of CC), but it is mitigated through the doctrine of 'destruction of the mutual trusting relationship' (judicial precedent) 3. Tenants have set off and retention rights regarding necessary expenses (Art. 608 (1), Art. 533, Art. 505- of CC), but they should be medium/big repairs 4. Rent claims can be assigned to third parties (Art. 466 (1), 467 of CC)	Same: 1,2,3,4,5,6,7,8,9	Same: 1,2,3,4,5,6,7,8 Regarding 9, Art. 32 of ALBL does not apply (Art. 38(7), and mutual agreement should be prioritized	Type 1 and 2 → Type 3

	5. Useful expenses paid by the tenant can be reimbursed at the end of the contract (Art. 196 (2), Art. 608 (2) of CC), but it should be an objectively recognizable improvement 6. Useful expenses may be reimbursed if the attached thing has become a part the object, its removal causes a damage to the leased thing, or too much burden on the tenant, etc. (Art. 242, Art. 608 (2) of CC, or Art. 33 of ALBL) 7. Tenant has retention right based on the claim for useful expenses (Art. 295 of CC) 8. Landlord has a statutory lien on the tenant's movable property in the building (Art. 311, Art. 312, Art. 313 (2) of CC) 9. Rent increase and decrease can be claimed by both parties in spite of a special clauses in the contract; However, if there is a special clause stating that the			

	building rent shall not be increased for a fixed period, a claim for rent increase is not valid (Art. 32 of ALBL)			
Deposit	1.No legal regulations on deposit 2.Shikikin/Security deposit and/or Reikin/Kenrikin 3. Special contract clause on Shikibiki (non-refundable deposit) is problematic, many lawsuits have occurred	Same: 1,2,3	Same: 1,2,3 However, there have emerged many objects without Shikikin, Reikin, Kenrikin, etc.,in all the types, but especially in the new type of rental dwelling, like, monthly apartments of which contract is Type 3	No difference among the three types
Utilities	Availability of water, gas and electricity is usual, but the tenant usually has to conclude a contract with each utility company	Same as Type 1	Same as Type 1, but in a 'room share' type of dwelling, the internal rules for the cohabitants determine how to pay for utilities	No difference among the three types

Description of dwelling

- Description of dwelling; indication of the habitable surface (and consequences in case of the provision of wrong data)

The layout of a dwelling is often shown in the advertisement in the estate agent's office and a tenant candidate takes a look at the object, before he/she applies for it. Description of the dwelling is usually included in the contract or in the document of important matters as to the object which should be explained by a real estate transaction specialist before the conclusion of the contract (Art. 35 of the Building Lots and Buildings

Transaction Business Act, see 2.4). It includes the type of the building (wooden or iron); type of the room (apartment, shop, office, etc.); purpose of use (dwelling or for a commercial purpose); utilities and their conditions (electricity, water, gas, toilette, bath, balcony, etc); habitable surface and kitchen.

If the information on the dwelling is wrong and if the actual surface is smaller than the indicated number in the contract, the tenant in good faith can claim for the reduction of rent (if the surface is the basis for the calculation of the rent) or cancel the contract (Art. 565 <seller's warranty in cases of shortage in quantity or partial loss of object>, Art. 563 <seller's warranty where rights partially belonged to others>. Those provisions shall apply mutatis mutandis to contracts for value other than contracts for sale through Art. 559 of CC). A claim for reduction or a cancellation does not preclude a tenant in good faith from making a claim for damages (Art. 563 (3) of CC).

Allowed uses of the dwelling

- Allowed uses of the rented dwelling and their limits
    - In particular: to what extent are mixed (residence/commercial) contracts lawful and usual (e.g. having a shop, a legal office or a doctor's studio in the dwelling)

Contracts of residential-commercial mixed use of the dwelling is lawful, although the object should be registered as 'residence/office' or 'residence/shop.' The part of the surface of the object leased as an office or a shop is subject to taxation (consumption tax), while the part used for residence is tax free (Consumption Tax Act, Basic Notification 6-13-5).[216]

Parties to a tenancy contract

- Landlord: who can lawfully be a landlord?

- does a change of the landlord through inheritance, sale or public auction affect the position of the tenant?

Landlord

There is no limitation for a person to become a landlord. For example, restriction to a mortgagor does not exist in Japan. To be a landlord is to become one of the parties of conclusion of a contract, and therefore, general rules on capacity of act apply here (Arts. 4-12 of CC). However, it is often that the problems of lack of capacity of legal act are not the ones of a landlord but of a tenant (see below in this section).

With respect to the change of the landlord, there are differences between the case of public auction, and the one of succession and sale. As explained in 6.3, the status of the tenant in case of public auction is different, depending on when the handover occurred. That is, whether the handover was before the mortgage settlement

[216] <http://www.nta.go.jp/shiraberu/zeiho-kaishaku/tsutatsu/kihon/shohi/06/13.htm>.

or not. As to the succession, if the landlord died, the status of the landlord will be succeeded by the successor according to Art. 896 of CC which states that 'from the time of commencement of inheritance, an heir shall succeed blanket rights and duties attached to the property of the decedent.'

As for a change through a sale, there are still academic discussions, whether the status of landlord will be transferred to the new owner (=buyer) due to the transfer of the ownership.[217] However, the judicial precedents rule that the contractual relationship between the original landlord and the tenant will be automatically transferred to the new owner and the tenant in case (1) if the original landlord and the new owner agreed that the contractual relationship with the tenant would be transferred, but irrespective of the tenant's countervailing power (registration of the rental contract), and (2) if there is no agreement upon the transfer but the tenant has a countervailing power.[218] The Supreme Court rendered that the new owner obtained the right to lease at the time of acquisition of the property without giving a notice to the tenant that the new owner became the landlord.[219] Regarding the issue of whether the new owner can claim for the performance of duties by the tenant (e.g. rent payment), the courts rule that the new owner should have completed the registration of the property right on the said building.[220]

The status of the tenant is protected under Art. 31 (1) of ALBL which stipulates that 'even if the building lease is not registered, at the time the buildings are delivered, the building lease shall subsequently become effective in respect to the person who has acquired real rights to said buildings.' That is, the handover of the dwelling should occur before the new owner resisters his/her property right on the said building.[221]

- Tenant:
- Who can lawfully be a tenant?

Tenant

Same as the case of landlord, to be a tenant is to become one of the parties of conclusion of a contract, and therefore, general rules on capacity of act apply here (Arts. 4-12 of CC). In the Japanese Civil Code, the legal act of four categories of persons is limited by law: (1) a minor (Arts. 4-6 of CC), (2) an adult ward (Arts. 7-10 of CC), (3) a person under curatorship (Arts. 11-14) and (4) a person under assistance (Arts. 15-18 of CC). (1) A minor (under 20 years old, Art. 4 of CC) cannot conduct a legal act alone and must obtain the consent of his/her statutory agent (a person who has a parental

[217] Yamamoto, *Minpo Kogi*, 494-497.
[218] Hiroshi Matsuo, 'Chintai Fudosan no Jototo Chintainin no Chii,' 24 *Keio Hogaku* (2012): 49-50. Daishin-in (the former Supreme Court) Decision on May 30, 1921, *Minroku* vol.27, 1013; Daishin-in Decision on October 12, 1928, *Horitsushinbun* no. 2921, 9; Daishin-in Decision on February 16, 1934, *Horitsushinbun* no. 3665, 8; Supreme Court Decision on September 18, 1958, *Minshu* vol. 12, no. 13, 2040.
[219] Supreme Court Decision on September 18, 1958, *Minshu* vol. 12, no. 13, 2040.
[220] Yamamoto, *Minpo Kogi*, 498. Daishin-in Decision on May 9, 1933, *Minshu* vol. 12, 1123; Supreme Court Decision on March 19, 1974, *Minshu* vol. 28, no. 2, 325.
[221] Supreme Court Decision on May 2, 1967, *Hanreijiho*, no. 491, 53.

authority) to perform any juristic act (Art. 5 (1) of CC). If a minor conducts a legal act without a consent of the statutory agent, the agent can rescind the said act (Art. 5 (2) of CC). The person who has a parental authority has a power of representation. But if a minor enters into marriage, he/she shall be deemed to have attained majority (Art. 753 of CC). Those rules apply to conclusion of a rental contract by a minor without a consent by the parental authority. Therefore, a person under 20 cannot be a tenant fully.

(2) An adult ward is a person who constantly lacks the capacity to discern right and wrong due to mental disability, and for whom the family court ordered the commencement of guardianship and it appointed a guardian (Arts. 7 and 8 of CC). Legal act of an adult ward is largely restricted according to Art. 859 (1) which states that 'a guardian shall administer the property of a ward and represent a ward in juristic acts concerning his/her property.' Therefore, the guardian concludes a rental contract for the adult ward and can rescind the rental contract which was concluded by a ward (Art. 9 of CC).

(3) A person under curatorship is a person whose capacity is extremely insufficient to appreciate right or wrong due to any mental disability, and for whom the family court ordered the commencement of curatorship and it appointed a curator (Art. 11 and Art. 12 of CC). There are certain legal acts which a person under curatorship cannot conduct alone and needs the curator's consent (Art. 13 (1) (2) of CC). If a person under curatorship conducts alone those enumerated acts (Art. 13 (1) of CC) and other acts which the family court has an order of the necessity of the curator's consent, the curator can rescind that legal act. One of the legal acts enumerated in Art. 13 (1) is <9>: to make any lease agreement with a term which exceeds the period set forth in Art. 602 of CC which stipulates 3 years as the maximum period of a lease. Therefore, a person under curatorship can conclude a rental contract for maximum 3 years alone, but he/she has to obtain a consent of the curator for a rental contract of more than 3 years. However, in practice, the landlord requires a guarantor for a conclusion of a rental contract with a person under curatorship, the curator's consent to become a guarantor can mean a consent for the rental contract itself. This applies to the next category, a person under assistance.

(4) A person under assistance is a person who has insufficient capacity to appreciate right or wrong due to any mental disability, and for whom the family court may rule the commencement of assistance and may appoint the assistant (Art. 15, Art. 16, Art. 17, Art. 876-7, Art. 876-9 of CC. The court may appoint the supervisor of the assistant (Art. 876-8 of CC)). However, there are some differences between a person under curatorship and a person under assistance. For the commencement of assistance the consent of the said person is necessary. In addition, the specific legal acts which needs the consent of the assistant are ruled by the family court at the request of one of the following persons, that is, the person under assistance, the assistant, and the supervisor of the assistant (Art. 17 (1) of CC). Those legal acts are within the enumerated legal acts in Art. 13 (1). If a person under assistance conducts those specified legal acts alone, the assistant can rescind the said legal act (Art. 17 (4)). Regarding a rental contract, a person under assistance can conclude a rental contract of up to the period of 3 years (Art. 602) as a person under curatorship. For a contract of the period more than 3 years, if the court rules, it is necessary for the said person to obtain the consent of the assistant. Yet, the requirement of a guarantor for a conclusion of a

rental contract may prevent the risk arising from the said person's solitary conclusion of a rental contract without the consent of the assistant who normally becomes the guarantor.

- Which persons are allowed to move in an apartment together with the tenant (spouse, children etc)?

Dwellers

It is a common practice that the spouse and the children of the tenant, as well as other family members who are registered in the family registration, are allowed to live in the dwelling of the contract. This practice is normally taken for granted, but it is supported by Art. 752 of CC which stipulates a married couple's duty of living together as well as mutual cooperation and assistance, by Art. 821 which rules the determination of the child's residence by a person who exercises parental authority, by Art. 877 (1) which stipulates the duty of support by the lineal relative and siblings, and by Art. 877 (2) which states that the family court may also impose a duty of support between relatives within the third degree in special circumstances. Allowance of cohabitation without being married depends on the landlord. If the dwelling is for one person, it is anyway not allowed, but if the dwelling is for two or more persons, some landlords require only notification of the additional cohabitant, and other landlords require that the two dwellers should be joint and several obligors with a guarantor for each dweller. In practice, however, if the tenant write the cohabitant as his/her fiancé, this fiancé is allowed to live as a cohabitant in the dwelling.

Some other relationships like friends, students, same sex couples can live in the dwelling which is leased for 'room share.' Traditionally the landlord rarely allowed this type of cohabitation (other than family members and fiancé), but it has become popular, partly because of difficulty to lease housings due to the economic recession, the unstable job market, the tendency to marry later, and so forth.[222] It depends on the landlord whether the all dwellers should be joint and several obligors or one person can be the tenant and the others are cohabitants, and whether one guarantor is enough or a obligator for each dweller is required. Same sex couples have difficulties to find a dwelling for themselves due to prejudice and discrimination against homosexuals in Japan, therefore, they do not open their relationship, and estate agents (or landlords) who offer dwellings for room share do not ask the relationship during the apartment search. There is another type of housing, which is called, 'share house,' and it is often that the tenant does not need either to pay Shikikin or to have a guarantor. The contract period is often short in the fixed term contract form. There are troubles arising from 'share house,' such as the landlord's termination which does not follow the legal rules for the fixed term rental contract and so on. However, there are no specific regulations which deal with such problems.[223]

[222] Keiko Tamashiro, 'Shohiseikatsu Sodan kara mita tatemono chinntaishaku,' in *Fudosanchintaishaku no Kadai to Tenbo (Problems and prospects of the renting immovable properties)* ed. H. Matsuo & A. Yamanome (Tokyo: Shojihomu, 2012), 228.
[223] cf. Ibid. 230.

- Changes of parties: in case of divorce (and equivalents such as separation of non-married and same sex couples); apartments shared among students (in particular: may a student moving out be replaced by motion of the other students); death of tenant
- Subletting: Under what conditions is subletting allowed? Is subletting being abused e.g. with the aim of circumventing the legal protection of tenants (when the tenant is offered not an ordinary lease contract but a sublease contract only)?
- Is it possible, and if yes under what conditions, to conclude a contract with a multiplicity of tenants (e.g. group of students)?

The consequence of change of co-dwellers is different according to what kind of relationship the dwellers have had. (1) In case of divorce, the dweller who will continue to stay in that dwelling should change the name of the party in the contract, if the rental contractual party has been the other dweller. This change of the name cannot be done with the existing contract, but the new contract with the new party should be concluded. That is, the new financial check regarding the staying dweller should be done, a new guarantor is required, the fee for changing the party / for concluding a new contract (often one month rent, but is different from case to case) can be required by the managing estate agent, and a new Shiki-kin (deposit) or in addition, Reikin (thanks money) might have to be paid. There are no legal rules stipulating the amount of fees and other cost in case of change of the party at divorce.

There is another way to deal with the case of divorce, that is, to consider it as a sublease to the ex-wife.[224] If this transfer of the tenancy right is not recognized as a breach of faith, the landlord cannot cancel the contract. In case of divorce the consent of the landlord to sublease the dwelling is not necessary, since the ex-wife was supposed to be allowed to live before the tenant got a divorce. [225]

(2) In case of death of the tenant, the left person, for example, the wife, can stay in the dwelling according to her succession, if the co-dwellers were married. Art. 896 of CC states that 'from the time of commencement of inheritance, an heir shall succeed blanket rights and duties attached to the property of the decedent.' However, the rental right is not inherited only by the heirs who lived together with the decedent, but also by the other heirs who lived somewhere else. The rental right is once succeeded to all the heirs first, and then it will be determined who will have the status of the tenant according to the agreement (if no agreement, then the family court's ruling) on the division of inherited property. Since the change of the party due to the succession occurs legally and automatically, there is no need for the heir to obtain a permission from the landlord nor to pay the fee for the change of the party in the contract.

If the left person is not a married partner, the succession will not occur and Art. 896 will not be applied. Namely, the left co-dweller does not succeed to the right of the decedent as the tenant. If the decedent does not have heirs, however, the left co-dweller without marriage or not legally adopted children succeed to the rights and duties of the

[224] Tokyo District Court Decision on April 24 in 1967, *Hanreijiho* no. 488, 67.
[225] <http://www.zennichi.or.jp/low_qa/regional_qa_detail.php?id=370>.

late tenant according to Art. 36 (1) of ALBL.[226] Even though there are heirs, the courts protected the status of the co-dweller by referring to the law of succession.[227] However, the left co-dweller does not obtain the right to rent the dwelling and the heirs succeed to that right. Therefore, the protection of the left co-dweller is not so strong and her/his status is not stable.[228]

(3) With regard to co-dwellers in the category of 'room share', including same sex couples, there are two possibilities of concluding a rental contract. One is that the all the members are the parties to make a contract with the landlord. That is, to conclude a contract with a multiplicity of tenants is possible. Each of the members has a joint liability, for example, each of them has an obligation to pay the whole rent. Guarantors can be also several to be joint guarantors, each of whom has an obligation for the whole rental contract. The other way is that the tenant concludes a contract with the landlord, and the other members become co-dwellers or subtenants with a permission of the landlord. In the former case, if one member moves out, then a new contract should be concluded due to the change of the tenants. In the latter case, if one member who is a co-dweller moves out, there is no need to change the existing contract. And if the tenant moves out, a new contract with co-dweller should be concluded. How to do with the rent, deposit money, at the time of moving out, etc. are determined by the internal room share rules. Replacement of the member should be reported to the landlord in the both cases. Yet there are no specific legal rules for problems arising from room share due to a relatively new development of this type of rent.

Subletting

Subletting is allowed, if the tenant obtains an approval of the landlord (Art. 612 (1) of CC). If the tenant subleases the dwelling to the third party without an approval of the landlord, the landlord can cancel the contract (Art. 612 (2) of CC). However, this provision has been mitigated by the legal precedent. Cancellation under Art. 612 (2) is only possible, if the relationship of mutual trust between the tenant and the landlord has been destroyed, in other words, if there is breach of faith. [229] With respect to abuse of subletting, there is no information on it.

Duration of contract

- Open-ended vs. limited in time contracts

[226] Art. 36 (1) In cases where a lessee of buildings used as residences dies with no heir, and persons with a relationship to the building lessee similar to a de facto marital relationship or a foster parent and child relationship, although notice of marriage or adoption has not been submitted, live together with the building lessee, said persons shall succeed to the rights and duties of the building lessee.
[227] Yonosuke Inamoto & Yukihiko Sawano (eds), *Konmentaru Shakuchishakkaho*, 3rd. ed. (Tokyo: Nihonhyoronsha, 2010), 280 (hereinafter referred to as *ALBL Konmentaru*). See Mariko Nishimura, 'Kazoku toha nanika (What is the family : A Study on the Subject of Succession of House Leasehold as a Means of Solving this Problem),' in 17/18 *Gakushuin Daigaku Daigakuin Hogakukenkyuka Hogakuronshu* (2011): 1-47.
[228] Ibid.
[229] Yamamoto, *Minpo Kogi*, 463. Supreme Court Decision on January 27, 1966, *Minshu* vol. 20, no.1, 136.

- for limited in time contracts: is there a mandatory minimum or maximum duration?

- Other agreements and legal regulations on duration and their validity: periodic tenancies ("chain contracts", i.e. several contracts limited in time among the same parties concluded one after the other); prolongation options; contracts for life etc.

As explained in 6.1, there are two kinds of limited in time contract: contract (1) limited in time with renewal protection and (2) limited in time without renewal protection, that is, fixed term rental contract. (1) A contract limited in time with renewal protection has a mandatory minimum duration, which is 1 year. If the period is shorter than 1 year, it will become automatically 'unlimited in time' (Art. 29 of ALBL). There is no maximum duration for a building lease (Art. 29 of ALBL).[230]

(2) A fixed term rental contract does not have any limitation on the minimum duration (Art. 38 (1) of ALBL). The period less than 1 year is valid for a fixed term rental contract. There is no maximum duration for a fixed term rental contract through the application of Art. 29 of ALBL as a contract limited in time.

As mentioned in 6.1, a contract limited in time with renewal protection is a type of contract of which renewal by the tenant is protected. Thus this can be a sort of a chain contract. It is very difficult for a landlord to refuse to renew the contract and the landlord has to have a 'just cause' to do so. In addition, a just cause can be accepted by the court only by balancing the needs and necessities of the landlord and those of the tenant.

There are three types of agreement of renewal of contract: (1) renewal based on the agreement, (2) statutory renewal and (3) automatic renewal provided in the contract. (1) Renewal based on the agreement is done within the period before the expiration, for example, it is initiated by the letter of renewal from the landlord 2 months before the expiration date and the tenant will agree to renew the contract. In this case, however, the tenant often have to pay the renewal fee to the landlord (often 1 month rent, 2 months' rent is also possible), the renewal administration fee to the managing estate agent (e.g. 0.5 month rent), and in addition the fire insurance. It is a common practice that the period of the duration of the contract is 2 years and every 2 years the tenant has to pay those fees. Although the former two fees have no legal ground, it is a custom and the Supreme Court found them valid (see 1.5: Special features in Japan).[231]

(2) Statutory renewal occurs in the following cases. Unless the landlord gives a notice of not renewing the contract between one year and six months before the expiration date, or unless the landlord gives a notice of not renewing the contract without altering the condition of the contract (rent, period, etc.) between one year and six months before the expiration date, the contract will be automatically renewed with conditions identical to those of the existing contract but the period will be unlimited in

[230] Art. 29 (2) of ALBL: The provisions of Article 604 of the Civil Code shall not apply to building leases. Art. 604 of CC: (1) The duration of a lease may not exceed twenty years. Even if the contract prescribes a longer term, the term shall be 20 years. (2) The duration of a lease may be renewed; provided, however, that such period may not exceed twenty years from the time of the renewal.

[231] Supreme Court Decision on July 15, 2011, *Minshu* vol.65, no.5, 2269.

time (Art. 26 (1) of ALBL). Moreover, if such a notice above has been given, but the tenant continues to use the building after the expiration date, a statutory renewal occurs when the landlord failed to make an objection without delay (Art. 26 (2) of ALBL). Whether the renewal fee should be paid in case of statutory renewal, the court decisions are divided.[232]

(3) Automatic renewal is a type of renewal which is written in the contract, such as, 'if both parties have a will to renew the contract and there is no offer from either party, the contract will be automatically renewed.'

A contract for life is prohibited under Art. 30 of ALBL, since it is recognized as disadvantage for the tenant. There is, however, an exception according to the Act on Securement of Stable Supply of Elderly Person's Housing (Act No. 26 of 2001). Art. 52 of this Act rules the conditions of 'Life Lease Company.' If a Life Lease Company supplies a dwelling for the life time of a tenant older than 60, who does not have a co-dweller, or whose co-dweller is either the spouse or a relative older than 60, with a permission of the governor of the prefecture, it can set a contract which will be ended at the time of the tenant's death in spite of Art. 30 of ALBL (Art. 52 of the Act on Securement of Stable Supply of Elderly Person's Housing).[233]

Rent Payment

- In general: freedom of contract vs. rent control
- Rent control: how is it legally framed; when does it apply; who carries it out; what are the consequences when the parties agree on an excessive rent
- Maturity (fixed payment date); consequences in case of delayed payment

There is no rent control in the private rental market, although it existed in the past as explained in 5. In other words, the principle of freedom of contract is the basis of the private rental market. The fixed payment is regulated by ALBL and it is paid monthly at the end of each month for a real estate lease (Art. 614 of CC).

In case of delayed payment, Art. 541 of CC states that 'In cases where one of the parties does not perform his/her obligations, if the other party demands performance of the obligations, specifying a reasonable period and no performance is tendered during that period, the other party may cancel the contract.' However, if this provision is applied

[232] Renewal fee was approved: Tokyo District Court Decision on June 5, 1997, *Hanreitaimuzu* no. 967.164; Tokyo District Court Decision on August 26, 2010, Westlaw Japan. See a review of this decision, Yuji Arai, 'Tatemono Chintaishakukeiyaku no Koshinryoshiharai Tokuyaku wa Hoteikoshin no baainimo Tekiyoga aruto sareta jirei', *RETIO* 83 (2011): 142. Renewal fee was rejected: Kyoto District Court Decision on May 18, 2004, H15 (wa) no. 3803.

[233] Mami Osugi, 'Koreisha to Tatemono Chinntaishaku,' in *Fudosanchintaishaku no Kadai to Tenbo (Problems and prospects of the renting immovable properties)* ed. H. Matsuo & A. Yamanome (Tokyo: Shojihomu, 2012), 191-206.

to any case in which the tenant did not perform his/her obligation, the landlord can cancel the contract and the basis of the tenant's life and business would be taken away by making a small failure. Therefore this provision is modified by the court through the doctrine of 'destruction of the mutual trusting relationship.' This means, even though the landlord cancelled the contract after demanding the tenant to perform the obligation (rent payment), that cancellation is invalid, if there is no 'destruction of the mutual trusting relationship' between the landlord and the tenant. In short, non-existence of destruction of the mutual trusting relationship works as a counter-argument by the tenant to refute the cancellation. Whether the mutual trusting relationship has been damaged or not is determined through considering the degree of damage of the landlord's interest (whether non-performance continues, how much the actual damage arising from the non-performance, whether the landlord has a not-performed duties) and the existence of the landlord's act to inhibit the contract continuation (whether there were uncooperative acts for the continuous contract relationship, whether there were arbitrary acts of the landlord).

- May the tenant exercise set off and retention rights over the rent payment? (i.e. the tenant withholding the rent or parts of it when the landlord does not respect his contractual duties, e.g. does not repair a defect);

The tenant can exercise set off and retention rights over the rent payment. Art. 608 (1) of CC states that 'If a lessee has defrayed necessary expenses with respect to the leased thing which ought to be borne by the lessor, the lessee may immediately demand the reimbursement of the same from the lessor.' Necessary expenses are the ones necessary to keep the leased thing to be available for using and taking the profits of it, since 'a lessor shall assume an obligation to effect repairs necessary for using and taking the profits of the leased things' (Art. 606 (1) of CC).[234] A special clause in the contract stating that 'the cost arising from sustainment, manage, repair of the equipment is the tenant's responsibility' is valid under the principle of freedom of contract as long as it is about small repairs like, Tatami facing, Fusuma sliding screen, exchange of paper of Shoji sliding screen, electric bulbs, fluorescent lamps.[235] But such clauses of the tenant responsibility regarding big repairs of the main part of the building, such as, roof, column, wall, and foundation, as well as moderate repairs, such as, sink, bathtub, washing basin, toilet, carpet, and change of Tatami mattress, are invalid.

If the tenant paid for the repair, he/she can refuse the rent payment according to the rule of defense for simultaneous performance (Art. 533 of CC).[236] According to most of the academic theories and judicial precedents the tenant's right to reimbursement of the repair cost and the landlord's right to the rent payment can be offset (Art. 505~ of

[234] *Chushaku Minpo (15)*, 235 (Watanabe & Harada).
[235] Supreme Court Decision on June 25, 1954, *Minshu* vol.8, no.6, 1224.
[236] Art. 533 of CC: A party to a bilateral contract may refuse to perform his/her own obligation until the other party tenders the performance of his/her obligation; provided, however, that this shall not apply if the obligation of the other party is not yet due. *Chushaku Minpo (15)*, 255 (Watanabe & Harada). Daishin-in Decision on November 20, 1940, *Hogaku* no.10, 417; Tokyo High Court Decision on February 22, 1963, *Kaminshu* vol.14, no.2, 250 (obiter dictum).

CC). However, if the tenant wants to avoid the cancellation due to the tenant's non-payment, the tenant should make a manifestation of his/her intention of a setoff (Art. 506 (1) of CC)[237] before the landlord indicates his/her intention of the cancellation.[238]

- May claims from rental agreements be assigned to third parties (i.e. may the landlord assign his rent claim to a bank?)

Rent claims can be assigned to third parties (Art. 466 (1) of CC). However, Art. 467 (1) states that the assignment of a nominative claim may not be asserted against the applicable obligor or any other third party, unless the assignor gives a notice thereof to the obligor or the obligor has acknowledged the same. And the notice or the acknowledgement may not be asserted against a third party other than the obligor unless the notice or the acknowledgement is made using an instrument bearing a fixed date (Art. 467 (2) of CC). And the assignor and assignee can resister such an assignment in order to countervail third parties other than the obligators (tenants), if the assignor is a legal person (corporate body). This system was introduced to simplify the process of notice and acknowledgement to many obligators (tenants). [239] A problem of priority occurs, if the assignment of rent payment and the extension of security interest to the proceeds of the collateral collide. The Supreme Court ruled that the mortgagee could exercise the claim to the proceeds of the collateral (rent payment), even after the said claim had been assigned and could be asserted to third parties through the acknowledgement of the obligator made with an instrument bearing a fixed date.[240] The priority is given to the mortgagee, and not to the one who has obtained the claim for the rent payment, since the latter could have known that a mortgage has been settled in the said building in the registration and could have prospected that extension of security interest to the proceeds of the collateral would occur. Claims for the future payment without specified obligators (e.g. future tenants of the newly built building) can be registered according to the amendment of the Act on Special Provisions, etc. of the Civil Code Concerning the Perfection Requirements for the Assignment of Movables and Claims (Act No. 104 of 1998) in 2004.[241]

- May a rent payment be replaced by a performance in kind (e.g. reparation, renovation)? Does the tenant have a statutory right to this effect? Could a lien of the "tenant-contractor" create problems in that case? (a lien is a statutory right of a contractor to ensure his being paid for his performances, e.g. improvements to the house, e.g. § 648 BGB)

[237] Art. 506 (1) Set-offs shall be effected by means of manifestation of one party's intention to the other. In such case, no condition or time limit may be added to such manifestation of intention.
[238] Tokyo High Court Decision on February 22, 1963, *Kaminshu* vol.14, no.2, 250.
[239] See the explanation of the Ministry of Justice, <http://www.moj.go.jp/MINJI/saikenjouto-01.html#02-1>.
[240] Supreme Court Decision on January 30, 1998, *Minshu* vol.52, no.1, 1.
[241] <http://www.moj.go.jp/MINJI/saikenjouto-01.html#02-1>.

Rent payment is monetary payment in practice. As for a repair of which the landlord has a duty (not small repairs), it can be reimbursed and be offset according to Art. 606 (1) and Art. 505~ of CC (see above in this section). In contrast, if it is about 'useful expenses' with respect to the leased thing, the lessor must reimburse those expenses on termination of the lease in compliance with Art. 196 (2) according to Art. 608 (2) of CC. Since the reimbursement occurs at the end of the contract, rent payment cannot be offset by the useful expenses.

Art. 196 (2) states that '(2) With respect to beneficial expenses including amounts paid by a possessor to improve thing in his/her possession, limited to cases where there is a current increase in value, the possessor may, at the selection of the person recovering the thing, have the person recovering the thing reimburse monies the possessor paid or the amount of the increased value; provided, however, that, with regard to a possessor in bad faith, the court may, at the request of the person recovering the thing, grant a reasonable period for same.' Useful expenses or beneficial expenses are the expenses to improve the leased thing objectively. For instance, changing a vault toilet to a flush toilet, and installing an air-conditioner to the wall can be regarded as useful expenses, but if it is too luxurious or too odd based on the tenant's taste, it cannot be acknowledged as an useful expense.[242]

The tenant needs neither give a notice to the landlord, nor obtain a consent regarding such expenses, since it has nothing to do with the interest which the landlord will obtain through the improvement. Therefore, even though the tenant spares expenses for a renovation without obtaining a permission of the landlord, the tenant's claim for a reimbursement is valid. Nevertheless, the landlord can terminate the contract due to a renovation without permission of the landlord, for example, due to the special clause that forbids a renovation without the landlord's consent. The special clauses on the tenant's duty of restoration and on exclusion of the tenant's claim for useful expenses have been found mostly valid by the courts, unless there are special circumstances, such as, the landlord's consent regarding the useful expenses.[243]

According to majority of academic theories and the judicial precedent, if an improvement or an added thing has become a part of the leased thing and therefore a property of the landlord (Art. 242 of CC) (that is, the tenant has no right and no duty to remove it), or its removal causes a damage to the leased thing, he/she has a claim for the expenses, the tenant has such a claim under Art. 608 (2).[244] However, the tenant has a duty to return the object (Art. 616→Art. 597 (1) of CC) and he/she has to restore it. Thus, if an improvement/attached part is physically and economically removable and independent from the leased thing, and therefore, it becomes a property of the tenant, the tenant should remove the things on his/her own expense and has no claim for such expenses (Arts. 616 and 598 of CC). Yet, such a removal is a disadvantage for the tenant as well as a social-economical loss, and therefore, Art. 33 of ALBL exists.[245] The

[242] *Chushaku Minpo (15)*, 239 (Watanabe & Harada).
[243] Ibid, 250 (Watanabe & Harada).
[244] Ibid, 241-242 (Watanabe & Harada).
[245] Art. 33 of ALBL (Right to Request Purchase of Interior Decorations and Fixtures): (1) In cases where tatami mats, fixtures, or other interior decorations added with the agreement of the building lessor exist, when the building lease has been terminated either by reason of the expiration of the period or by the request for termination, the building lessee may request of the building lessor that he/she purchase said interior decorations and fixtures at the prevailing market price. This shall also apply to interior decorations

range of reimbursement is either the actually paid amount or the amount of the increased value at the landlord's will (Art. 196 (2) of CC), but in fact the lower amount is chosen by the landlord.

The tenant has retention right based on his/her claim for useful expenses (Art. 295 of CC). However, if the court granted the landlord a reasonable period for the performance, such performance is not due, therefore, no retention right arises (Art. 295 (1) of CC). The tenant who has retention right can refuse evacuation claim by the landlord as well as a third party who obtain the building through a public auction or a purchase.[246] However, the tenant has a duty to pay the interest arising from his/her retention right, that is, the rent during his/her possession of the thing due to his/her such right.[247] The majority of academic theories and the judicial precedent argue that the reimbursement of the useful expenses (the tenant's claim) and the handover of the thing (the landlord's claim) should be exchanged if the tenant's retention right is acknowledged.[248]

- Does the landlord have a lien on the tenant's (movable) property in the house (Vermieterpfandrecht as in § 562 BGB, which functions as a guarantee for the payment of the rent by the tenant)? If yes, what is the scope of this right? How is it enforced?

The landlord has a statutory lien on the tenant's movable property in the building. Art 311 of CC states that a person who has a claim that arose from a lease of immovable property shall have a statutory lien over certain movables of the obligor. Art. 312 also states that statutory liens for a lease of immovable property shall exist with respect to the movables of the lessee in connection with obligations of the lessee that arose from the lease relationship including rent for that immovable property. From this provision, the tenant's obligations which cause the liens are not only rent payment but also other obligations arising from the lease relationship, such as, the landlord's claim for a damage of the leased thing. Art. 313 (2) of CC rules the scope of the statutory liens for leases of immovable properties, stating that 'the statutory lien of a lessor of a building shall exist with respect to movables furnished to that building by the lessee.' In addition to the movables which were set in connection with the use of the leased dwelling (such as, Tatami mat, wooden fittings, furniture, office fixtures, etc.), the judicial precedent includes movables which the tenant brought to the dwelling for a certain period due to renting such dwelling, such as, money, valuable papers or jewelry.[249] However, if the landlord has received a security deposit (Shiki-kin), he/she has a statutory lien over the amount which will not be covered by that security deposit (Art. 316 of CC).

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and fixtures purchased from the building lessor. The distinction between the improvement under Art. 608 (2) of CC and one under Art. 33 (1) of ALBL has been academically criticized. See *Chushaku Minpo (15)*, 242-243 (Watanabe & Harada).

[246] Ibid, 257 (Watanabe & Harada).

[247] Ibid, 259 (Watanabe & Harada).

[248] Ibid.

[249] Legal advice by a lawyer in the website of the All Japan Real Estate Federation, <http://www.zennichi.or.jp/low_qa/regional_qa_detail.php?id=355>.

In order to exercise a statutory lien the landlord has to submit the documents which proves that the landlord has lien, and file a ruling for initiating a public auction of the tenant's movables at the district court. If the court recognizes the existence of lien, the court gives a ruling to commence a public auction of the tenant's movables. Then the landlord can bring an exemplified copy of commencement of a public auction of the tenant's movables and file the procedure of a public auction. The court enforcement officer seizes the movable property and changes it to money through a public auction. The landlord can obtain this money.[250]

Clauses on rent increase

- Open-ended vs. limited in time contracts
- Automatic increase clauses (e.g. 3% per year)
- Index-oriented increase clauses

Art. 32 (1) of ALBL states that 'When the building rent becomes unreasonable, as a result of the increase or decrease in tax and other burden relating to the land or the buildings, as a result of the rise or fall of land or building prices or fluctuations in other economic circumstances, or in comparison to the rents on similar buildings in the vicinity, the parties may, notwithstanding the contract conditions, request future increases or decreases in the amount of the building rent; provided, however, when special clauses exist to the effect that building rent shall not be increased for a fixed period, those clauses shall apply.' This is a formative right, that is, the revision of rent become effective without a consent of the other party, when the manifestation of intention of one party arrives at the other party.[251] This article applies to the normal rental contracts, rental contract unlimited in time and rental contract limited in time with renewal protection. The condition for such a claim to be valid are (1) objectively the building rent becomes unreasonable and (2) there is no special clause stating that the building rent shall not be increased for a fixed period.[252] If those conditions are met, a claim for rent increase or decrease is valid, 'notwithstanding the contract conditions,' that is, even in case that there are some contract clauses, such as, 'automatic increase clause (with a percentage, according the consumer price index, etc.). In this sense the Art. 32 (1) is recognized as a mandatory provision. This does not mean, however, that the special clause is invalid if it is disadvantageous to the tenant, but it means that the existence of such a special clause does not prevent the tenant from exercising such claims.[253]

If the both parties cannot reach an agreement of rent increase, they have to go to the summary court for a conciliation (Art. 24-2, 3 of the Act for Conciliation of Civil Affairs, Act No. 222 of 1951). If they cannot reach an agreement, the case will go either to the

[250] <http://www.courts.go.jp/osaka/saiban/tetuzuki_minji14/sinho_gaiyo/index.html>.
[251] *ALBL Konmentaru*, 252.
[252] Ibid, 246.
[253] Ibid, 248.

summary court or the district court according to the amount of the claim and the court will render the adequate rent.

On the other hand, if it is about a fixed term rental contract (without renewal protection), the above said Art. 32 ALBL does not apply. Art. 38 (7) of ALBL states that in cases of a fixed term rental contract the provisions of Article 32 shall not apply in cases where there are special clauses pertaining to rent revision. In light of the spirit of the fixed term rental contract, the mutual agreement on rent revision is prioritized in order to avoid litigations on this issue. Such a contract clause on rent revision should be the one to determine rent objectively enough to exclude the application of Art. 32 of ALBL.[254] For example, a special clause of 'no rent revision during the contractual period', 'automatic increase with a fixed rate after certain period', 'index-oriented increase after certain period (e.g. consumer price index)' are valid special contractual clauses, but a clause stating that 'the parties can revise the rent after consultation' is just determining the way to change the rent and is not clear enough to exclude the application of Art. 32.[255]

Utilities

- Describe the usual kinds of utilities (e.g. basic utilities like the supply of water, gas and electricity vs. additional utilities, i.e. services such as waste collection) and their legal regulation
- Responsibility of and distribution among the parties:
  - Does the landlord or the tenant have to conclude the contracts of supply?
  - Which utilities may be charged from the tenant?
  - What is the standing practice?
- How may the increase of prices for utilities be carried out lawfully?
- Is a disruption of supply by the external provider or the landlord possible, in particular if the tenant does not pay the rent?

The usual kinds of utilities are the supply of water, gas and electricity. Municipalities give a service of garbage collection without any additional free. It is rare that the landlord offers a dwelling for rent including all the utilities, while there are some cases that an additional fixed rate of water should be paid to the landlord, or electricity and gas are included in the monthly fee for the management of the common areas of the apartment building. There is no legal regulation for the arrangement, and therefore, allocation of responsibilities for utility supply depends on the parties. If utilities are not paid to the landlord, the tenant has to conclude an individual contract with each utility company. Gas is often provided by a town gas company of which price is a public utility

[254] Ibid, 303.
[255] Ibid.

charge, but some landlords have their independent contract with propane gas companies of which price is not determined by public bodies. In that case, the tenant cannot change the propane gas company even though he/she has a contract, since the contract is concluded for the whole building, that is, all the households in the building. The tenant needs a consent of the landlord to change the contract over the whole building. [256] Recently, all inclusive rental dwellings emerged, such as, monthly apartments or share houses. The rent of those cases include all the monthly utility costs.

The increase of prices of gas and electricity is determined in two ways. One way is that the gas and electricity companies apply for price increase to the government and the government permits price increase after examining the application. The other way is the 'price adjusting system based on imported materials' that prices of imported materials, such as, liquefied natural gas or crude oil, are automatically reflected to prices of gas and electricity. Gas and electricity prices are reviewed every month based on the trade statistics. [257] Regarding water supply, each municipality has an authority to determine increase of water price.

Disruption of supply by the external providers is possible and done normally, if the tenant does not pay the fee. Water supply can be stopped by the municipality,[258] but this is said to be the last one to be stopped among the three. Since utility contracts are normally individual contracts concluded by the tenant, the landlord cannot disrupt those supplies. Especially regarding water supply, it is illegal if the landlord stops water supply according to the Art. 51 (2) of the Water Supply Act (Act No. 177 of 1957). The landlord uses other means to deal with rent arrear, such as, using the deposit, guarantor, surety company, or evacuation based on cancellation of the contract due to breach of the tenant's duties.

Deposit

- What is the legal concept (e.g. is the deposit an advance rent payment or a guarantee deposit to cover future claims of the landlord)?
- What is the usual and lawful amount of a deposit?
- How does the landlord have to manage the deposit (e.g. special account; interests owed to the tenant?)
- What are the allowed uses of the deposit by the landlord?

Deposit and other similar monetary customs in the private rental market are peculiar in Japan as explained in 1.5. There is no legal provisions on deposit and other

[256] See the website of the consumer association of propane gas fee, <http://www.propane-npo.com/home/cate_4/apart_henkou.shtml>.
[257] Yuriko Suzuki, 'Denki Gas 7 gatsu Neage', *Asahi Newspaper*, 31 May 2013, page 8. See also the website of the Tokyo Electric Power Company, <http://www.tepco.co.jp/e-rates/individual/fuel/about-j.html>.
[258] E.g. Sakai city, <http://water.city.sakai.lg.jp/q_a/kyuusui.html>.

kinds of money. Shikikin or a security deposit is a deposit money paid by the tenant which is based on the Shikikin contract accompanying with the main rental contract.[259] The purpose of this money is a security money for possible damages arising from the tenant's destruction of the object or rent arrear. However, there is a custom, Shikibiki (a partial non-refund), a special contractual agreement by which the landlord keeps some amount of the deposit or some percentage of it. The purposes of Shikibiki are various, such as, for restoration after the termination of the contract, for compensation for the vacancy until a next tenant comes after the termination of the contract, or for a similar purpose of Kenrikin/Reikin which will be explained below.[260]

Kenrikin/Reikin (thanks money) is a payment paid by the tenant at the conclusion of a tenancy contract. This money will not be refund at the termination of the contract. The purposes of this money are said to be: a compensation for the use-value of the object; and a compensation for the added value of right to use. As for the former, Kenrikin/Reikin is considered as an advance rent payment, a compensation for right to use, or compensation for the value of the place (e.g. a shop which attracts customers). Examples of the latter are a compensation for the added value attached to the right to use, such as, business interests of Noren (a shop curtain->reputation, credit of the shop) or good connection with customers, and a compensation for the availability to transfer the right of use, if it is in the case.[261]

Customs of Shikikin/security deposit and Kenrikin/Reikin are vasious from one region to another. In Kanto area (the east of Japan, around Tokyo), Shikikin and Reikin are the common combination, while in the west (the areas of Kansai and the western areas after Kansai) Shikikin/security deposit and Shikibiki (partial non-refund of Shikikin) are the normal combination. While the former custom does not have Shikibiki (partial non-refund) but has Reikin (thanks money) which will not be refund, the latter custom does not have Reikin, but has Shikibiki which plays a role of Reikin in the sense that a part of Shikikin will not be returned. There are no legal regulations to stipulate the amount of Shikikin or Reikin, but there is a recent governmental survey, Survey on the Trend in the Housing Market published in 2012.[262] According to this survey, the percentage of the households which paid Shikikin/security deposit from April, 2011 to March, 2012 was 66.8%. Regarding the amount, 35,1% of all the households paid less than 1 month rent, and 32.2% paid 1 month. However, 25.7% of the households paid 2 months' rent.[263] With respect to Reikin, 56.8% of the households paid Reikin and 33.7% paid no Reikin. As for the amount of Reikin, 44.5% paid 1 month rent and 33.1% paid less than 1 month, while 12.9% paid 2 months' rent.[264]

However, this survey does not tell in which region Shikikin or Reikin common and how much it would be. There is a survey on regional differences about those monetary customs in the rental housing market.[265] Although it is relatively old (2007), it gives an impression how different those customs according to regions. In Tokyo 70.3% of all the

[259] Yamamoto, *Minpo Kogi*, 410.
[260] Ibid, 410-411.
[261] Ibid, 420-421.
[262] <http://www.mlit.go.jp/common/000995672.pdf>.
[263] Survey, at 207.
[264] Survey, at 208.
[265] <http://www.mlit.go.jp/kisha/kisha07/07/070629_3/02.pdf>.

surveyed rental housing managing companies (real estate agents) received Shikikin from April 2005 to March 2006 and its average amount was 1.6 months rent. Only 5.3% of the managing companies had Shikibiki and its average amount was 1 month rent. On the other hand, in Hyogo (in the Kansai area) 100% received Shikikin and its average amount was 3.7 months rent. In Fukuoka (in the western island, Kyushu) 93.1% received Shikikin and average amount was 3.3 months rent. In Fukuoka 89% had Shikibiki and its average amount was 2.6 months rent. With respect to Reikin, on the other hand, in Tokyo 57.5% received Reikin and its average amount was 1.4 months rent, while in Hyogo only 8% received Reikin and its average amount was 3.2 months rent, and in Fukuoka there is no Reikin system at all.

The landlord has to keep Shikikin or security deposit until the handover of the dwelling by the tenant. The deposit can be used to cover the damages from destruction of the object caused by intention or negligence of the tenant or rent arrear.[266] Although the tenant has an obligation to restore the dwelling at the handover after the termination of the contract, not all the repairs are the tenant's responsibilities, that is, they should not be paid by the deposit. According to the governmental Guideline for Troubles about Restoration (revised in 2011) normal wear and tear is not included in the tenant's restoration duties and is not paid from the deposit.[267] Even though there is a special contractual agreement on the tenant's responsibility to restore normal wear and tear, the court rendered that such agreement was invalid under Art. 10 of the Consumer Contract Act (Act No. 61 of 2000), unless there were reasonable grounds, such as, the lower rent than the market rent.[268] In practice, the landlord does not pay the interest arising from the deposit. Theoretically explained, however, the landlord does not have to pay the interest arising from the deposit, if there is a special agreement stating that the deposit will be refund without interest. Even if there is no such an explicit contract clause, it is understood that there is no duty for the landlord to pay the interest, since the deposit is a security to cover future claims of the landlord and there is no legal regulations on it. This is also assumed from Art. 578 of CC which does not require interests even in case of conclusion of loan consumption contract.[269] There is no information on whether the landlord has a special account for the deposit.

Repairs

- Who is responsible for what kinds of maintenance works and repairs? What kind of repairs or works may lawfully be assigned to the other party (especially the tenant)

[266] Yamamoto, *Minpo Kogi*, 410; Website of Okinawa prefecture, <http://www.pref.okinawa.jp/site/kankyo/kemminseikatsu_center/7185.html>
[267] MLIT, the Guideline for Troubles about Restoration, in <http://www.mlit.go.jp/common/000991390.pdf>.
[268] Supreme Court Decision on March 24, 2011, *Minshu*, vol.65, no.2, 903.
[269] Art. 587: A loan for consumption shall become effective when one of the parties receives money or other things from the other party by promising that he/she will return by means of things that are the same in kind, quality and quantity. See the legal advice by a lawyer in the All Japan Real Estate Federation , <http://www.zennichi.or.jp/low_qa/qa_detail.php?id=283&ref=top&PHPSESSID=bc09fd84dcdd26bfb4b91ccdcddae6b5>.

As explained in 6.4: Rent payment, Art. 608 (1) of CC states that 'If a lessee has defrayed necessary expenses with respect to the leased thing which ought to be borne by the lessor, the lessee may immediately demand the reimbursement of the same from the lessor.' Necessary expenses are the ones necessary to keep the leased thing to be available for using and taking the profits of it, since 'a lessor shall assume an obligation to effect repairs necessary for using and taking the profits of the leased things' (Art. 606 (1) of CC). A special clause in the contract stating that 'the cost arising from sustainment, manage, repair of the equipment is the tenant's responsibility' is valid under the principle of freedom of contract as long as it is about small repairs like, Tatami facing, Fusuma sliding screen, exchange of paper of Shoji sliding screen, electric bulbs, fluorescent lamps. But such clauses of the tenant's responsibility regarding big repairs of the main part of the building, such as, roof, column, wall, and foundation, and repairs with a moderate degree, such as, sink, bathtub, washing basin, toilet, carpet, and change of Tatami mattress, are invalid. In short, small repairs are tenant's responsibilities and repairs with medium and high degree are the landlord's responsibilities.

The tenant has a duty to give a notice about a repair to the landlord according to Art. 615 of CC.[270]

Connections of the contract to third parties

- Rights of tenants in relation to a mortgagee (before and after foreclosure)

As explained above in 6.3: Limitation on freedom of contract through regulation, the tenant's right to stay (=countervailing power against the mortgagee) changes depending on when the mortgage was settled. In other words, when the dwelling was handed over to the tenant. If the handover had occurred before the mortgage was settled and registered, the tenant has a prioritized right and therefore he/she cannot be evacuated by the new owner (the successful bidder). On other hand, if the handover occurred after the mortgage had been set up and registered, the new owner can evacuate the tenant (Art. 95 (2) of the Civil Execution Act (Act No. 4 of 1979)), although the new owner should have a waiting period of 6 months (Art. 395 of CC). Even in this case, if the following conditions are met, that is, (1) the rental contract is registered, (2) all the mortgagees agree that the tenant has a countervailing power, and (3) this agreement is registered, the tenant has a countervailing power against the mortgagees and cannot be evacuated from the said dwelling (Art. 387 of CC).

6.5 Implementation of tenancy contracts

Example of table for 6.5 Implementation of tenancy contracts

[270] Art. 615 of CC: If the leased Thing requires any repair, or if any person asserts rights with respect to the leased Thing, the lessee must notify the lessor without delay; provided, however, that this shall not apply if this is already known to the lessor.

	Main characteristics of rental contract unlimited in time (Type 1)	Main characteristics of rental contract limited in time with renewal protection (Type 2)	Main characteristics of fixed term rental contract (Type 3)	Ranking from strongest to weakest regulation, if there is more than one tenancy type
Breaches prior to handover	1.The landlord's non- performance of handover : claim for damages (Art. 415 of CC); cancellation (Art. 541 of CC). This applies to a case that the former tenant refuses to hand over the dwelling. 2. Double lease: claim for damages (Art. 415); cancellation (Art. 541). The tenant may be able to claim for exclusion of interference against an unlawful occupant. Against an legal tenant, registration is necessary. 3. The tenant's non-performance to taking possession: the tenant's paying penalty, deposit will be refund	Same as type 1	Same as type 1	No difference among the three types
Breaches after handover	1. Defects: the landlord's duty of warranty (Art. 566, Art. 570 of CC) as a strict liability; four kinds of defects: material, legal, psychological, environmental. Defects can be also treated by Art. 606 of CC, the landlord's duty to repair. -Material defects, non-performance of the landlord's duty of repair→ rent reduction or cancellation -Legal defects, non-performance of the landlord's duty of obtaining the right → cancel the contract and claim for damages, claim for rent reduction -Psychological defects, non-performance of the landlord's duty of disclosure→damages and cancellation -Environmental defects, non-performance of the landlord's duty of letting the tenant live	Same as type 1	Same as type 1	No difference among the three types

	peacefully→damages and cancellation 2. Entering the premises - The landlord's right to repair and the tenant's duty to tolerate such repairs (Art. 606 (2)) -Self enforcement by the landlord in case of rent arrear or some other breaches by the tenant is prohibited			
Rent increases	1. Art. 32 of ALBL: allowed as a result of the increase or decrease in tax and other burden relating to the land or the buildings, as a result of the rise or fall of land or building prices or fluctuations in other economic circumstances, or in comparison to the rents on similar buildings in the vicinity. But only if there is no clause in the contract that building rent shall not be increased for a fixed period. 2. Dispute over the rent increase: prior conciliation is required, then to the court 3. Conciliation/Court decides the adequate rent after referring to the professional knowledge, such as, of a real estate appraiser 4. Public housing: allowed in case of the increase of the tenant's income, Public Housing Act.	Same as type 1	Special contract clauses on rent increase are applied	Type 1 and 2 →Type 3
Changes to the dwelling	1. Improvement by the tenant without a permission of the landlord is allowed→reimbursement based on Art. 608 (2), such an improvement should be a part of the landlord's property 2. Interior decoration added with the agreement of the landlord →the tenant has a claim the landlord to purchase it, if such a decoration is detachable and the tenant's property (Art. 33 of ALBL) 3. No requirements for the landlord to proceed the maintenance measures with regard to the tenants, such as notice period, rent reduction.	Same as type 1	Same as type 1	No difference among the three types
Use of the	1. Animals, smells, disturbing acts are	Same as	Same as	No

dwelling	often forbidden in the special agreement in the contract 2. If the purpose of the contract was notified, prostitution and commercial uses are possible. However, the change of the purpose of use without notifying the landlord is non-performance of duty and can be a ground of cancellation. 3. There is no obligation of the tenant to live in the dwelling. A contract of a holiday home can be either a rental contract for a temporal use (Art. 40 of ALBL) or fixed term rental contract without renewal protection (Art. 38 of ALBL).	type 1	type 1	difference among the three types
Video surveillance	1. It is lawful and common that security cameras are set in the common area of the apartment building	Same as type 1	Same as type 1	No difference among the three types

Disruptions of performance (in particular "breach of contract") prior to the handover of the dwelling

In the sphere of the landlord

- Delayed completion of dwelling
- Refusal of handover of the dwelling by landlord (in particular: case of "double lease" in which the landlord has concluded two valid contracts with different tenants over the same house)
- Refusal of clearing and handover by previous tenant
- Public law impediments to handover to the tenant

Art. 601 of CC states that a lease shall become effective when one of the parties promises to make a certain thing available for the using and taking the profits by the other party and the other party promises to pay rent for the same. According to this article the landlord has a duty to hand over the dwelling in order to let the tenant use it and take profits from it, and to keep the dwelling for the purposes of the using and taking the profits by the tenant.[271] If the completion of dwelling delayed and the landlord cannot hand over the dwelling, it is a breach of contract based on this Art. 601 of CC. Therefore, the tenant can claim for damages arising from this delay (Art. 415 of CC) and cancel the contract (Art. 541 of CC). However, in practice, the landlord avoids risks by concluding a

[271] Yamamoto, *Minpo Kogi*, 393-394.

pre-contract (Art. 556→Art. 559 of CC)[272] with an agreement on 'the planned date to hand over' and with a clause that the future tenant shall not claim in case of delay.

In case of refusal of handover by landlord particularly due to the double lease the same rules explained above apply. It is a breach of contract by the landlord and the tenant can claim for a damage (Art. 415 of CC) and cancel the contract (Art. 541 of CC). Who has the right to stay in the dwelling depends on when the tenant can claim for exclusion of interference, which originally stems from property right.[273] There are two academic theories on this issue.[274] One is that the tenant has a claim for exclusion of interference to the other tenant, when he has a countervailing power through registration of his/her rental contract (Art. 605 of CC). In other words, tenancy right as a claim will become strong as property right to be able to claim for exclusion of interference to the other legal tenant, only when he/she has a countervailing power. The judicial precedent takes this position. The other is that the tenant can claim for exclusion of interference based on his/her tenancy right which is in essence deemed to be property right. Although the tenant can claim for exclusion of interference against an illegal occupant without having a countervailing power, the result is the same with the other legal tenant in this theory, too, that is, he/she has to register the contract (=obtain a countervailing power) in order to claim for exclusion of interference against the other tenant.

If the previous tenant refuses to hand over the dwelling, the landlord cannot perform his/her contractual duty arising from Art. 601 of CC, therefore, the new tenant can claim for damages (Art. 415) and cancel the contract (Art. 541). Cleaning is the landlord's responsibility according to the governmental Guideline for Troubles about Restoration (revised in 2011).[275] Cleaning the dirt caused by normal use by the tenant is recognized as a part of refurbish and grading up the dwelling for the next tenant and therefore is the landlord's responsibility. If the dirt is within the normal range caused by the normal use of the tenant, the refusal of cleaning is valid and the landlord has to do it with his/her own cost. However, if the dirt is too excessive and not the one arising from the normal use by the tenant, but rather from his/her negligence, it is the tenant's breach of duty of diligence. In that case, the tenant should pay for the cleaning cost, although in practice it is often paid by the deposit.

Public law impediments (such as city planning) are considered as defects in the subject items (Art. 566, Art. 570 of CC).[276] If the handover becomes impossible due to public law impediments, the tenant can cancel the contract and claim for the damages (Art. 566, 570, 559 of CC).[277]

In the sphere of the tenant

[272] Art. 556 (1) of CC: A pre-contract to sell or purchase made by one party shall take the effect of a sale when the other party has manifested his/her intention to complete such sale. This article applies mutatis mutandis to contracts for value other than contracts for sale (Art. 559 of CC).
[273] Yamamoto, *Minpo Kogi*, 2.
[274] Yamamoto, *Minpo Kogi*, 539-540.
[275] MLIT, Guideline for Troubles about Restoration, <http://www.mlit.go.jp/common/000991390.pdf>, 21.
[276] Supreme Court Decision on April 14, 1966, *Minshu* vol. 20, no. 4, 649.
[277] K. Yunoki & T. Takagi (eds), *Chushaku Minpo* (Japanese Civil Law Annotated) Vol.14 2nd.ed, (Tokyo: Yuhikaku, 2010), 243 (Yunoki & Takagi).

- refusal of the new tenant to take possession of the house

If the rental contract has been concluded, that is, if the both parties have agreed on the contract (a written agreement is not necessary, but often the contract is signed by the parties with both of the seals) after the explanation of the important things as to the object and the condition of the contract by a real estate transaction specialist (Art. 35 of the Building Lots and Buildings Transaction Business Act),[278] the money the tenant paid will not be refund. The content of paid money includes (1) Reikin, (2) one month rent based on a common contract clause that the notice period for the tenant is one month before (so-called 'penalty'), (3) application money, in addition to (4) the fee for the estate agent. Application money will become handsel (Tetsukekin), once the contract is concluded. Therefore, it will not be refund, if the tenant cancel the contract before the handover.[279] However, since the tenant has not moved into the dwelling, the cost for restoration would not arise. Therefore, the deposit can be refund, although in practice it depends on the agreement with the landlord. There is no information on whether the tenant has to pay for damages, while paying a penalty seems to be a custom in case of the tenant's cancellation before the handover.[280]

Disruptions of performance (in particular "breach of contract") after the handover of the dwelling

Defects of the dwelling

- Notion of defects: is there a general definition?
- Examples: Is the exposure of the house to noise from a building site in front of the house or are noisy neighbours a defect? What about damages caused by a party or third persons? Is the occupation of the house by third parties such as squatters considered as a defect in the legal terms?
- Discuss the possible legal consequences: rent reduction; damages; "right to cure" (to repair the defect by the landlord); reparation of damages by tenant; possessory actions (in case of occupation by third parties) what are the relationships between different remedies; what are the prescription periods for these remedies

If there is any latent defect in the subject matter of a sale, the landlord is liable for breach of the duty of warranty according to Art. 570 (application of Art. 566 of CC[281]:

[278] <http://www.pref.osaka.jp/kenshin/azukari/>.
[279] Ibid.
[280] Kanagawa Takken Kyokai, http://www.kanagawa-takken.or.jp/kaiin/01_20110914_text.pdf.
[281] Art. 566 (1) of CC: In cases where the subject matter of the sale is encumbered with for the purpose of a superficies, an emphyteusis, an easement, a right of retention or a pledge, if the buyer does not know the same and cannot achieve the purpose of the contract on account thereof, the buyer may cancel the

seller's warranty in cases of superficies or other rights) to latent defects in the subject matter of a sale), which applies mutatis mutandis to rental contracts through Art. 559 of CC.[282] If the landlord does not tell the potential tenant such defects attached to the dwelling, he/she breaches the duty of disclosing important matters based on the landlord's warranty. That is, the tenant can claim for damages because of such defects and cancel the contract, if he/she cannot achieve the purpose of renting the object due to such defects. This duty of warranty is strict liability (liability without fault), in contrast with non-performance of obligation as a negligence.

With respect to categories of defects, 4 categories are generally recognized: (1) material defects, (2) legal defects, (3) psychological defects, and (4) environmental defects. This categorization is generally used for sale contracts of real estate, but it is useful in case of rental contract as well, since, as already mentioned above, the provisions on contract of sale apply mutatis mutandis to other contracts for value, including rental contract (Art. 559 of CC).

(1) Material defects are, for example, a leak in the roof, termites, a slant floor, defect of plumbing system, flooded building, etc. (2) Legal defects are the defects which prevents free trade, such as servitude, superficies, tenancy right, are attached to the building, etc. (3) A psychological defects is, for example, that a dwelling where a suicide happened lacks in normal characteristics supposed to be attached to the object. In the case law, suicide and murder which occurred in the dwellings are considered as 'psychological defects' of the objects under Art. 570 of CC, under which a buyer can cancel the contract or claim for damages, if a buyer has not been informed on this information. The seller of the object has obligation to disclose this information. Estates agents have also the same obligation under Art. 35 (1) or Art. 47 (1) of the Building Lots and Buildings Transaction Business Law.[283] Another example is that an office of Boryokudan (gangsters) is located in the same building. Such a case in a sales contract was recognized by the court,[284] while there was a rental contract case of which claim for a damage due to such a psychological defect and the tortious act was rejected.[285] (4) At last, environmental defects are such as noise, bad smell, vibrations, and trouble with neighbors. The standard is whether it disturbs a normal life.

Specifically regarding rental contracts, there are several cases.[286] As for material defects (1) if defects existed at the time of contract conclusion, the landlord has a duty to repair, since Art. 606 of CC (the landlord's duty to repair) applies to the whole contractual period according to the majority of academic opinions and the judicial precedent.[287] If the defect is not known at the time of conclusion of the contract, the

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contract. In such cases, if the contract cannot be cancelled, the buyer may only demand compensation for damages.

[282] *Chushaku Minpo (15)*, 166 (Mochizuki & Mizumoto). Yamamoto, *Minpo Kogi*, 431.

[283] However, in case of suicide for example, the time period (how long the defect is) and the range of the tenants (the first tenant after the accident or further tenants) of the disclosure obligation depend on the degree of the psychological defect which arises from the character of the tenant contract (whether the dwelling is in a city or in a rural place, whether it is for a single person or for a family, etc.), means of the suicide (hanging, sleeping drug, jumping off), place of suicide (whether it was in the room or in the common area), place of death (whether in the dwelling of in a hospital), whether it attracted public attention, and so on.

[284] Tokyo District Court Decision on August 29, 1995, *Hanreitaimuzu*, vol. 926, 200.

[285] Tokyo District Court Decision on December 27, 2004, H16 (wa) no. 17987, H16 (wa) no. 22565.

[286] *Chushaku Minpo (15)*, 166-167 (Mochizuki & Mizumoto).

[287] Ibid, 212 (Watanabe & Harada).

landlord has warranty (Arts. 566, 570, 559 of CC) and a duty of repair (Art. 606 (1) of CC) simultaneously. However, provided that the repair is possible, the duty of repair based on either of the duties should be performed first by the landlord. And if the landlord does not perform that duty, then the tenant can claim for the reduction of rent or cancel the contract.[288] And if the duty of repair arises from the landlord's warranty, the term to claim for repair should be within 1 year (Art. 566 (3) of CC).

If the landlord has no right to lease the object (typically no property right), this may be classified as a (2) legal defect as above explained. The renal contract is valid in this case. However, if the true owner of the object claim for return, the tenant cannot refuse this claim.[289] The landlord has a duty to obtain property right or some other possible rights in order to let the tenant to use and take profits of the object completely (mutatis mutandis application of Art. 560 of CC, contract of sale). If the landlord does not perform this duty, the tenant can cancel the contract[290] and claim for damages (mutatis mutandis application of Art. 561 through Art. 559 of CC), and claim for the reduction of the rent (mutatis mutandis application of Art. 563 of CC). If the cause is attributed to the landlord, the tenant can claim for the landlord's breach of contract.[291] In addition, if the landlord has no right to lease the object and the tenant has a risk to lose a part of or the whole right to use and take profits of the object, the tenant can refuse to pay part of or whole rent according to the degree of that risk (mutatis mutandis application of Art. 576 of CC).[292] Also if the true owner of the object claims for return, the tenant can refuse to pay the rent, for there is a risk that the tenant cannot use and take profits of the rental object (application of Art. 576 through Art. 559).[293] If the tenant cannot make use of the dwelling, for example, because of the tenant's handing over the dwelling, the duty of the landlord to let the tenant use and take profits of the object becomes extinct due to the impossibility of performance, and therefore, the contract ceases. Thus, the tenant can refuse to pay the rent.[294] In this case, the tenant can claim for damages.[295]

(3) In case of psychological defects such as an accident in the past, the landlord has a duty to disclose the information which arises from the landlord's warranty (Arts. 570, 559 of CC). If the landlord does not fulfill this duty, he/she cannot be exempted from the warranty and therefore, the tenant can cancel the contract and claim for damages. Since there is no legal rules to stipulate the conditions of such warranty, it is very difficult for the landlord to judge, how long the period of duty of disclosure should be and how the court considers the seriousness of that incident. There is only a tendency of the judicial decisions, such as, the period is longer and the incident is recognized as more serious, if the purpose of dwelling is for living (not for business) and for family (not for singles); if cruelty of the incident is severe (e.g. murder, suicide, etc. rather than natural death); and if the mobility of the local people is low (e.g. people stay in the same place in the rural area longer than in the city, therefore, they remember the incident and

[288] Ibid.
[289] Ibid, 159 (Mochizuki & Mizumoto).
[290] This cancellation does not have retroactivity (Art. 620 of CC). Ibid, 167 (Mochizuki & Mizumoto).
[291] Ibid, 166 (Mochizuki & Mizumoto).
[292] Ibid.
[293] Yamamoto, *Minpo Kogi*, 423.
[294] Ibid.
[295] *Chushaku Minpo (15)*, 166 (Mochizuki & Mizumoto).

the rumor goes around in the neighborhood, which disturbs the relationship with neighbors).[296]

(4) Environmental defects include noise or other kinds of nuisance of the neighbors. There is a court decision on the case that the tenant had to move out because of noise and nuisance caused by the neighbor above that tenant, although the tenant asked the landlord (the dwelling is public housing owned by Osaka City) to remedy that interference. The Osaka District Court rendered that the landlord had the duty to let the tenant peacefully use and make profits of the dwelling and therefore, the landlord should have cancelled the contract with the bothering neighbor based on 'destruction of the mutual trusting relationship' after several warnings to that neighbor in order to return the peaceful use of the tenant's dwelling. Thus, the court ruled that the landlord should pay for damages arising from breach of contract.[297]

The occupation of the house by the third parties is usually not recognized as a defect in the legal terms (see 6.5, Disruptions of performance).

There is a contradiction between the landlord's warranty and duty to repair. In case of warranty, the tenant can claim for damages and cancel the contract according to Art. 566 (1), Art. 570 and Art. 559 of CC. The statutory limitation for such a claim or a cancellation is 1 year after the tenant knew that defect (Art. 566 (3), Art. 570 of CC). Even though the tenant has not known a defect, the prescription period will come to the end in 10 years after the handover of the object according to the general provision of extinctive prescription of claim (Art. 167 (1) of CC).[298] In contrast, the landlord has also a duty to repair (Art. 606 of CC) arising from the duty to let the tenant use and take the profits of the object for the whole contractual period (Art. 601 of CC). The prescription period for a claim for damages caused by no performance of the duty of repair is 10 years (Art. 167 of CC).

Here a contradiction between Art. 606 and Art. 570 is found and it is not clear what kind of relationship between warranty and the duty to repair. However, the tenant's claim in such cases is mostly based on non-performance of duty of repair, since Art. 606 stipulates a clear duty of the landlord; prescription period is longer than the case of warranty; and the range of damages is assumed to be greater than the one of warranty, since it includes the defects both existing from the beginning and coming afterwards.[299] The academic majority states that if a repair is possible, the tenant can claim for both, and if a repair is not possible, he/she can have only a claim based on warranty.[300]

Entering the premises and related issues

- Under what conditions may the landlord enter the premises?

[296] Yasufumi Nakado, 'Shinriteki Kashi ni Kansuru Saibanrei ni Tsuite,' *RETIO* 82 (2011): 119. It is notable to point out that the landlord can sue the successor/guarantor of the tenant for damages arising from the suicide of the tenant on the ground that the successor/guarantor has a duty of due care of prudent manager not let the tenant commit suicide. Ibid. 125. And the amount of such damages is the difference between the amount of profits not realized and the actual rent in the period in which the incident (suicide) lasts to affect. Ibid.

[297] Osaka District Court Decision on April 13, 1989, *Hanreitaimuzu* no.704, 227.

[298] Supreme Court Decision on November 27, 2001, *Minshu* vol.55, no.6, 1311.

[299] Osamu Kasai, et.al, *Hajimeteno Keiyakuho* (An Outline of the Law of Contract) (Tokyo: Yuhikaku, 2004), 134.

[300] Ibid.

- Is the landlord allowed to keep a set of keys to the rented apartment?
- Can the landlord legally lock a tenant out of the rented premises, e.g. for not paying rent?

Normally in practice, the landlord and/or the managing company have/has a set of keys for each dwelling or master keys for all the dwellings in the building. However, they are not allowed to enter the premise without consent of the tenant or without a justified reason. Such an act is a violation of Art. 130 of the Penal Code (Act No. 45 of 1907)[301] and a tortious act from which a claim for damage arises (Art. 709 of CC).[302] With regard to this issue there are two points to be mentioned. One is about the landlord's duty and right to repair, and the other is about self-enforcement (self-help), particularly in relation to rent arrear.

As to the first point, the landlord has a duty to repair as well as right to repair in order to preserve the leased thing. Art. 606 (2) of CC states that the lessee may not refuse if the lessor intends to engage in any act that is necessary for the preservation of the leased thing. There was a case that a female tenant asked the landlord to repair the air conditioner but the repair agent entered the dwelling not on the promised day without a consent of the tenant due to the schedule of the repair agent. The tenant cancelled the tenancy contract and moved out. In the contract there was a contract clause stating that if it is necessary from the reason of management, the landlord may enter the dwelling with a previous consent of the tenant, and the tenant cannot refuse it, unless there is a justifiable reason for it. The Osaka District Court ruled that the landlord's act was non-performance of the contractual duty of entering the premise with the tenant's consent, and a tortious act due to the landlord's negligence, in light of right to privacy. However, this landlord's act in order to repair the air conditioner was not recognized as an act of destruction of the mutual trusting relationship, and therefore the tenant's claim for cancellation was not valid. [303]

If the tenant refuses to let the landlord repair the defect in the dwelling, it is the tenant's breach of duty to accept repairs. Even in such a case, however, the landlord is not allowed to enter the dwelling by force without permission of the tenant, since self-enforcement is legally forbidden. There was a leading case of the Supreme Court on the landlord's self-enforcement, which set up the standard on this matter. The Supreme Court stated that self-enforcement was generally legally forbidden, but it could be exceptionally allowed to the necessary extent, if there are special emergent circumstances in which it is impossible or extremely difficult to remedy illegal interference with right through the legal procedures.[304] The landlord can, therefore, cancel the contract based on the tenant's non-performance of the duty to accept repairs,[305] provided that (1) the repair is necessary to preserve the building, that is,

[301] Art. 130 of Penal Code: A person who, without justifiable grounds, breaks into a residence of another person or into the premises, building or vessel guarded by another person, or who refuses to leave such a place upon demand shall be punished by imprisonment with work for not more than 3 years or a fine of not more than 100,000 yen.
[302] Art. 709 of CC: A person who has intentionally or negligently infringed any right of others, or legally protected interest of others, shall be liable to compensate any damages resulting in consequence.
[303] Osaka District Court Decision on March 30, 2007, *Hanreitaimuzu* no.1273, 221.
[304] Supreme Court Decision on January 27, 1965, *Minshu*, vol.19, no.9, 2101, *Hanreijiho* no. 436, 37.
[305] Yokohama District Court Decision on November 27, 1958, *Kaminshu*, vol.9, no.11, 2332.

necessary for the purpose of use and making profits of the dwelling (the landlord does not have a duty for trivial repairs), and (2) the repair is minimum essential so that the tenant can use the dwelling according to its purpose, since originally the tenant has right to use and make profits of the dwelling based on the rental contract.[306]

The other point is about the landlord's self-enforcement in case of rent arrear or the tenant's refusal of the handover of the dwelling after the termination of the rental contract. The landlord's act to enter the premise without permission of the tenant violates the tenant's right to privacy, right to live peacefully or right to possession of the dwelling, even though the tenant has a duty to hand over the dwelling due to the termination of the contract,[307] or the tenant has lost the right of possession.[308]

The existence of a special agreement in the contract which allows the landlord's entering the dwelling without permission of the tenant or the landlord's carrying the movable of the tenant does not justify such acts of the landlord. This kind of special agreement is void due to the violation of public order and morality according to Art. 90 of CC.[309]

The landlord's act to change the lock is illegal and considered as a self-enforcement to infringe the tenant's right to possession, if the purpose of such an act is to force the tenant to pay the unpaid rent or to hand over the dwelling. However, if the purpose is disaster measures or crime prevention which the normal legal procedures for housing rental contract cannot realize, change the lock has been allowed by the courts.[310]

Rent regulation (in particular implementation of rent increases by the landlord)

- Ordinary rent increases to compensate inflation/ increase gains
- Is a rent increase after renovation measures, e.g. upgrading the energy performance of the house, or similar lawful and dealt with in a special procedure?
- Rent increases in "housing with public task"
- Procedure to be followed for rent increases
    - Is there some orientation at the market rent; if yes, how is the market rent measured/calculated (e.g. statistical devices such as a Mietspiegel [= rent statistics for a certain area])?
- Possible objections of the tenant against the rent increase

[306] Masao Eguchi, 'Chinshakunin ni yoru Chintainin no Shuzenyokyu no Kyohi,' *Gekkan Fudosan*, (June, 2012).
[307] Tokyo District Court Decision on May 30, 1972, *Hanreijiho* no. 683, 102.
[308] Tokyo District Court Decision on May 30, 2006, *Hanreijiho* no.1954, 80.
[309] Art. 90 of CC: A juristic act with any purpose which is against public order and morality is void
[310] Tokyo District Court Decision on March 13, 1987, *Hanreijiho* vol.1281, 107. Toshikazu Endo, 'Fudosan Chintaishaku niokeru Mudan Tachiiri, Kagikokan ni kansuru Hanrei no Doko,' *RETIO* 72 (2009): 40.

Art. 32 (1) of ALBL states that 'When the building rent becomes unreasonable, as a result of the increase or decrease in tax and other burden relating to the land or the buildings, as a result of the rise or fall of land or building prices or fluctuations in other economic circumstances, or in comparison to the rents on similar buildings in the vicinity, the parties may, notwithstanding the contract conditions, request future increases or decreases in the amount of the building rent; provided, however, when special clauses exist to the effect that building rent shall not be increased for a fixed period, those clauses shall apply' (see 6.4). Thus the landlord has to have justifiable reasons to increase rent enumerated in this article.

Since the landlord has a duty to repair (Art. 606 (1) of CC), the landlord cannot increase rent because of the cost for the repair. On the other hand, if the landlord had to repair the building because of an unpredictable, inevitable accident, such as a typhoon or a flood, the cost of repair can be reflected in the amount of rent to a certain degree.[311] The cost of improvement can be also considered in the amount of rent, since the value of use increases.[312] There is no special legal procedure for rent increase after renovation measures.

If the tenant refuses to accept rent increase, the landlord has to file a conciliation for rent increase in the summary court (Art. 24-2 of the Act for Conciliation of Civil Affairs, Act No. 222 of 1951). If they cannot reach an agreement, it is possible that the conciliation committee can determine terms of conciliation based on the written agreement between the parties stating that they obey such terms of conciliation (Art. 24-3 of the Act for Conciliation of Civil Affairs). If the conciliation fails, the case will go either to the summary court or to the district court according to the amount of the claim and the court will render the adequate rent.

The tenant can deposit the amount of rent which the tenant thinks adequate in the official depository (Art. 494 ~ of CC) until the amount of rent is determined by the court, or by the conciliation, since non-payment of rent can be a justifiable cause for a cancellation by the landlord.[313] If the amount which the tenant has paid during the dispute period is lower than the determined amount, the tenant should pay the difference with interest of 10 percent per year (Art. 32 (2) of ALBL).[314]

The adequate rent is determined by one of the calculation methods: (1) yield method (genuine rent (=the price of building and the land is multiplied by the expected yield rate) + necessary expenses), (2) sliding scale method (the existing rent is indexed to the economic fluctuation, such as, price index), (3) difference distribution method (how much in the difference between the adequate amount of rent based on the price of

[311] *Chushaku Minpo (15)*, 800 (Shinozuka).
[312] Ibid.
[313] ALBL Konmentaru, 254. c.f. In case of claim for rent reduction by the tenant, the amount of rent which is supposed to be paid by the tenant until the decision of the court or the conciliation is what the landlord thinks adequate. *ALBL Konmentaru*, 255.
[314] Art. 32 (2) of ALBL: If no agreement may be reached between the parties regarding the increase in the amount of the building rent, until the judicial decision on establishing the increased amount as valid becomes final and binding, it shall be sufficient for the party which has received that request to pay the building rent in an amount that is deemed to be reasonable; provided, however, that when said judicial decision becomes final and binding, if the amount that has already been paid is insufficient, the amount of the shortfall shall be paid with the addition of interest on late payments at the rate of ten percent per year. On the other hand, if the paid rent exceeds the determined rent, the amount of the excess shall be returned with the addition of interest at the rate of ten percent per year from the time the payment was received (Art. 32 (3) of ALBL).

the building and the land, and the paid rent, is taken as belonging to the landlord, and that amount is added to the existing paid rent), and (4) comparison of rental housing method (the adequate rent is determined based on similar rental housing in the neighborhood). The Supreme Court stated that which method should be applied depends on a case.[315] Which method or which combination of the methods should be applied and what kind of numbers should be taken in each method are highly technical questions that need professional knowledge. Therefore, a real estate appraiser assesses the adequate rent in each case in order that the court make a decision.[316] There is no similar system, such as Mietspiegel in Japan, although this German system has been discussed by academics.[317]

With respect to rent increase in housing with public task, first of all, the Public Housing Act (Act No. 193 of 1951) applies, although such relationship is academically interpreted as private law relationship instead of public law relationship.[318] The public body determines the amount of rent up to the market rent in the neighborhood by considering the income of the tenant as well as the locational conditions, the scale of the buildings, the age of the buildings, and so on, according to the Cabinet Order (Art. 16 (1) of Public Housing Act). The market rent in the neighborhood is determined by the public body every year based on the current price of the housing and land, repairing expenses, management expenses, etc. (Art. 16 (2) of Public Housing Act). If the income of the tenant who has lived in the public housing more than 3 years exceeds the standard amount income ruled by the Cabinet Order, the public body determines the amount of rent up to the market rent in the neighborhood (Art. 28 (2) of Public Housing Act).[319] The tenant in the former has to make efforts to hand over the dwelling (Art. 28 (1) of Public Housing Act). In case that the tenant's income has been 'high income' which exceeds the standard amount income ruled by the Cabinet Order in the last 2 years of more than 5 years' residence, the public body can claim for handover of the dwelling to the tenant (Art. 29 (1) of Public Housing Act. See also 4.3). If the tenant still stays in the dwelling in spite of the eviction order, the rent will be the market rent in the neighborhood (Art. 29 (5) of Public Housing Act).

Alterations and Improvements by the tenant

- Is the tenant allowed to make (objective) improvements on the dwelling (e.g. putting in new tiles)?
- Must, and if yes under what conditions, improvements of the dwelling by the tenant be compensated by the landlord?

[315] Supreme Court Decision on November 30, 1965, *Hanreijiho* no.430, 27; Supreme Court Decision on July 5, 1968, *Hanreijiho* no.529, 49.
[316] *ALBL Konmentaru*, 253.
[317] Shunji Fujii, 'Doitsu no hyojun chinryo hyo (German Mietspiegel),' in *Tochisogokenkyu* 6-3 (1998), Tomohiro Yoshimasa, 'Shinraikankeikhakai no hori no kino to tenbo' in *Fudosanchintaishaku no Kadai to Tenbo (Problems and prospects of the renting immovable properties)* ed. H. Matsuo & A. Yamanome (Tokyo: Shojihomu, 2012), 151.
[318] *Chushaku Minpo*, 794 (Shinozuka).
[319] See the guideline of the MLIT, 'Kouei Jutaku Seido no Gaiyo nitsuite' (2005.5.30), 5-6. <http://www.mlit.go.jp/jutakukentiku/house/singi/koutekishoui/2-1-sankou.pdf>.

- Is the tenant allowed to make other changes to the dwelling?
    - in particular changes needed to accommodate a handicap (e.g. building an elevator; ensuring access for wheelchairs etc)?
    - fixing antennas, including parabolic antennas

The tenant is allowed to make improvements on the dwelling without a permission of the landlord (generally see 6.4). Since the purpose of Art. 608 (2) of CC is to make the landlord return the unjust enrichment to the tenant, of which the landlord obtained objectively from the tenant's expense, it is necessary and enough that there is a fact that the landlord obtains the enrichment. That is, the landlord's permission is not a requirement for the tenant to be compensated.[320]

In order for the tenant to be compensated, the improvement has to have an additional value at the time of termination of the contract. If the value has disappeared at the end of the contract and the landlord does not obtain any profit from it, the tenant has no claim for reimbursement of costs.[321]

Whether the tenant can claim for reimbursement based on Art. 608 (2) of CC depends on whether the improvement/the added thing become part of the landlord's property. If an improvement or an added thing has become a part of the leased thing and therefore a property of the landlord (Art. 242 of CC) (that is, the tenant has no right and no duty to remove it), or its removal causes a damage to the leased thing, he/she has a claim for the expenses under the Art. 608 (2). However, if an improvement/attached part is physically and economically removable and independent from the leased thing, and therefore, it becomes a property of the tenant, the tenant should remove the things on his/her own expense and has no claim for such expenses (Arts. 616 and 598 of CC), because the tenant has a duty to return the object (Art. 597 (1) of CC) and he/she has to restore it.

However, there is another legal provision in ALBL. Art. 33 (1) states that 'in cases where tatami mats, fixtures, or other interior decorations added with the agreement of the building lessor exist, when the building lease has been terminated either by reason of the expiration of the period or by the request for termination, the building lessee may request of the building lessor that he/she purchase said interior decorations and fixtures at the prevailing market price. This shall also apply to interior decorations and fixtures purchased from the building lessor.' The object of such a claim is the one which the landlord agreed upon. This landlord's agreement is valid for the present tenant who bought such a decoration from the former tenant, if the former tenant obtained the permission of the landlord. This is a formative right, that is, once a claim is made, there are the same effects of a sales contract.[322] This Art. 33 of ALBL is not a compulsory provision, but a discretionary provision. Thus the parties can make a special agreement to exclude the application of Art. 33 of ALBL. [323]

[320] *Chushaku Minpo*, 241 (Watanabe & Harada)..
[321] Ibid.
[322] *ALBL Konmentaru*, 261.
[323] Ibid, 263-264.

Such interior decorations are, for example, shower equipment, gas equipment in the kitchen, flush toilet, lightening equipment, etc., which is a property of the tenant (which is not a part of the landlord's property) and which give objective profits for the use of the building (=dwelling).[324] On the contrary, the things which are independent and easily removed, and of which removal does not affect the value of the dwelling are not included (such as furniture). In this sense, added interior decorations are interpreted as the things which can function completely by being attached to the building (=dwelling) and decrease their value if detached, although they can be removed by the tenant.[325] However, the enumerated things in this provision have become obsolete and tatami mats or fixtures are now standard equipment in the dwelling.

The amount the landlord should pay is the current price for the value of the decoration which functions completely by being attached to the building, when the claim is made by the tenant at the termination of the contract.

Renovation of the dwelling to accommodate the handicapped can be understood either as an improvement under Art. 608 (2) of CC or interior decoration under Art. 33 of ALBL, depending on whether the added thing has become part of the dwelling, that is, a part of the landlord's property or not. A toilet with washlet (a warm toilet seat with washing equipment), rails, a fixed kitchen shelf are classified as the matters under Art. 33 of ALBL. Under Art. 33 of ALBL, the tenant should ask the landlord beforehand, whether he/she is allowed to make such a renovation of the dwelling, while the both parties can have a special agreement stating that the tenant will not claim for the cost of interior decoration at the termination of the contract.[326] Setting an elevator costs money and there is no information on it. There is also not so much legal debate on the tenant's barrier-free renovations. The reasons for it might be because the handicapped are avoided by the landlord, the handicapped live in the owner occupied houses with their caretakers, or many of the economical private rental dwellings are anyway not suitable for the handicapped (without elevator, too small, etc.). On the other hand, a large amount of public housing are suitable for the handicapped, and therefore, those people may try to find dwellings in the public housing. Additionally, there is a governmental subsidy program to enhance the use of vacant private housing for the people in need.[327] The government subsidizes renovations to accommodate the handicapped and the elderly, as well as energy saving reforms and earthquake resistant constructions. This may become an incentive for the landlord to renovate their dwellings to be suitable for the handicapped.

An antenna which the tenant fixed is a matter of Art. 33 of ALBL. The tenant can claim that the landlord should purchase that antenna at the termination of the contract, if all the conditions are met, such as, the tenant obtained the permission of the landlord before setting it, and there is no special agreement of the tenant's not claiming for the landlord's purchase at the termination of the contract, etc.

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[324] Supreme Court Decision on March 11, 1954, *Minshu* vol.8, no.3, 672; Supreme Court Decision on October 14, 1958, *Minshu* vol.12, no.14, 3078. *ALBL Konmentaru*, 261.
[325] Ibid.
[326] *ALBL Konmentaru*, 264.
[327] <http://www.minkan-safety-net.jp/outline.html>.

Maintenance measures and improvements, in particular upgrading the energy performance of the house by the landlord

- What kinds of maintenance measures and improvements does the tenant have to tolerate?
- What conditions and procedures does a landlord who wants to make renovations need to respect (e.g. giving adequate [i.e. sufficiently long] notice; offer an alternative dwelling; offer a rent reduction to compensate for disturbances)?

The landlord has the duty to repair the dwelling necessary for using and taking profits of the leased thing (Art. 606 (1) of CC). At the same time, the landlord has right to repair to maintain his/her property, and therefore, the tenant has to accept such repairs and tolerate the inconvenience due to those repairs (Art. 606 (2) of CC).[328] Thus, if the landlord asks the tenant to leave the dwelling for a certain period, the tenant has to leave it. If the tenant refuses to leave the dwelling in order to let the landlord repair the dwelling for maintenance, this is a breach of the duty of tolerance under Art. 606 (2), and is a just cause for the cancellation of the contract from the landlord.[329] Even though the tenant cannot use the dwelling completely because of repair for maintenance, the tenant cannot claim for damages arising from such maintenance measures, since the landlord exercised his right to maintain the dwelling and did not breach the duty of the rental contract.[330] The landlord should give enough attention to the tenant's interest in case of such maintenance construction.[331]

However, Art. 607 of CC states that in cases where the lessor intends to engage in an act to preserve the leased thing against the will of the lessee, if the lessee cannot achieve the purpose of the lease as a result of the same, the lessee may cancel the contract. The old Civil Code (it was based on the French Law and promulgated in 1890, but it was never enacted) had a provision which contained a section (1) stating that the tenant can claim for reduction of rent if the repair lasts for more than 1 month, and a section (2) stating that the tenant may cancel the contract, when the tenant loses the important part, whole or partly, for living or doing business. But there were discussions on this article at that time that it was unfair for the landlord to reduce rent due to his exercise of right to maintain the property and there may be disputes over the reduction. Therefore, the former section was omitted from the present Civil Code and the second section stipulating the tenant's right to cancel the contract without any conditions was preserved as Art. 607.[332]

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[328] Ibid, 231.
[329] Yokohama District Court Decision on November 27, 1958, *Kaminshu* vol.9, no.11, 2332.
[330] Ibid. *Chushaku Minpo (15)*, 231 (Watanabe & Harada). See the internet site of the All Japan Real Estate Federation, <http://www.zennichi.or.jp/i/QandA/QandA_detail_A.php?req2=30&id=17>. According to the Federation, If the tenant cannot use and take profits of the dwelling due to such maintenance measures, the tenant does not have to pay rent for that period. However, the landlord does not have to pay for the hotel cost in addition to non-payment of the rent, if the tenant had to stay in a hotel during that maintenance construction.
[331] *Chushaku Minpo (15)*, 231 (Watanabe & Harada).
[332] Ibid, 232 (Watanabe & Harada).

There is no legal rule and little information on notice period of a repair, on offering an alternative dwelling nor on offering a rent reduction to compensate for disturbances, although the landlord, in practice, gives a notice before the maintenance construction and offers an alternative dwelling if possible (a vacant room in the same building, etc.).

With regard to upgrading the energy performance of the house, the government encourages earthquake resistance reform, barrier free reform (for the elderly and the handicapped), and energy saving reform, but they are not legal duties of the landlords. The governmental subsidies are aimed at both owned dwellings and rental dwellings. The subsidies in a form of tax deduction are applied mainly to owned dwellings, while the subsidies as grants are given to rental housing within the program of 'Enhancing the Safety-Net by Using the Private Rental Housing.' The purpose of this 'Safety-Net' program is that to offer adequate rental dwellings by using the private rental housing stock to the people who have difficulties to find rental dwellings, because of age, handicap, children, and low income. Thus there are several conditions for a landlord to receive such a subsidy, for example, not to refuse the categorized people in need, maximum rent according to the area, to offer the dwellings to sufferers of a disaster, etc. Although the government encourages the landlords to maintain and renovate their rental property, there is little information on the number of the landlords who do it.

The cost of earthquake resistance reform is quite high and having an assessment costs also money. In addition there is no legal obligation for the landlords to make an earthquake resistance reform. The Act on Promotion of Renovation for Earthquake-resistant Structures (Act No. 123 of 1995) was enacted in 1995 after the Hanshin Awaji Earthquake disaster, since many buildings collapsed, which had been built before the introduction of the new earthquake resistance standard of 1981. However, this Act stipulates only obligations to make efforts to have an assessment and to make an earthquake resistance reform to the landlords whose buildings are used by many people (such as a hotel, school, hospital, apartments), and whose buildings do not meet the requirements of the new earthquake resistance standard (Art. 6 of Act Act on Promotion of Renovation for Earthquake-resistant Structures).

Uses of the dwelling

- Keeping animals; producing smells; receiving guests; prostitution and commercial uses (e.g. converting one room in a medical clinic); removing an internal wall; fixing pamphlets outside.
- Is there an obligation of the tenant to live in the dwelling? Are there specificities for holiday homes?

Whether the tenant can keep animal(s) or not depends on the contractual agreement. There are special rental dwellings in which the tenant can keep animals, but the tenant has to talk with the landlord beforehand about what kind of animals and how many of them the tenant can keep in the dwellings. As to producing smells, it may be difficult to prohibit the tenant from producing a smell, for example, of tobacco in the balcony, which does not destroy (disturb) either the dwelling or the common area. If it is about a bad smell as a neighbor's nuisance, the landlord or the managing company has

to stop it for the tenant whose use and take profits of the dwelling is disturbed. There is often a contract clause on the forbidden acts of noise, bad smells, dangerous and harmful acts in light of sanitary, and thus the landlord may claim for the performance of such a duty to the disturbing tenant. Whether it is possible to receive guests or to let them stay over night depends on each agreement. There are cases that the tenant is not allowed to receive guests or let the guests stay over night, but mainly they are the dwellings for singles, students, or the buildings of women's only.

Prostitution and commercial uses are possible, only when those dwellings are for business use and the landlord agreed upon it. If the purpose of use is for a dwelling but the actual use is a commercial use or vice versa, and if the actual kind of business is different from the one in the original contract, it is non-performance of duty of the tenant. It is a ground for a cancellation from the landlord without notice (Art. 541 of CC), since it has destroyed the mutual trusting relationship by itself.[333] Alternation of a room into a room for a business purpose (e.g. medical clinic) may be a non-performance of duty, since a special agreement of non-alternation (renovation) of the dwelling without the landlord's permission is often written in the contract. However, whether the landlord can cancel the contract depends on whether such an act destroyed the mutual trusting relationship between the landlord and the tenant. Removing an internal wall without a permission of the landlord may be a ground for the landlord to cancel the contract without notice, since it is also an act of destroying the mutual trusting relationship between the landlord and the tenant due to the infringement of ownership.[334] Fixing pamphlets is allowed, if the purpose of use is for a business and if the pamphlets are within the range of the business purpose.[335] Other cases such as, if the purpose of use is a dwelling but nevertheless the tenant wants to fix the pamphlet, or if the pamphlets have nothing to do with the purpose of use (e.g. a pamphlet of a concert), the tenant has to obtain a permission of the landlord, since the rented area is limited to the inside of the dwelling and the outside wall is a common area which is the object of the landlord's management.

There is no obligation of the tenant to live in the dwelling. However, a special clause, such as, 'The landlord may cancel the contract, if the tenant is absent for a long time without giving notice on it to the landlord' is valid, although its validity will be judged in light of the destruction of the mutual trusting relationship between the landlord and the tenant.[336] Though a tenant can rent a holiday home by a normal rental contract, it can be rented as an object of 'building lease for the purpose of temporary use' under Art. 40 of ALBL.[337] According to Art. 40, all the provisions regarding rental contract (Arts. 26 to 39 of ALBL) do not apply to rental contract for the purpose of temporary use, that is, more tenant-protective rules are not applied, and therefore, general provisions in CC (Art. 601~) govern such a case. For a contract to be a rental contract for a temporary use, the

[333] Yamamoto, *Minpo Kogi*, 485.
[334] Ibid.
[335] Legal Counseling Center of Osaka Bar Association, <http://soudan.osakaben.or.jp/content/shakuchi/radio/11-06-03.php>.
[336] Kimi Sato, 'Fudosan Torihiki ni okeru Keiyaku no Yukosei 2 (Validity of contract in the real estate transaction),' Shijokenshu no. 55, Real Partner, <http://www.hosyo.or.jp/realpartner/shijou0601_02.pdf>. As a case in which such a cancellation was valid, Tokyo District Court Decision on March 16, 1994, *Hanreijiho* no.1515, 95, *Hanreitaimuzu*, no. 877, 218.
[337] Art. 40 of ALBL: In cases where it is clear that buildings have been leased for the purpose of temporary use, the provisions of this Chapter shall not apply.

motive for the contract, the kind of building, its structure, the tenant's purpose of lease and his/her actual usage, the amount of rent, period, and other contractual conditions should be considered, and there must be rational circumstances which prove that the contract is not a normal contract with a long term.[338] The term does not have to be less than 1 year, but the maximum period which has been admitted by the court is 5 years.[339]

As a legal problem, there is a problem of which rules between Art. 38 (fixed term rental contract)/ Art. 39 (building lease with intent to demolish), and Art. 40 (building lease for temporary use) should apply to such a case. Art. 38 of ALBL rules fixed term contracts (with no renewal protection) and it allows a contract for less than 1 year. While a tenant of the contract under Art. 38 are more protected by the provisions in ALBL, a tenant of the contract under Art. 40 of ALBL has less protection because of non-application of provisions on rental contract in ALBL. According to an academic discussion, the application of Art. 40 should be strictly limited, although there might be a case of lack of formality for the fixed term contract under Art. 38 (obligation of explanation at the conclusion of the contract, etc.).[340] Thus, if the landlord would like to lease the dwelling for a short period, then Art. 38 and Art. 39 apply, and if the tenant has a reason to rent the dwelling for such a purpose, such as a holiday home, an office for the election campaign, then Art. 40 applies.[341]

Video surveillance of the building

> Is the surveillance of certain parts (e.g. corridors) of the building lawful and usual?

It is lawful to set a security/surveillance camera in the common area, because the landlord has right to manage such common area which is not a private area like the rented dwelling. Such a rental object with security cameras is getting popular and many objects offer surveillance for the purpose of crime prevention.[342] If a tenant wants to set such a camera in the common area, that tenant should obtain a permission of the landlord beforehand because of the landlord's right to manage the common area. If the landlord set a camera in the common area, the tenants may have right to disclosure of the content of the video and the preservation of that information.[343] If the boundary between the common area and the rented dwelling is not clear, such as, if the corridor is exclusively used for a dwelling, the landlord may have to obtain a permission of the tenant in that dwelling. [344]

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[338] Tokyo District Court Decision on September 18, 1979, *Hanreijiho* no.955, 99. *ALBL Konmentaru*, 311.
[339] Ibid.
[340] Ibid.
[341] Ibid, 312. Tokyo High Court Decision on April 7, 1977, *Hanreijiho* no.856, 42.
[342] There is a special internet site to look for dwellings with surveillance cameras. e.g. <http://www.apaman-navi.com/basic/terms/31/>.
[343] See a lawyer's comment in the internet site, Masahiro Kobayashi on March 24, 2007, <http://hanamizukilaw.cocolog-nifty.com/blog/cat6561801/>.
[344] Ibid.

6.6 Termination of tenancy contracts

Table for 6.6 Termination of tenancy contracts

	Main characteristics of rental contract unlimited in time (Type 1)	Main characteristics of rental contract limited in time with renewal protection (Type 2)	Main characteristics of fixed term rental contract (Type 3)	Ranking from strongest to weakest regulation, if there is more than one tenancy type
Mutual termination	-Either party may request to terminate it at any time	-If there is no clause of a reservation of the right to terminate, either party cannot terminate the contract. -If there is an agreement on that either party reserves the right to terminate the contact within the period, the contract will become one which can be terminated by request (Art. 618→617 of CC) -However, landlord needs to have a just cause.	-Neither party can terminate the contract before the termination date (basic assumption)	Type 3→Type 2→Type 1
Notice by tenant	-3 months' notice period (Art. 617 (1) of CC)	-There is often a contract clause on the tenant's right to terminate the contract 30 days before. -Contract clause to prohibits the	-If certain conditions are met, tenant can terminate the contract (Art. 38 (5) of ALBL) -In the above case, the termination	Type 3 or Type 2 →Type 1

		tenant from terminating the contract is invalid (Art. 10 of Consumer Contract Act; Art. 30 of ALBL) -Penalty clause is valid, but if it gives too much burden to the tenant, such a clause is invalid (Court decision based on Art. 90 of CC)	period is 1 month. -Art. 38 (5) of ALBL is a one-sided mandatory provision and therefore contract clauses which are disadvantageous to the tenant are invalid.	
Notice by landlord	-6 months' notice period (Art. 27 (1) of ALBL)	-Very difficult to terminate the contract -To terminate the contract, the landlord needs the reservation of termination right in the contract, and in addition, a just cause -Refusing renewal is almost impossible because of requirement of a just cause.	-Landlord's midterm termination right in light of Art. 38 (5) of ALBL is disputable.	Type 2 or 3 →Type 1
Landlord's cancellation (extraordinary notice) because of breach of contract by the tenant	-The tenant's assignment or subleasing of the object without the approval of the landlord (Art. 612 of CC). -The tenant's non-performance of the obligation (Art. 541 of CC). -Mitigation of the effect of the landlord's cancellation through the doctrine of destruction of the mutual trusting relationship (however, it may work disadvantageously to the tenant in some case).			
Public housing	-In case of public housing, the public body can claim for handover of the dwelling, if it falls under the cases stipulated in the Public Housing Act (Art. 32, Art. 27). -In public housing case, if the tenant's income has			

	been 'high income', the public body can give an eviction order. No need to have a 'just cause' (Art. 29 of the Public Housing Act).	
Landlord's notice in case of sale, public auction, inheritance	-Sale: the tenant's tenancy right has a countervailing power against the new owner of the building (Art. 31 of ALBL), that is, the new owner cannot terminate the contract without normal procedure stipulated in CC and ALBL. -Public auction: (1) handover of the dwelling before the registration of mortgage = the tenant has a countervailing power against the mortgagee or the winning bidder (Art. 31 of ALBL). (2) if the registration of mortgage was earlier than handover of the dwelling, the tenant does not have a countervailing power against the mortgagee or the winning bidder. However, the winning bidder has a waiting period of 6 months (Art. 395 of CC). (3) when certain conditions are met in case of handover after the registration of mortgage, the tenant has a countervailing power (Art. 387 of CC) especially in commercial contracts. -Inheritance: the tenant has a countervailing power against the successor (Art. 896 of CC, Art. 31 of ALBL).	
Other reasons for termination	-Repossession for default of mortgage payment: see above at 'public auction.' -City planning: tenants are interested parties in city planning/urban renewal cases. They can submit their opinion at the time of planning; if they have losses, they are compensated according to the type of expropriation.	

Mutual termination agreements

If the contract type is contract unlimited in time (Type 1), either party may request to terminate it at any time, if the parties do not specify the period of a rental contract. The notice period is 6 months for the landlord (Art. 27 (1) of ALBL, a mandatory provision), while it is 3 months for the tenant (Art. 617 (1) of CC).[345] In addition, the landlord has to have a 'just cause' to terminate the contract.

However, even if the contract type is contract limited in time with renewal protection (Type 2), with a special agreement of the parties that either party reserves the right to terminate the contract within the period, such a contract will become one which can be terminated by request (Art. 618 and Art. 617 of CC) will be applied. The validity of this kind of special agreement is acknowledged, since the landlord needs to have a

[345] *ALBL Konmentaru*, 208.

'just cause' to terminate the contract and it is not necessarily disadvantageous for the tenant.

In case of fixed term rental contract (Type 3), the termination agreement is made at the conclusion of such a contract. This type of contract is seen as based on the both parties' freedom of contract. The both parties are supposed not to be able to terminate the contract before the termination date, although the tenant may be able to terminate the contract if certain conditions are met according to Art. 38 (5) of ALBL (see below).

Notice by the tenant

- Periods and deadlines to be respected
- May the tenant terminate the agreement before the agreed date of termination (in case of contracts limited in time); if yes: does the landlord then have a right to compensation (or be allowed to impose sanctions such as penalty payments)?
- Are there preconditions such as proposing another tenant to the landlord?

If the contract type is contract limited in time for a dwelling (Type 2), there is often a contract clause on termination from the tenant, (1) the tenant can request for the termination of the contract 30 days before, (2) in spite of the former clause the tenant can terminate the contract at any time, if the tenant pays rent of 30 days after the date of the request of termination. The tenant can terminate the contract, if such a clause on reservation of the right to terminate is written in the contract (Art. 618 of CC). Such a clause is also written in the standard contract recommended by the government.[346]

On the contrary, a contract clause which prohibits the tenant from terminating the contract is invalid under either Art. 10 of the Consumer Contract Act[347] or Art. 30 of ALBL, [348] since such a clause impairs the interest of the tenant. Even though a contract clause states that the notice period is a certain period and has to pay the rent of that period in case of termination (e.g. 6 months and the tenant has to pay 6 months' rent to terminate the contract), too much burden on the tenant is not permitted by the court.[349]

If the contract limited in time has a contract clause on a reservation of the right to terminate, the rule of termination for a contract unlimited in time stipulated by Art. 617

[346] <http://www.mlit.go.jp/common/000991363.pdf>.

[347] Art. 10 of the Consumer Contract Act: Any Consumer Contract clause that restricts the rights or expands the duties of the Consumer more than the application of provisions unrelated to public order in the Civil Code, the Commercial Code (Act No. 48 of 1899) and any other laws and regulations, and that unilaterally impairs the interests of the Consumer, in violation of the fundamental principle provided in the second paragraph of Article 1 of the Civil Code, is void. See the homepage of the Tokyo Taito Association of Tenants of Land and Dwellings, <http://blog.goo.ne.jp/sumaino1/e/dd7b569ae905492741efc6927eec8948>.

[348] Art. 30 of ALBL (mandatory provisions): Any special provisions that run counter to the provisions of this Section and that are disadvantageous to the building lessee shall be invalid.

[349] Tokyo District Court Decision on June 14, 1993, *Hanreitaimuzu* no.862, 276. In this case, the court found that the termination was a mutual termination.

applies to such a case through Art. 618 of CC (see above mentioned explanation). That is, notice period for the tenant is 3 months. On the other hand, if there is no contract clause of a reservation of the right to terminate, the tenant cannot terminate the contract. The tenant can leave the contract, if the both parties agree. Otherwise, neither party can terminate the contract, unless there is a breach of contract.

There is sometimes a contract clause on a penalty in case of the tenant's termination of the contract before the agreed date. The court made a judgment that such a contract clause itself was valid, but if the burden on the tenant was too heavy, such a clause can be invalid in light of public order and morality under Art. 90 of CC.[350] The limit of the penalty is not officially determined, but according to the above case of a business tenancy, the penalty limit for a business tenancy was one year. An agreement on the payment of the rest of the contract period as a penalty is valid, but if the penalty is too high, the excessive part can be judged invalid by the court. What kinds of circumstances are taken into account to the validity of a penalty are: who wants to terminate and on which ground (if the tenant wants to terminate the contract because of his/her circumstances, the higher amount can be valid), the setting of the amount of initial cost and its reason at the conclusion of the contract (if the initial cost is lower than usual in exchange of the higher amount of penalty, that amount of penalty tends to be found valid), the degree of awareness and understanding of both parties regarding the penalty (if the tenant was not aware about the high risk of the penalty, the validity tends to be denied; if the tenant listened to the detailed explanation by the landlord and signed that document of such risks, the validity of such an agreement is approved), and the purpose of the tenancy (if it is about dwelling, the tenant is more protected and the high penalty tends to be denied; if it is about a business tenancy, the tenant is less protected and the high penalty tends to be approved). The court considers all the matters above and makes a judgment on the validity of a contract clause of a penalty.[351]

If the contract is a fixed term rental contract (Type 3), the tenant has the right to terminate the contract before the agreed date of termination, if the circumstances meet the conditions stipulated in Art. 38 (5). Art. 38 (5) states that 'in cases of a lease pursuant to the provisions of paragraph (1) for a building used for a residence (limited to those pertaining to buildings having floor area (in the case where a part of the building is the object of the lease, the floor area of said part) of less than 200 square meters), when it becomes difficult for the building lessee to use the building as his/her principal residence due to an unavoidable circumstance such as a work-related transfer, the receiving of medical care, or the necessity of providing care to a relative, the building lessee may request to terminate the building lease. In this case, the building lease shall be terminated when one month has passed since the day of the request to terminate.' According to this provision, the object should be for a residence of less than 200 square meters, which includes a dwelling with a shop.[352] If the object is not for a residence, the termination of the contract before the agreed termination date is not allowed, but the obligation of rent payment for the rest of the period remains in case that the mutual agreement of termination has not been made. However, if the tenant left the object and the landlord has found a new tenant, who has received a countervailing power through

[350] Tokyo District Court on August 22, 1996, *Hanreitaimuzu* no.933, 155.
[351] Ibid.
[352] *ALBL Konmentaru*, at 299.

the handover of the object, the performance of the former tenancy contract become impossible and therefore the contract is terminated. In consequence the landlord cannot claim for the rent payment to the former tenant.[353]

'An unavoidable circumstance' includes 'objective reasons,' such as 'research abroad,' 'bankruptcy of the company for which the tenant works,' 'dismissal from work,' 'necessity of moving because of a new job after being discharged due to the restructuring of the company,' as well as 'subjective reasons,' for example, 'a murder or a suicide occurred in the same apartment building' and 'no peaceful living because of gangsters' moving into the same building' in addition to the enumerated examples in Art. 38 (5).[354]

This right to termination before the agreed date is only given to the tenant. Termination can be done by the indication of the will of the tenant. There is no formalities to express his/her will, that is, it becomes valid by oral expression of the will of termination. It does not need a consent of the landlord and therefore, it is a formative right.[355]

The contract will be terminated one month after the request of the termination by the tenant. The termination period in CC is 3 months (Art. 617 of CC), but it is shorten in Art. 38 (5). This provision, Art. 38 (5) (as well as (4)[356]) is a one-sided mandatory provision (only a tenant can terminate the contract) and the contract clauses which are disadvantageous to the tenant are invalid. For instance, in case of the floor area less than 200 square meters, following contract clauses are invalid, since they are disadvantageous to the tenant: a contract clause which does not allow any midterm termination, a clause which narrows the scope of 'an unavoidable circumstance,' a clause which require the tenant to pay the amount of rent for the rest of the period or to pay a penalty, and a clause of which notice period is longer than one month[357]

There is a criticism on Art. 38 (5) that the tenant's right to midterm termination of a fixed term rental contract is inconsistent, since even in the contract limited in time (Type 2) the tenant's unilateral termination of the contract before the agreed date is not allowed (Art. 618 of CC). Indeed, fixed term rental contract is considered as an expression of freedom of contract of the both parties. In addition, the landlord is not allowed to obtain a compensation for the midterm termination by the tenant. Such a criticism claims that only if there is a special agreement on midterm termination of the contract by the both parties, a midterm termination should be allowed, on the other hand,

[353] Ibid, 299-300.
[354] Ibid, 300-301.
[355] Ibid, 301.
[356] Art. 38 (4) of ALBL: In cases of a building lease pursuant to the provisions of paragraph (1) for which the duration is one year or more, unless the building lessor during the period from one year to six months prior to expiration of the period (hereinafter referred to as the "Notice Period" in this paragraph) notifies the building lessee to the effect that the building lease will be terminated by reason of the expiration of the period, he/she may not assert that termination against the building lessee; provided, however, that this shall not apply in cases where the building lessor has notified the building lessee to that effect after expiration of the Notice Period and six months have passed since the date of that notice.
[357] *ALBL Konmentaru*, 302.

if both parties exclude such an agreement, then neither of them can terminate the contract before the agreed date.[358]

There is no custom in Japan that the tenant looks for the next tenant, in case that the tenant has to terminate the contract before the agreed date of termination.

Notice by the landlord

- Ordinary vs. extraordinary notice in open-ended or time-limited contracts; is such a distinction exists: definition of ordinary vs. extraordinary (= normally related to fundamental breaches of the contract, e.g. in cases of massive rent arrears or strong antisocial behaviour)
- Statutory restrictions on notice:
  - for specific types of dwellings, e.g. public dwellings; rental dwellings recently converted into condominiums (if there exists a special form of protection in this case as in German law) etc.
  - in favour of certain tenants (old, ill, in risk of homelessness)
  - for certain periods
  - after sale including public auction ("emptio non tollit locatum"), or inheritance of the dwelling
- Requirement of giving valid reasons for notice: admissible reasons
- Objections by the tenant
- Does the tenancy have "prolongation rights", i.e. the statutory right to stay for an additional period of time (outside the execution procedure)?

- Challenging the notice before court (or similar bodies)
- in particular claims for extension of the contract or for granting of a period of grace under substantive or procedural law

Ordinary notice is different according to the type of the contract.

In case of rental contract unlimited in time (Type 1), as explained above in 'mutual termination agreements,' both parties can request to terminate the contract at any time, although the notice period for the landlord is 6 months according to a mandatory provision, Art. 27 (1) of ALBL, compared to 3 months for the tenant based on Art. 617 (1)

[358] Shuhei Yoshida, 'Teiki tatemono Chintaishakuseido no kadai,' in *Fudosanchintaishaku no Kadai to Tenbo (Problems and prospects of the renting immovable properties)* ed. H. Matsuo & A. Yamanome (Tokyo: Shojihomu, 2012), 91-92. There is another argument to retain Art. 38 (5), if there is no contract clause to exclude the right to midterm termination. Ibid. 92.

of CC. This is an ordinary notice by the landlord. However, the landlord has to have a 'just cause' to terminate the contract.

On the other hand, if the contract type is contract limited in time with renewal protection (Type 2), the protection of the tenant is very strong and it is almost impossible for the landlord to terminate the contract. If there is no contract clause to reserve the right to terminate, the landlord (or either of them, depending on such a clause) cannot terminate the contract. If one party or the both parties reserve the right to terminate the contract during that period, the contract can be terminated 3 months after a request of termination as the case of a contract unlimited in time (Art. 618 and Art. 617 of CC)[359].

In addition, the landlord can hardly terminate the contract by refusing a renewal. In order not to renew the contract, the landlord should give a notice of not renewing the contract (this apply to the tenant too under the Act) between one year and six months before the expiration date (Art. 26 (1) of ALBL). Otherwise, the contract will be automatically renewed with the conditions identical to those of the existing contract, but the period will be unlimited in time. Even though the landlord gives a notice of refusal of renewal, however, the contract is deemed to be renewed, if the tenant uses the said property after the expiration date and if the landlord fails to make an objection without delay (Art. 26 (2) of ALBL). Moreover, a refusal of renewal is not valid, if the landlord does not have a "just cause." A just cause can be recognized by the court mainly through a comparison of the needs and necessities of the landlord and those of the tenant (for the detailed information on the elements for such a comparison, see 6.1).

In case of fixed term rental contract (Type 3), academic opinions over the question, whether the landlord can reserve the midterm termination right are divided. One opinion is that it is invalid in light of the system of the fixed term rental contract[360], another is that it is valid, but only with a 6 months' waiting period (Art. 27 of ALBL) and a just cause (Art. 28 of ALBL).[361]

Extraordinary notice is called cancellation in Japan. Cancellation is allowed in certain special cases, since a contract has a binding power. There are two grounds that the landlord can cancel the contract. (1) the tenant's assignment or subleasing of the object without the approval of the landlord (Art. 612 of CC), and (2) non-performance of the obligation (Art. 542 of CC). The cancellation is effective only toward the future (Art. 620 of CC).[362] In such a case, if one of the parties is negligent, claims for damages against that party are possible (Art. 620 of CC). There is another ground for a cancellation, that is, bankruptcy. However, the landlord cannot cancel the contract directly. The tenant's trustee in bankruptcy can either cancel the tenancy contract or claim for the continuous tenancy contract after performing the tenant's obligation, such as rent payment according to Art. 53 (1) of the Bankruptcy Act (Act No. 75 of 2004). If the tenant's trustee in bankruptcy has cancelled the tenancy contract, the landlord can

[359] Art. 618 of CC: Even if the parties specify the term of a lease, the provisions of the preceding Article (Art. 617, author) shall apply mutatis mutandis if one party reserves, or both parties reserve, the right to terminate during that period.
[360] Teruaki Tayama et.al, *Kihonho Konmentaru*, 2nd. ed, revised ed. (Tokyo: Nihonhyoronsha, 2009), 119 (Yasuo Kimura).
[361] Yukio Uehara, 'Teikishakkaken no Kaishakuteki Kento', in *Kokushikanhogaku* 33 (2001), 8.
[362] Yamamoto, *Minpo Kogi*, 454-455.

claim for the handover of the rental object and claim for damages as a bankruptcy creditor (Art. 54 of the Bankruptcy Act).[363]

As a ground for a cancellation by the landlord, (1) assignment or subleasing of the object without the approval of the landlord is admitted. Assignment means that the tenant assigns the right to rent the object to a third party and the tenant leaves that rental contract relationship. Sublease means that the tenant sublets the object to a third party while keeping the contractual relationship with the landlord.[364] In such cases the landlord can cancel the contract (Art. 612 (2) of CC) and therefore, the contract is ceases and the landlord can claim for the handover of the object.[365]

However, the judicial precedent limits the application of Art. 612 (2) of CC through the doctrine of bad faith.[366] That is, 'if there are special circumstances in which the tenant's act is not considered as a bad faith to the landlord,'[367] a cancellation based on Art. 612 (2) is not possible. The tenant has to prove that there was no bad faith in his/her act. The general standard to judge whether there was a bad faith or not are as follows. Firstly, it is about the range and continuity of the assignment or the sublease. If the part which has been assigned or subleased is small, a cancellation is not possible. Also if the period of such an act was short and is not conducted now, a cancellation is not allowed. Secondly, it is about whether the tenant has actually changed through that assignment or subleasing. If the assignee or the sublesee is a family member or a close relative, a cancellation is often denied. Moreover, if the tenant is actually same in spite of the formality's change (e.g. division of a company, change the business from a private management to an incorporated body, etc.), a cancellation is not possible.[368]

As for (2) the tenant's non-performance of the obligation, the typical cases are (a) rent arrear and (b) a breach of the usage obligation. Art. 541 of CC stipulates that 'in cases where one of the parties does not perform his/her obligations, if the other party demands performance of the obligations, specifying a reasonable period and no performance is tendered during that period, the other party may cancel the contract.' If this rule is strictly applied to any case in which the tenant did not perform his/her obligation, the landlord can cancel the contract and the tenant will lose the basis of his/her life or business. Therefore, the judicial precedent has modified the ground and structure of such a cancellation with 'the doctrine of destruction of the mutual trusting relationship' as explained already in 6.4.

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[363] If the landlord went bankruptcy, the landlord's trustee can either cancel the contract or claim for the tenant's performance of the obligations (Art. 53 (1) of the Bankruptcy Act). The tenant cannot cancel the tenancy contract. If the landlord's trustee in bankruptcy has canceled the contract, the tenant returns the object and claim for damages as a bankruptcy creditor (Art. 54). However, if the tenant has registered that rental contract, the landlord's trustee cannot cancel the contract and the tenant's credit becomes a claim on the estate (Art. 56). C.f. The term "claim on the estate" means a claim which may be paid from the bankruptcy estate at any time without going through bankruptcy proceedings (Art. 2 (7) of the Bankruptcy Act). A translation of the Bankruptcy Act, see <http://www.wipo.int/wipolex/en/text.jsp?file_id=187660#LinkTarget_439>.

[364] Yamamoto, *Minpo Kogi*, at 456.

[365] Ibid, 457.

[366] Supreme Court Decision on September 25, 1953, *Minshu* vol.7, no.9, 979; Supreme Court Decision on September 22, 1955, *Minshu* vol.9, no.10, 1294; Supreme Court Decision on May 8, 1956, *Minshu* vol.10, no.5, 475; Supreme Court Decision on April 28, 1961, *Minshu* vol.15, no.4, 1211; Supreme Court Decision on Novermber 19, 1964, *Minshu* vol.18, no.9, 1900.

[367] Supreme Court Decision on January 27, 1966, *Minshu* vol.20, no.1, 136.

[368] Yamamoto, *Minpo Kogi*, 467-469.

The doctrine of destruction of the mutual trusting relationship is understood as follows: A rental contract is a continuous contract based on the mutual trusting relationship between the parties. Therefore, if a party betrays such a trusting relationship and acts in bad faith to prevent the parties to stay in a continuous rental contract relationship, the other party can cancel the contract from that point on.[369] This doctrine mitigates the direct impact of the cancellation rule (Art. 541 of CC) on the tenant. If the landlord cancels the contract after he/she demands performance of the obligations within a reasonable period and no performance is tendered during that period, the tenant can claim that the contract cannot be cancelled because of non-existence of destruction of the mutual trusting relationship as a counterargument.

However, the same doctrine can work disadvantageously on the tenant in two ways.[370] One is that the doctrine allows a cancellation by the landlord without any notice, if there is a destruction of the mutual trusting relationship.[371] According to this, the existence of the destruction of the mutual trusting relationship is a condition for such a cancellation, that is, the landlord's statement of the claim. The condition for a valid cancellation without notice is that the breach of contract by the tenant is enormous and the tenant's act in bad faith is so extreme that the continuous contract relationship is impossible. Such a breach of obligation is not just a breach of contract obligations, but an infringement of the landlord's ownership. Examples are: massive rent arrears,[372] destruction or remodeling of the object,[373] and a different usage purpose from the one in the original agreement.[374]

The other is that the doctrine allows a cancellation by the landlord based on the destruction of the mutual trusting relationship, even though the tenant did not breach contract obligations.[375] An example of such a cancellation which the Supreme Court found valid was the case that the tenant had used some other objects other than the contractual objects in the same building. The act of the tenant was not a breach of the contract, but it was an infringement of the landlord's ownership of the objects which were closely related to the contractual objects. Therefore, the Supreme Court rendered that the tenant's act destroyed the mutual trusting relationship which was a basis of the rental contract and therefore it was an act in bad faith which made the contract relationship extremely difficult to continue.[376]

Regarding statutory restrictions on notice, restrictions for rental dwellings recently converted into condominiums do not exist in Japan.

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[369] Ibid, 474.
[370] Ibid.
[371] Ibid, 484.
[372] Supreme Court Decision on April 26, 1974, *Minshu* vol.28, no.3, 467. The tenant did not pay rent for 9 years and 10 months, and a cancellation without notice was found valid by the Supreme Court.
[373] Supreme Court Decision on April 25, 1952, *Minshu* vol.6, no.4, 451; Supreme Court Decision on February 18, 1972, *Minshu* vol.26, no.1, 63 (destruction of the object). Supreme Court Decision on June 26, 1956, *Minshu* vol.10, no.6, 730; Supreme Court Decision on September 27, 1963, *Minshu* vol.17, no.8, 1069; Supreme Court Decision on December 13, 1984, *Minshu* vol.38, no.12, 1411(a public housing case).
[374] Yamamoto, *Minpo Kogi*, 485.
[375] Ibid.
[376] Supreme Court Decision on August 2, 1965, *Minshu* vol.19, no.6, 1368. As another example, the tenant's antisocial behavior was also considered as a reason which destroyed the mutual trusting relationship and the cancellation without notice by the landlord was accepted by the Supreme Court. Supreme Court Decision on February 20, 1975, *Minshu* vol.29, no.2, 99. Yamamoto, *Minpo Kogi*, 487.

With respect to public housing, there are certain rules on public housing. The judicial precedent rules over public dwellings as follows. Public dwellings are dwellings owned and managed by the public bodies, but the relationship between the public body and the tenant is basically not different from normal private rental contract relationship. Therefore, although the Public Housing Act and other ordinances based on it are applied to the cases of public dwellings prior to CC and ALBL, generally CC and ALBL are applied to the cases unless the Public Housing Act and other ordinances stipulate differently. And the doctrine of mutual trusting relationship also applies to the contract relationship over public dwellings.[377]

Even though CC and ALBL generally apply to the rental relationship of the public housing, Art. 32 (1) of the Public Housing Act stipulates that the public body can claim for handover of the dwelling, if it falls under one of the following cases: (1) when the tenant moved into the dwelling by fraudulent means, (2) when the tenant has more than three months' rent arrears, (3) when the tenant has destroyed the public housing or the common facility, (4) when the tenant has violated the rules stipulated in Art. 27 <1> – <5> of the Public Housing Act,[378] (5) when the tenant violated the ordinance based on Art. 48 of the Public Housing Act,[379] such as, if a tenant does not use the dwelling more than 15 days without a justifiable reason, (6) when the duration of the contract has expired. And if the tenant has received such a claim, the tenant should hand over the dwelling immediately (Art. 32 (2) of the Public Housing Act).

It is controversial whether a fixed term rental contract (Type 3) can be introduced to the public housing. As already explained, a fixed term rental contract is a rental contract which will be terminated at the expired date without any justifiable reasons from the landlord, that is, a rental contract without renewal protection (Art. 38 of ALBL). There is an opinion that the introduction of fixed term rental contract system to the public rental relationship is not prohibited, since the Public Housing Act does not prohibit it and CC and ALBL apply to the public rental housing relationship. On the other hand, a possible interference with the tenant's stable life through the introduction of the fixed term rental contract system without restriction is not consistent with the purpose and the system of the public housing laws.[380] The MLIT has a policy that a partial introduction of the fixed-term rental contract system to the households whose income is expected to rise or to be recovered, such as, young households with children or business reconstructors, by compromising the both needs of the existing tenant's stable life and of people in need who cannot enter the public housing in lack of public housing.[381]

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[377] Supreme Court Decision on December 13, 1984, *Minshu* vol.38, no.12, 1411. Yasushi Sumimoto, Koeijutaku no seido to kadai, *Fudosanchintaishaku no Kadai to Tenbo (Problems and prospects of the renting immovable properties)* ed. H. Matsuo & A. Yamanome (Tokyo: Shojihomu, 2012), 313.

[378] There are five rules stipulated in Art. 27 (1)-(5) of Public Housing Act: obligations to use the public housing with necessary care and to maintain its normal status; prohibition of sublease and assignment of the rental right; prohibition of change of the purpose without a permission of the public body; prohibition of rearrangement or extension of the public housing without a permission of the public body; and obligation to attain a permission from the public body, if the tenant intends to have cohabitants other than the ones at the time of moving in.

[379] Art. 48 of the Public Housing Act: The public body shall enact an ordinance on necessary matters over the management of the public housing as well as public facilities.

[380] Sumimoto *Fudosanchintaishaku no Kadai to Tenbo (Problems and prospects of the renting immovable properties)* ed. H. Matsuo & A. Yamanome (Tokyo: Shojihomu, 2012), 314.

[381] Ibid, at 315.

In case that the tenant's income has been 'high income' in the last 2 years of more than 5 years' residence, the public body can order the tenant to hand over the dwelling within a certain period (Art. 29 (1) of the Public Housing Act). If the tenant still stays in the dwelling in spite of the eviction order, the rent will be equivalent to the rent of neighborhood, market rental price (Art. 29 (5) of the Public Housing Act). If the tenant does not move out longer than 6 months after the determined date in the eviction order, the public body can collect the rent twice as much as the market rental price according to the law (Art. 29 (6) of the Public Housing Act).[382] Such an eviction as an administrative disposition due to the excess of the income does not need to have a 'just cause' ruled by ALBL which is normally applied (see 4.3).

In case of an eviction of a tenant with 'high income,' many ordinances of local governments have provisions on the extension of the eviction date, in case of (1) if the tenant or the cohabitant is ill, (2) if the tenant or the cohabitant has tremendously suffered from a disaster, (3) if it is expected that the income will extremely decrease due to, for example, the tenant's or the cohabitant's retirement in the near future, and (4) and other circumstances which are similar to the above three.[383] Other than public housing cases, there is no statutory restrictions on the landlord's notice to certain tenants who are old, ill or in risk of homelessness. Those tenants are presumably treated through the 'just cause' doctrine by comparing the needs and circumstances of the landlord and the tenant, and compensated with the eviction fee in case of the landlord's termination of the contract (see 5 and 6.1).[384]

The notice period is regulated differently for the landlord and for the tenant. As mentioned above in the beginning of the section, 'Notice by the landlord,' ordinary notice period for the landlord is longer than that for the tenant, that is, 6 months for the landlord (Art. 27 (1) of ALBL) and 3 months for the tenant (Art. 617 (1) of CC) in case of rental contract unlimited in time (Type 1). In case of rental contract limited in time with renewal protection (Type 2), however, the contract can be terminated 3 months after a request of termination as the case of a contract unlimited in time, only if one party or the both parties reserve the right to terminate the contract during that period (Art. 618, Art. 617 of CC). As to renewal of the contract type 2, in order not to renew the contract, the landlord should give a notice of not renewing the contract (this apply to the tenant too under the Act) between one year and six months before the expiration date (Art. 26 (1) of ALBL). Otherwise, the contract will be automatically renewed with the conditions identical to those of the existing contract, but the period will be unlimited in time.

Statutory restriction on notice by the landlord in case of sale, including public auction and inheritance of the dwelling exists. In principle, a basic civil law maxim is 'emtio tollit locatum,' but this principle has been modified in favor of the tenant's interest. The tenant can assert his/her rental right in two ways. One argument is based on Art. 177 of CC. Art. 177 of CC rules that 'acquisitions of, losses of and changes in real rights concerning immovable properties may not be asserted against third parties, unless the same are registered pursuant to the applicable provisions of the Real Estate

[382] Ibid, at 319.
[383] For example, Art. 33 of the Tokyo Public Housing Ordinance (Ordinance No. 77 of 1997).
[384] cf. Shunji Fujii, 'Seitojiyuseido no Jittai to Kadai', in *Fudosanchintaishaku no Kadai to Tenbo (Problems and prospects of the renting immovable properties)* ed. H. Matsuo & A. Yamanome (Tokyo: Shojihomu, 2012), 121. Case of the elderly tenant, ibid, 125.

Registration Act (Law No. 123 of 2004) and other laws regarding registration. According to the judicial precedent and the mainstream academic theories interpret that 'third parties' in Art. 177 include tenants. In other words, the new owner of the property needs a countervailing power against the third party (the tenant, here) through the registration of the property in order to give a notice for the termination of the contract or to claim for rent payment.[385] In short, the tenant can claim that the new owner cannot terminate the contract based on the new owner's property right, as long as that property right has not been registered.

The other argument is based on Art. 605 of CC. Art. 605 states that 'a lease of immovable property, when registered, shall also be effective against a person who subsequently acquires real rights with respect to the immovable property.' In this argument the registered rental right is effective against a person who has bought that property (=new owner), that is, rental right is recognized as strong as quasi-property right, considered that tenancy right is a basis for a stable, continuous life or a business. However, tenancy right itself is an only personal right, not property right, and therefore, the landlord is not obliged to cooperate with the tenant in order that the tenant gets that tenancy right to be registered. Thus such a registration of tenancy right is not commonly undertaken.[386] In order to protect tenants' tenancy right more firmly, ALBL expand the countervailing power of tenants. Art. 31 of ALBL states that 'even if the building lease is not registered, at the time the buildings are delivered, the building lease subsequently becomes effective in respect to the person who has acquired real rights to said buildings.' Therefore, the new landlord cannot evict the tenant from the building based on his/her property right, if the tenant had moved into the building before the landlord registered his/her property right on the said building.

In case of auction, the relationship between the tenant and the mortgagee becomes an issue. If the tenant had moved into the dwelling before the registration of mortgage was completed, the tenant has a countervailing power against the mortgagee or the winning bidder based on Art. 31 of ALBL.[387] Or if the tenancy right has been renewed with a mutual consent of the both parties after the mortgage was registered, such renewed tenancy right can be effective against the mortgagee and the winning bidder.[388] On the other hand, the tenant who moved into the dwelling after the mortgage had been registered does not have a countervailing power against the mortgagee and the winning bidder.[389] However, the winning bidder (=the new owner) has to have a waiting period of 6 months to evacuate the tenant (Art. 395 of CC) (see 6.3).

As to inheritance of the dwelling (see 6.4: Parties to a tenancy contract), the tenant has a countervailing power against the successor. Art. 896 of CC states that 'from the time of commencement of inheritance, an heir shall succeed blanket rights and duties attached to the property of the decedent. Since the tenant had been living in the dwelling before the landlord died, the tenant has a countervailing power against the successor and the successor cannot evict the tenant (Art. 31 of ALBL).

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[385] Yamamoto, *Minpo Kogi*, 491-492. Daishin-in Decision on May 9, 1933, *Minshu* vol. 12, 1123; Supreme Court Decision on March 19, 1974 *Minshu* vol.28, no.2, 325. Hanrei Hyakusen I, 58, Jurist No. 159 (2001).
[386] Yamamoto, *Minpo Kogi*, 492-493.
[387] *ALBL Konmentaru*, 242.
[388] Ibid. Hiroshima High Court in Okayama Branch Decision on February 24, 1975, Komin vol.28, no.1, 39.
[389] Daishin-in Decision on September 28, 1939, *Minshu* vol.18, 1121.

For a termination of a contract the landlord is required to give valid reasons. As already discussed in 5 and 6.1, the landlord need a just cause to terminate the contract. The elements considered to judge a 'just cause' are clarified in Art. 28 of ALBL: a termination of a building lease contract or a refusal of renewal may not be made, 'unless it is found, upon consideration of the prior history in relation to the building lease, the conditions of the building's use, the current state of the building and, in cases where the building lessor has offered payment to the building lessee as a condition for surrendering the buildings or in exchange for surrendering the buildings, the consideration of said offer, that there are justifiable grounds for doing so in addition to the circumstances pertaining to the necessity of using the buildings on the part of the building lessor and the lessee.' It should be noted that the landlord's necessity of the building itself is not enough to be a just cause, but the necessity of the tenant's and other circumstances should be considered in order to determine whether the landlord has a just cause.[390] Moreover, the payment of eviction fee was introduced to the just cause system. In this sense, the role of the just cause system in the Japanese tenancy law has been a general clause to balance the interests of the both parties.[391] Examples of acknowledged just cause are, necessity of the building for the main branch of the company + deterioration of the building + eviction fee,[392] necessity of renewal of the building for the child of the landlord + deterioration of the building + eviction fee,[393] necessity of reconstruction of the building + eviction fee,[394] effective use of the land + eviction fee + deterioration of the building (risk at an earthquake).[395] Even though the landlord's just cause is admitted after balancing the necessity of self-use of both parties, the court ordered an eviction fee because of disadvantages for the tenant.[396] In this case the role of the eviction fee is more than to determine a just cause. [397]

The tenant can object the notice before the court. However, as emphasized many times, the protection of the tenant is very strong in Japanese tenancy law through renewal protection and the just cause system, and this protection is, therefore, more than the tenant's right to objection. The landlord's termination of the contract (contract unlimited in time, Type 1) or rejection of renewal of the contract (contract limited in time, Type 2) is permitted by the court, only when the landlord has a just cause. In some circumstances, the renewal is automatically done no matter what the landlord's intention (statutory renewal). Moreover, this just cause is also strengthen by the eviction fee (Art. 28 of ALBL). In other words, a termination or a rejection of the renewal can be permitted, when the landlord pays the eviction fee. However, such cases often reach amicable settlements offered by the courts.[398] In consequence, there are no prolongation rights for the tenants, that is, there is no need to give prolongation right to the tenants. No

[390] Supreme Court Decision on February 14, 1950, *Minshu* vol.4, no.2, 29; Supreme Court Decision on September 14, 1951, *Minshu* vol.5, no.10, 565.
[391] Fujii, 'Seitojiyuseido', 122. Analysis of the judicial precedent, see Iwao Sato, *Gendaikokka to Ippanjoko* (Modern state and general clause) (Tokyo: Sobunsha, 1999), 281.
[392] Tokyo High Court Decision on March 20, 1989, *Hanreijiho* no.1303, 38.
[393] Osaka High Court Decision on September 29, 1989, *Hanreitaimuzu* no. 714, 177.
[394] Tokyo District Court Decision on April 24, 1991, *Hanreitaimuzu* no. 769, 192.
[395] Tokyo District Court Decision on April 23, 2008, *Hanreitaimuzu* no. 1284, 229.
[396] Tokyo High Court Decision on December 14, 2000, *Hanreitaimuzu* no. 1084, 309.
[397] Fujii, 'Seitojiyuseido',132.
[398] Junichi Honda et al., Zadankai (2), in *Fudosanchintaishaku no Kadai to Tenbo (Problems and prospects of the renting immovable properties)* ed. H. Matsuo & A. Yamanome (Tokyo: Shojihomu, 2012), 480.

particular claims are seen for extension of the contract under substantive or procedural law either.[399]

Termination for other reasons

- Termination as a result of execution proceedings against the landlord (in particular: repossession for default of mortgage payment)

Repossession for default of mortgage payment

Whether the termination as a result of execution proceedings against the landlord, namely, whether the repossession for default of mortgage payment is allowed or not, depends on when the dwelling was handed over to the tenant. As explained already in 6.3 and 6.6, if the handover had occurred before the mortgage was settled and registered, the tenant has a prioritized right and therefore he/she cannot be evacuated by the new owner (the successful bidder). That is, the termination of the contract by the new owner cannot be made to the tenant who had moved into the dwelling before the mortgage was settled and registered.

On the other hand, if the handover occurred after the mortgage had been set up and registered, the new owner can evacuate the tenant (Art. 95 (2) of the Civil Execution Act (Act No. 4 of 1979). However, the new owner should have a waiting period of 6 months if, (i) a tenant who has been using or receiving profits from the building since prior to the commencement of auction procedures; or (ii) a tenant who is using or receiving profits from the building by virtue of a lease given after the commencement of auction procedures by the administrator of compulsory administration or execution against profits from secured immovable properties (Art. 395 of CC). In such a case the tenant has no countervailing power to the new owner. During the waiting period Shikikin (security deposit) will not be transferred to the new owner and therefore the tenant cannot claim for the return of Shikikin. And if the tenant does not pay the rent within a reasonable period after the new owner's notice, the new owner can claim for the immediate handover of the dwelling (Art. 395 (2) of CC).[400]

Even in such a case that the handover occurred after the settlement of the mortgage, if the following conditions are met, that is, (1) the rental contract is registered, (2) all the mortgagees who settled before the registration of the rental contract agree

[399] One exception is the case when a rental dwelling is in a building on the land which is the object of a land lease right. If the tenant did not know the expiration of the land lease right one year prior to that expiration, the tenant may request the court to grant a reasonable time period up to one year from the day the tenant was made aware of the expiration of the land lease right. Art. 35 of the ALBL: (1) In cases where there is a lease with respect to buildings on land that is the object of a Land Lease Right, when the building lessee must surrender the buildings by reason of the expiration of the Land Lease Right, only in cases where the building lessee was unaware of the expiration of the Land Lease Right at least one year prior to said expiration, the court may, pursuant to a request by the building lessee, grant a reasonable time period for the surrender of the land, not exceeding one year from the day the building lessee was made aware of the expiration of the Land Lease Right. *ALBL Konmentaru*, 270-271.

[400] Takashi Uchida, *Minpo III*, 3rd.ed. (Tokyo: Tokyodaigaku Shuppannkai, 2005, 2010), 440-441. If the tenant has a countervailing power, the judicial precedent says that Shikikin is transferred to the new owner as a matter of course, including in case of an auction, *Chushaku Minpo (15)*, 321-322 (Ishigai).

that the tenant has a countervailing power, and (3) this agreement is registered, the tenant has a countervailing power against mortgegees and cannot be evacuated from the said dwelling (Art. 387 of CC). Such a case is seen in a building for commercial rent, of which value becomes higher only when the objects are rented by the tenants for commercial purposes.

- Termination as a result of urban renewal or expropriation of the landlord, in particular:
  - What are the rights of tenants in urban renewal? What are the rules for rehousing in case of demolition of rental dwellings? Are tenants interested parties in public decision-making on real estate in case of urban renewal?

City planning and the rights of tenants

The Japanese Constitution declares basic property right, but at the same time, it balances such right with the public welfare. Art. 29 of the Constitution states: The right to own or to hold property is inviolable; Property rights shall be defined by law, in conformity with the public welfare; Private property may be taken for public use upon just compensation therefor. Based on the third clause of Art. 29 of the Constitution, Compulsory Purchase of Land Act (Act No. 219 of 1951, hereinafter referred to as CPLA) rules that if there is a building on the land which shall be taken for public use, that building should be assigned to another place with the compensation for such an assignment (Art. 77 of CPLA).

Tenants are interested parties in public/partly public decision-making on real estate in case of city planning or urban renewal. There are four related acts which stipulate the legal position and the rights of tenants. (1) City Planning Act (Act No. 100 of 1968, hereinafter referred to as CPA), (2) Urban Renewal Act (Act No. 38 of 1969, hereinafter referred to as URA), (3) Land Allocation Act (Act No. 109 of 1954, hereinafter referred to as LAA), and (4) Compulsory Purchase of Land Act, CPLA.[401]

(1) In the City Planning Act tenants are either 'residents' or 'stakeholders.' Tenants are as 'residents' allowed to join public hearings in order to make their opinions reflected under Art. 16 (1),[402] and as 'stakeholders' tenants may submit a written opinion pertaining to the proposed city plan made available for public inspection to the prefectures or municipalities under Art. 17 (2). In addition, Art. 66 states that if the public notice on the permission of a city planning project has been made, the project executor shall try to obtain the cooperation of the inhabitants of the project sites and the neighboring land by taking measures such as explaining to them the outline of the project in question and hearing their opinions.

[401] For the explanation of rights and status of the tenant below, I referred to the material used at the study group of Shojihomu Kenkyukai for the reform of the Act on Temporary Treatment of Rental Land and Housing in Cities Damaged by War (Act No. 13 of 1946) held on November 29, 2011 after the Great East Japan Earthquake in 2011. <http://www.shojihomu.or.jp/risai/2shiryou2.pdf>.

[402] Art. 16 (1) of CPA: When deemed necessary in compiling proposed city plans, …... the Prefectures or municipalities shall perform any required measures, such as convening public hearings, in order to reflect the opinions of residents.

(2) Urban Renewal Act rules the matters around the tenants in the designated area of an urban redevelopment project. There are two types of urban redevelopment project. (a) The first kind of project is that the former rights holders can continue to live or do business in the redeveloped buildings by using the 'exchange of rights' method. (b) The second kind of project is conducted by the 'land acquisition method' and the former rights holders will move out of the said area.

In relation to this distinction, Art. 74 of CPA stipulates that measures for livelihood rehabilitation should be taken, in addition to the compensation, for any person who may lose his/her basis of living as a result of giving up land, etc. due to the execution of city planning projects. The matters listed in Art. 74 are: (i) acquisition of housing land, land suitable for development of arable land, or other land, (ii) acquisition of residence, shops, or other buildings, and (iii) aid for finding employment, vocational guidance, or vocational training. The project executor shall make efforts to meet the request (Art. 74 (2) of CPA). This Art. 74 (2) of CPA does not apply to the first kind of project (a), but it applies to the second kind of project (b), since the exchange of rights method itself is considered as a measure for livelihood rehabilitation in the first kind of project, and the acquisition method (the rights holders have to leave the area) is not recognized so (Art. 6 (2) of URA) .

(a) In the first kind of project there are rules related to the tenants. If an individual person or an association plans to conduct an urban redevelopment project, it is necessary to obtain a permission from the governor of the prefecture (Art. 7-9 of URA) and to select more than three judging committee members with a permission of the governor of the prefecture (Art. 7-19 of URA). In order to apply for such a permission the potential project executor should have consents of all the rights holders with regard to the land or buildings in that area (Art. 7-13 of URA). If a tenant does not want to obtain the tenancy right after the completion of that urban redevelopment, the tenant may request not to obtain that tenancy right within a certain period after the public notice of the permission of an urban redevelopment project is posted (Art. 71 (3) of URA). A tenant who had a tenancy right to the dwelling in the project area shall obtain a tenancy right to the part of the built building by the redevelopment project (Art. 88 (5) of URA). If a tenant does not want to obtain a tenancy right in the redeveloped area, he/she will be compensated (Art. 91 of URA).[403] If a tenant obtains a tenancy right to the dwelling in the redeveloped building owned by the same landlord, and the tenant and the landlord cannot reach an agreement on the amount of rent by when the public notice of the completion of the construction is posted, the project executor will decide it based on the majority opinion of the judging committee (Art. 102, Art. 7-19 of URA).[404] If the owner of the building left the area and the tenant stays, the project executor leases a dwelling to the tenant. The project executor should inform the tenant the amount of rent for the dwelling offered by the project executor after the public notice of the completion of the construction was posted (Art. 103 (1) of URA). If the tenant has an objection to the amount of rent, he/she has to claim for reduction before the court within 60 days after the tenant received the notice (Art. 103 (2) of URA).

(b) In the second kind of project all the rights holders should leave the area one time. In case the tenant wants to rent a dwelling in the area, the tenant can demand a

[403] In addition, Art. 97 of URA rules compensation for ordinary damage caused by handover of the land.
[404] If the project executor is a local government, that local government has to make a decision on the amount of rent, etc. based on the resolution by the urban renewal committee (Art. 102, Art. 57 of URA).

tenancy right on a dwelling in the redeveloped building (Art. 118-2 (5) of URA). The tenant who has planned to rent a dwelling in the redeveloped building will obtain such a tenancy right (Art. 118-18 of URA). The executor should give a notice on the amount of rent to the tenant (Art. 118-23 of URA). As mentioned above, Art. 74 of CPA, measures for livelihood rehabilitation applies to this type of project.

(3) Land Allocation Act has also provisions on tenants in the land allocation project. A tenant of a building in the targeted area of a land allocation project is named 'an interested party' or 'a person who has a tenancy right to the building in the targeted area.' If the project executor is a private individual (not a public body), it is necessary to obtain all the interested parties' consents in order to apply for authorization of that project (Art. 8 of LAA). At making a decision on the project plan, interested parties may submit their opinion on the said project plan to the governor of the prefecture (Art. 20 (2), Art. 55 (2) of LAA). If the land in the project area is planned to be exchanged and the landlord claims that the exchanged land should be in the urban redevelopment area, the landlord should obtain the consent of the tenant in the landlord's original building (Art. 85-3 (2) of LAA). In addition, the LAA stipulates the contract relationship between the landlord and the tenant. If the amount of rent has become disproportionate after the building was relocated due to the land allocation project, the both parties can claim for increase or decrease of the rent toward the future (Art. 116 (1) of LAA). However, if the landlord claims for increase of the rent according the provision above, the tenant can cancel the contract and be discharged from the obligation (Art. 116 (2) of LAA). If the tenant cannot achieve the purpose of the tenancy contract due to the relocation of the building, the tenant can cancel the contract and claim for damages caused by that cancellation to the project executor. And the project executor can claim for a compensation to the landlord to the extent of the benefit which the landlord has obtained (Art. 116 (3) and (4) of LAA).

(4) In the Compulsory Purchase of Land Act a tenant is named 'a interested person' or 'an occupant/a possessor.' The interested parties can demand a public hearing for the accreditation (approval) of the project to either the Minister of MLIT or the governor of the prefecture (Art. 23 of CPLA). When the application of the project becomes open to the public, interested parties can submit their opinion to the governor of the prefecture (Art. 25 of CPLA). When the public notice of approval of the project is posted, the project executor has to inform the interested parties of compensations which they will receive (Art. 28-2 of CPLA). When the public notice and the public inspection of the application for a determination concerning the expropriation of land has are posted, interested parties can submit their opinion (Art. 43 of CPLA). The interested parties (in addition to the project executor and property owners) can demand an evacuation decision by the expropriation committee (under the rule of the prefectural governor: Art. 51 of CPLA) (Art. 47-2 (3) of CPLA). If the project executor, property owner, or interested parties demands an evacuation decision, the project executor has to submit the documents of estimated compensations for the loss due to the expropriation (Art. 47-3 (1) of CPLA).

As to the compensation for the loss, Art. 88 stipulates that the loss of the interested parties due to the use or the expropriation of land shall be compensated (Art. 88 of CPLA). If the tenant cannot continue to rent the object due to the expropriation and the use of land, (a) the expense which usually costs for concluding a new contract over another object which is equivalent to the former object, and (b) the difference between the former rent and the new rent for the period which is usually necessary to stabilize a

living or a business, shall be compensated (Art. 25 of Cabinet Order Ruling Art. 88-2 of CPLA, Cabinet Order No. 248 of 2002). If it is impossible to relocate the object (Art. 78 of CPLA) or the cost of the relocation is more expensive than the purchase price of the equivalent object and therefore, the project executor claims for the expropriation of the object (Art. 79 of CPLA), the tenancy right itself becomes extinguished (Art. 101 (3) of CPLA) and thus the loss of that tenancy right shall be compensated. When the decision on evacuation has been made, the possessor of the object in the said land shall hand over the land or the object to the project executor, or relocate the object (Art. 102 of CPLA).

6.7 Enforcing tenancy contracts

Example of table for 6.7 Enforcing tenancy contracts

	Main characteristics of rental contract unlimited in time (Type 1)	Main characteristics of rental contract limited in time with renewal protection (Type 2)	Main characteristics of fixed term rental contract (Type 3)	Ranking from strongest to weakest regulation, if there is more than one tenancy type
Eviction procedure	1. Landlord sends a notice of demand for payment with specifying the period of rent payment (in case of rent arrears). 2. If the tenant does not pay the rent, (1) the landlord can file either for a petition for settlement or (2) for a conciliation before taking legal action (the consent of the parties is necessary for the both procedures), or submit a letter of complaint for handover of the dwelling and payment of the rent to the court. 3. The court may give a settlement recommendation 4. If the both parties do not accept that settlement recommendation, the court can render a final and binding judgment. 5. A court execution officer gives a notice of handover with a certain period (1 month) and if the handover does not occur by that determined date, a court execution officer evacuates the possessor by force.			No differences among the three types
Protection from eviction	There is no written rules on social defenses from eviction in private rental contract relationships.			
Effects of bankruptcy	-The landlord cannot cancel the rental contract based on the tenant's bankruptcy. -The bankruptcy trustee in bankruptcy can either cancel the tenancy contract or claim for the continuous tenancy contract after performing the			

	tenant's obligation, such as rent payment (Art. 53 (1) of the Bankruptcy Act). -The landlord may specify a reasonable period and make a demand for a definite answer regarding whether the trustee will cancel the contract or continue the rental contract. In this case, if the bankruptcy trustee fails to give a definite answer within that period, it will be deemed that he/she cancels the contract (Art. 53 (2) of the Bankruptcy Act) -The rent arrears prior to the decision on the commencement of bankruptcy proceedings will be a bankruptcy claim and will be paid in a certain percentage back to the landlord. - If the bankruptcy trustee has decided to continue the rental contract, the rent after the decision on the bankruptcy proceedings will be paid as a claim on the bankruptcy estate by the bankruptcy trustee. - If the bankruptcy trustee has decided to cancel the contract, it will become also a claim on the bankruptcy estate, and thus the rent will be paid during the period after the commencement of bankruptcy proceedings until the end of the contract (Art. 148 (1) (viii) of the Bankruptcy Act)	

- Eviction procedure: conditions, competent courts, main procedural steps and objections
- Rules on protection ("social defences") from eviction
- May rules on the bankruptcy of consumers influence the enforcement of tenancy contracts?

A typical eviction procedure in case of rent arrears is as follows. The landlord (or his/her counsel) sends a notice of demand for payment as a certified mail. The landlord makes a manifestation of intention to cancel the contract, often with the above mentioned notice of demand for payment, such as, 'if the payment is not done by the certain date, the contract will be automatically cancelled.' If the tenant still does not pay the rent on that date, the landlord can cancel the contract (Art. 541 of CC). If the tenant objects to that cancellation, the landlord can file a petition for settlement with the summary court (Art. 2 of the Act for Conciliation of Civil Affairs, Act No. 222 of 1951), or file for a conciliation before taking legal action (Art. 275 (1) of the Code of Civil Procedure, Act No. 109 of 1996).

Another procedure which the landlord can take is that to submit a letter of complaint regarding handover of the dwelling and payment of the rent to the district court which has jurisdiction either the domicile of the tenant or the location of the building (Arts.

4, 5, 8, and 133 of Code of Civil Procedure). In this case the main purpose of the complaint is handover of the dwelling. If the amount sued for is JPY 1,400,000 or less (e.g. the value of the said dwelling is calculated by the percentage of the floor size of the dwelling to the whole building), the landlord can bring the case to the summary court (Art. 33 of the Court Act, Act No. 59 of 1947). In such a case, a judicial scrivener can undertake the procedure (Art. 3 (6) of the Judicial Scriveners Act, Act No. 197 of 1950).

The court may give a settlement recommendation. If the both parties accept this settlement recommendation, the tenant hands over the dwelling voluntarily. If this settlement recommendation was acknowledged but the handover has not been done, the record of settlement is effective as a final and binding judgment (Art. 267 of Code of Civil Procedure). If the settlement recommendation is not accepted by the parties, the court renders the final and binding judgment, that is, enforceable title of obligation, without which the next procedure of compulsory execution is not possible. Then the landlord demands compulsory execution of an obligation on the basis of an authenticated copy of the title of obligation attaching a certificate of execution (Art. 25 of the Civil Execution Act, Act No.4 of 1979). A court execution officer gives a notice of handover with a certain period (1 month) and if the handover does not occur by that determined date, a court execution officer evacuates the possessor by force. Even though a third party has the possession of the dwelling in the meanwhile, the court execution officer can perform compulsory execution to that third person (Art. 168-2 (1) (2) (6) of the Civil Execution Act). [405]

There is no written rules on social defenses from eviction except the cases in the public housing (see 6.6 Notice by the landlord, public housing).

As explained in 6.6, the landlord cannot cancel the contract directly, when the tenant has gone bankruptcy. The only person who can cancel the contract based on the tenant's bankruptcy is the bankruptcy trustee (Art. 53 (1) of the Bankruptcy Act). The bankruptcy trustee in bankruptcy can either cancel the tenancy contract or claim for the continuous tenancy contract after performing the tenant's obligation, such as rent payment (Art. 53 (1) of the Bankruptcy Act). If the bankruptcy trustee has cancelled the tenancy contract, the landlord can claim for handover of the rental object and claim for damages as a bankruptcy creditor (Art. 54 of the Bankruptcy Act).[406] For the landlord, however, it is important that such a decision by the bankruptcy trustee, whether cancellation or continuation of the contract, will be made as soon as possible. Since the position of the landlord will be unstable until that decision is made, the landlord may specify a reasonable period and make a demand on a bankruptcy trustee that the trustee should give a definite answer within that period with regard to whether the

[405] See the internet site of the Real Estate Transaction Modernization Center <http://www.kindaika.jp/archives/1680>.

[406] Cf. If the landlord went bankruptcy, the landlord's trustee can either cancel the contract or claim for the tenant's performance of the obligations (Art. 53 (1) of the Bankruptcy Act). The tenant cannot cancel the tenancy contract. If the landlord's trustee in bankruptcy has canceled the contract, the tenant returns the object and claim for damages as a bankruptcy creditor (Art. 54). However, if the tenant has registered that rental contract, the landlord's trustee cannot cancel the contract and the tenant's credit becomes a claim on the estate (Art. 56). C.f. The term "claim on the estate" means a claim which may be paid from the bankruptcy estate at any time without going through bankruptcy proceedings (Art. 2 (7) of the Bankruptcy Act). A translation of the Bankruptcy Act, see <http://www.wipo.int/wipolex/en/text.jsp?file_id=187660#LinkTarget_439>.

trustee will cancel the contract or continue the rental contract. In this case, if the bankruptcy trustee fails to give a definite answer within that period, it shall be deemed that he/she cancels the contract (Art. 53 (2) of the Bankruptcy Act).[407]

The Bankruptcy Act rules that the rent arrears prior to the decision on the commencement of bankruptcy proceedings will be a bankruptcy claim and a certain percentage of such rent arrears will be paid back to the landlord. On the other hand, the rent which has arisen after the decision on the bankruptcy proceedings will be paid as a claim on the bankruptcy estate[408] by the bankruptcy trustee, when the bankruptcy trustee has decided to continue the rental contract. If the bankruptcy trustee has decided to cancel the contract, it will become also a claim on the bankruptcy estate, and thus the rent will be paid during the period after the commencement of bankruptcy proceedings until the end of the contract (Art. 148 (1) (viii) of the Bankruptcy Act).[409]

Apart from the above mentioned bankruptcy procedure, however, if the tenant has rent arrears, the landlord can cancel the contract. The procedure to enforce eviction was mentioned above in this section. On the other hand, if the tenant has paid the rent regularly, the landlord cannot cancel the contract solely based on the tenant's bankruptcy.[410] The landlord has to have a just cause to terminate the contract as it is the case for the normal procedure under Art. 28 of ALBL.

6.8 Tenancy law and procedure "in action"

The practical role of private rented housing can only be realistically assessed when the practical functioning of the legal system in this field ("tenancy law in action") is taken into account:

The role of associations of landlords and tenants

- What is the legal status and what are the roles, tasks and responsibilities of associations of landlords and tenants?

There is a national federation of associations of tenants of land and dwellings (established in 1967), of which members are 120 associations, in total 9500 persons.[411] Under this federation there are 10 local associations. They are not distributed all over

[407] Masao Eguchi, 'Chintaishaku Kikanchu no Chinshakunin no Hasan (Bankruptcy of the tenant during the tenancy),' Gekkanfudosan (May 2013), <http://www.zennichi.or.jp/low_qa/qa_detail.php?id=400>
[408] Art. 2 (14) of the Bankruptcy Act: (14) The term "bankruptcy estate" as used in this Act means a bankrupt's property, inherited property or trust property for which a bankruptcy trustee has an exclusive right to administration over and disposition of in bankruptcy proceedings.
[409] Art. 148 (1) (viii) of the Bankruptcy Act: A claim arising, in cases where a notice of termination of a bilateral contract (including termination of a lease contract pursuant to the provisions of Article 53(1) or (2)) is given by reason of the commencement of bankruptcy proceedings, during the period after the commencement of bankruptcy proceedings until the end of the contract.
[410] Under the former Art. 621 of the Civil Code it was allowed that the landlord cancel the rental contract based on the tenant's bankruptcy. However, this Article was abolished in the legal reform in 2004.
[411] <http://www.zensyakuren.jp/shoukai/shoukai.html>.

Japan, and are mainly located in Kanto and Kansai areas. Its purpose is to protect the tenant's right of residence from unjust infringement and to demand stabilization of life and improvement of living environment to the government and local governments. Its activities are various, such as, a campaign against abolition of the rent control by bringing the case as a constitutional case, a campaign to make the property tax for the small residential land exceptional to the normal property tax (1/6 of the burden), a campaign to stop a worse reform of the ALBL, a campaign to protect the tenants from infringement of the right of residence by developers (Jiageya) and from destruction of cities, etc. Recently it has become a big issue, whether a security deposit should be completely returned (Shikibiki-problem) (see 1.5 and 6.4) and the federation struggles with this actual problem. Another recent problem is 'Oidashiya' a company to evict the tenants due to his/her rent arrears by means of illegal harassment, such as, dispose furniture without a permission of the tenant, put the demand note on the door, exchange the key, etc. To deal with this issue, the federation demanded the MLIT to give an administrative guidance to the association of the management companies, and the MLIT made this guidance. The federation issues its newspaper to discuss those current problems. The federation has also posts relevant legal cases and answers the questions from the interested persons in its internet site. A tenant can also consult each local association regarding his/her problems. The federation and local associations try to protect their right to residence and appeal to the government in order to change the policy, for example, with drafting 'Charter of Private Rental Housing' (2012).[412]

For landlords there is an association of landlords of land and buildings in Japan (established in 1981).[413] It has around 80 professional people, such as, lawyers, tax accountants, judicial scriveners, public accountants, class-1 architects, real estate appraiser, and the like. It gives advice to member-landlords and tries to solve problems. Most frequent asked topics are rent arrears, vacant rental dwellings, renovation of the building and its following evacuation problems, and inheritance. Other than the consultation, the services which the landlord association offers are, that the member landlords receive its newspaper with profitable information for landlords, that the members let the association estimate possible inheritance tax, that the members let the association calculate solar power generation, that the members consult possible utilization of land, and that the members let the association undertake the inheritance procedure. In addition to that, the association holds seminars, undertakes governmental projects, such as, help homeless people or the unemployed to find rental housing, enhances earthquake-resistant reconstruction of old buildings, or conducts a survey on rental housing for households with small children, gives their opinions in the study group on land and building lease held by the Ministry of Justice, does research on real estate and ALBL, and supports the victims of the Great East Japan Earthquake. Moreover, the association publish their opinions about the important Supreme Court decisions, such as, the decisions on Shikibiki and renewal fee (see 1.5). This landlords association seems to be not one-sided for the landlord, since its activity includes helping homeless people or people in the difficult situation. However, the association exists for the landlords and tries to help the landlords, especially elderly landlords. The landlords association sees current problems as arising from the aging society, that is, both parties (landlord and tenant) are elderly, such as, an old landlord cannot solve the problem of rent arrears and

[412] <http://www.zensyakuren.jp/tosyakuren/minkan/data/2012/121031_01.pdf>.
[413] <http://www.jinushi.gr.jp/index.html>.

evictions, and the tenant cannot move out because of their age, lack of monetary resources, etc.[414]

Role of standard contracts

- What is the role of standard contracts prepared by associations or other actors?

There are several model rental contracts prepared by the MLIT according to the type of contract. They are the standard rental contract for residential use with official comments (Type 2),[415] the standard rental contract for lifetime use (see 1.4 and 6.4),[416] the standard sublease rental contract,[417] and the standard rental contract with a fixed term (Type 3).[418] The standard rental contract for residential use is most distributed in the rental market and lawyers and interested people seem to use this standard contract. There are also standard contracts, including contracts for office use, etc. made by judicial scrivener's offices.[419]

Tenancy law disputes

- How are tenancy law disputes carried out? Is tenancy law often enforced before courts by landlords and tenants and/or are - voluntary or compulsory - mechanisms of conciliation, mediation or alternative dispute resolution used?

Since the court procedure costs time and money, ADR (Alternative Dispute Resolution) is often used by the parties. As mentioned above, if the dispute is about increase or decrease of rent, the conciliation first principle rules the case (Art. 24-2, Civil Conciliation Act) (see 5; 6.1; 6.5), that is, the conciliation committee can settle the case, if both parties have agreed to follow the committee's decision in writing (Art. 24-3, Civil Conciliation Act). If they cannot reach an agreement, the case will go either to the summary court or the district court according to the amount of the claim and the court will render the adequate rent.

Regarding the cases other than the rent increase/decrease cases, the parties have a freedom to choose, either bring a case to the court or try to solve the dispute outside of the court. ADR is classified to the three categories according to the settlement bodies: judicial, administrative, and private.[420] (1) Judicial settlement is done by the court, such as, civil conciliation (Civil Conciliation Act, Act No. 222 of 1951). If the both parties reach an agreement and sign the record, the conciliation is deemed to be achieved and

[414] <http://www.jinushi.gr.jp/example/index.html>.
[415] <http://www.mlit.go.jp/jutakukentiku/house/jutakukentiku_house_tk3_000019.html>.
[416] <http://www.mlit.go.jp/jutakukentiku/house/torikumi/torikumi.html>.
[417] Ibid.
[418] <http://www.mlit.go.jp/jutakukentiku/house/torikumi/teishaku/tc-index.html>.
[419] For example, standard contracts made by the LAWIS judicial scrivener's office are available in the internet for free, <http://www.lawiz.net/template/>.
[420] <http://www.mhlw.go.jp/shingi/2007/12/dl/s1227-8d_0073.pdf>.

it has an effect as one of a judicial settlement (Art. 16 of Civil Conciliation Act). (2) Administrative ADR is done by an administrative body, such as, the National Consumer Affairs Center of Japan.[421]The National Consumer Affairs Center (NCAC)[422] carries out a conciliation or an arbitration without any initial fees (except fees for communication, transportation, etc.), but it takes only the dispute which NCAC finds important from a perspective of consumer protection. (3) If the settlement body is a private person, it is ruled by the Act on Promotion of Use of Alternative Dispute Resolution (Act No. 151 of 2004; hereinafter referred to as ADR Act). The ADR Act adopts a certification system in which a private dispute resolution business obtains a certificate by the Minister of Justice (Art. 5 of ADR Act).[423] Certified business bodies include Dispute Resolution Centers by Bar Associations (under different names, such as, mediation center, ADR center, etc.),[424] consumer groups, or industry groups. For example, if a Dispute Resolution Center of Tokyo Bar Association undertakes a dispute, the fee would be a filing fee, JPY 10,500, a fee for each meeting, JPY 5,250, and a success fee which is divided to the both parties based on the resolution, according the amount of a case.[425]

If ADR is classified according to its way and effect, there are three kinds of ADR, (1) mediation, (2) conciliation, and (3) arbitration.[426] Those procedures are less expensive, convenient (no need to choose the proper jurisdiction) and faster,[427] but it is necessary to have the both parties' consent in order to commence such a procedure. It is closed, opposite to the judicial procedure (open to the public). Both parties do not have to have agreed with the ADR resolution before a filing a case to the dispute resolution body.

(1) According to the explanation of the MLIT, the goal of mediation is to solve the problem with the settlement between the parties, but different from conciliation, mediation is suitable for dispute cases with less complicated legal and technical matters and there will be no 'mediation offer' compared to conciliation which offers 'settlement offer' by the conciliators. It is normally done by a single mediator, and mediation meeting is held one or two times.[428] If the parties reach an agreement, they sign the settlement record. It has an effect of settlement under the Civil Code (Art. 695 of CC). However, this record does not have an enforcement power.[429] If one party does not perform the obligation written in the settlement document, the other party files a case at the court and receives the court decision according to the settlement record, then he/she obtains

[421] Ibid.
[422] <http://www.kokusen.go.jp/adr/index.html>, for English, <http://www.kokusen.go.jp/ncac_index_e.html>.
[423] Certification system is explained in the Internet site of the Ministry of Justice, <http://www.moj.go.jp/KANBOU/ADR/tetsuzuki.html>.
[424] Japan Federation of Bar Associations (JFBA), <http://www.nichibenren.or.jp/contact/consultation/bengoshikai_consultation/conflict.html>. According to JFBA, there are 35 Dispute Resolution Centers (of 32 Bar Associations) (April, 2013).
[425] <http://www.toben.or.jp/bengoshi/kaiketsu/cost.html>.
[426] See the explanation by MLIT, <http://www.mlit.go.jp/common/000027310.pdf>.
[427] According to the JFBA, the average duration of a ADR was 88.5 days, and the average number of meetings was 2.7 in 2009, <http://www.nichibenren.or.jp/contact/consultation/bengoshikai_consultation/conflict/houritu10.html#q8>.
[428] Yokohama Bar Association, <http://www.yokoben.or.jp/consult/by_content/consult14/>.
[429] On the other hand, a judicial settlement is a settlement which is made in and authorized by the court. And a judicial settlement has an enforcement power according to Art. 267 of Code of Civil Procedure (Art. 267: When a settlement or a waiver or acknowledgement of a claim is stated in a record, such statement shall have the same effect as a final and binding judgment.) and Art. 22 (7) of Civil Execution Act.

a title of obligation which allows compulsory execution (Art. 22 of Civil Execution Act; see 6.7). The other way is to let the record notarized at the Notary Public Office and obtain a title of obligation. Moreover, if the mediation procedure is closed because of no expected resolution, and the party who demanded the mediation files a complaint at the court within one month after he/she received the notice, nullification of prescription is applied, that is, it is legally deemed that such a complained was filed at the time of demand for a mediation.[430]

(2) When the case is more complicated and technical which does not fit a mediation, a conciliation is undertaken. Conciliators are normally 3 persons or less and conciliation is undertaken about 3 times.[431] Conciliators not only encourage consultation but also can recommend the parties to accept the draft of the record of settlement.[432] The effect of the settlement is the settlement under the Civil Code as in the case of mediation, and nullification of prescription is also applied.

(3) Arbitration is a type of ADR, of which the both parties have to follow the arbitration judgment by the arbitrators (Arbitration Act, Act No. 138 of 2003). Both parties have to agree to follow the arbitration judgment before its commencement. The arbitration judgment has an enforcement power. Therefore, the advantage of the arbitration is that the party can force the other party to perform the obligation written in the arbitration judgment.[433] However, once the parties agreed to follow the arbitration judgment, neither party can bring a lawsuit on that dispute at the court. In addition, there is no system of appealing, neither party can file a complaint to the arbitration judgment.[434]

In addition, there are local governments' efforts to avoid and reduce disputes over rental housing which are embodied as ordinances and guidelines.[435]

- Do procedures work well and without unreasonable delays? What is the average length of procedures? Are there peculiarities for the execution of tenancy law judgments (e.g. suspensions of, or delays for, eviction)?

The duration and cost of the judicial procedure depend on cases, but one law firm gives information on duration (from the time of delegation to the lawyer to completion of eviction) and cost (including the lawyer's fee, eviction enforcement fee, etc.) of eviction cases due to rent arrears. Case 1: JPY 750,000 (actual expenses) + JPY 420,000 (lawyer's fee), but success fee is not included (35% of the amount of the returned money), this applies to the following cases too) and 100 days; Case 2: JPY 500,000 (actual expenses) + 420,000 (lawyer's fee) and 150 days; Case 3: JPY 230,000 (actual expenses) + 420,000 (lawyer's fee) and 100 days; Case 4: JPY 85,000 (actual expenses) + 420,000 (lawyer's fee) and 100 days, although there are other prompt

[430] <http://www.mlit.go.jp/common/000027310.pdf>.
[431] <http://www.yokoben.or.jp/consult/by_content/consult14/>.
[432] <http://www.mlit.go.jp/common/000027310.pdf>.
[433] <http://www.mhlw.go.jp/shingi/2007/12/dl/s1227-8d_0073.pdf>.
[434] Ibid.
[435] See the guideline of Tokyo (2013), Guideline for Preventing Rental Housing Disputes, <http://www.toshiseibi.metro.tokyo.jp/juutaku_seisaku/tintai/310-6-jyuutaku.pdf>. Ordinance for Preventing Disputes over Rental Housing in Tokyo (Ordinance No. 95, March 31, 2004), <http://www.reiki.metro.tokyo.jp/reiki_honbun/g1013360001.html>. A short explanation of them, see <http://www.toshiseibi.metro.tokyo.jp/eng/pdf/index_06.pdf>, 3.

cases.[436] Another judicial scrivener's office also indicates that the average duration of an eviction case is between 3 and 6 months.[437] It is also said that the landlord should give notice at least 3 times before the cancellation for eviction to show that the landlord repeated giving notice in a certain period, and it takes 1 month to start the trial after filing a complaint. That means, it takes around 3 months including the period of notices (pre-trial), until the action actually starts.[438] Then if 3 months are added to the period to the average cases, the total duration would become around 6 - 9 months. It is criticized that the duration of the judicial procedure is too long and cost is too high, including the lawyer's fee. Therefore, even though the legal action started, the court tries to make a settlement (judicial settlement) and almost all the cases end up with a settlement.[439] Moreover, ADR is often used for tenancy disputes by the parties. There is no special execution of tenancy law judgments, especially, of eviction.

Fairness and Justice

- Are there problems of fairness and justice? Are there problems of access to courts especially for tenants? What is the situation concerning legal fees, legal aid and insurance against legal costs?

To talk about fairness and justice is a difficult thing, since what are fairness and justice is different depending on a person and his/her perspective to see the situation. From a perspective of a tenant, it is obvious that the Japanese tenancy law is tenant-protective and this tenant-protective tenancy law may be considered as just and fair, since tenants have normally less resources and are taken as weaker parties. With the Japanese tenancy law and its implementation, landlords can hardly terminate tenancy contracts due to the just cause system including eviction fee, the doctrine of destruction of the mutual trusting relationship, and statutory renewal. Therefore landlords try to have security at the entrance of a tenancy contract by demanding a personal guarantor, and Shikikin (security deposit) with a Shikibiki contractual clause (part of the deposit will not be returned). Protective tenancy law and procedure works, then, adversely to the tenants. On the other hand, in case of rent arrears and eviction, the landlord have to wait before filing a case (by giving notice several times in a certain period) and it costs money to evict a tenant, even though that tenant has breached the contract. Therefore, from a landlord's perspective, tenancy law and procedure may be seen unfair and unjust. However, the landlord may access the judicial procedure better due to their monetary resources than the tenants. In short, fairness and justice cannot be measured without taking the background and resources of the both parties into consideration. If it is simply about formal requirements to access the court for the tenants, there is no difference between tenants and landlords, except, as said above, actual monetary resources.

As to legal fees, they depend on the amount of the value of the object of the lawsuit. For example, according to one law firm, in an eviction case of one dwelling out

[436] <http://www.emg-law-office.jp/Q&A_1.html>.
[437] <http://www.legalclinic.jp/vacate/102/103.html>.
[438] <http://allabout.co.jp/gm/gc/383101/3/>.
[439] *Fudosanchintaishaku no Kadai to Tenbo (Problems and prospects of the renting immovable properties)* ed. H. Matsuo & A. Yamanome (Tokyo: Shojihomu, 2012), 480.

of 20 dwellings of the building of which value is JPY 50,000,000, there are a fee for certified letter (JPY 1,990), fee for filing a case at the court (JPY 12,000), pre-paid fee for stamp fee at the court (JPY 6,000), a fee for sending the judgment (JPY 450), pre-paid fee for enforcement of eviction (JPY 65,000), fee for the enforcement company (JPY 500,000, it is difficult to estimate it, since it depends on the case), in addition to lawyer's fee of starting fee (=JPY 210, 000 which is not be refund) and success fee (JPY 157,500 + 10.5% of the amount of returned rent). In total it is estimated JPY 952,940.[440] If there is no place to keep the movables of the tenant, it will cost for the place to keep them (enforcement officer decide how long, normally, between 2 weeks and 1 month).[441] Moreover, out-of-pocket expenses, such as travel cost of the lawyer, etc. will be added, too. Although it is a freedom to determine his/her lawyer's fee, starting fee and other fees seem to be the same to many lawyers based on the internet information. There is also a survey on the lawyer's fees undertaken by the Japan Federation of Bar Associations (JFBA).[442]

If the claim is JPY 600,000 or less than that, a party can take a small claim action. The fee costs less than a normal action (e.g. JPY 3,000 for the value of the object JPY 300,000). The trial is generally one time and the decision is delivered and therefore the parties should prepare the complete evidence and documents.[443]

Japan has an official system of legal aid for civil cases based on the Comprehensive Legal Support Act (Act No. 74 of 2004). The Japan Legal Support Center (JLSC) was established in 2006.[444] It supports the people who need legal support comprehensively by using measures, such as, giving information and advice on legal issues on the phone, supporting victims of crimes, supporting lawyers under-populated areas, coordinating court-appointed contract attorneys at law, and so forth. One of the most important businesses of JLSC is legal aid. [445] This is a system that a person who cannot afford to pay for legal services can obtain such services with various supports. In order to receive legal aid, (1) his/her income and assets are less than a certain level, (2) there must be a possibility to resolve the dispute, such as, win the case or reach a settlement, and (3) his/her purpose should be suitable for the one of legal aid, e.g. it should not be only to fulfil the retaliatory emotions or a commercial purpose, or not be an abuse of right.[446] If a person meets above three requirements, he/she can receive following legal services, that is, JLSC gives a legal consultation for free and pays temporality the fees for a lawyer or a judicial scrivener, or judicial procedure, or fees for making legal documents, for that person. If a person receives livelihood protection, he/she receives a waiting period until the dispute is resolved, and will be exempted from returning the fees which JLSC paid for him/her. There is also a simple legal aid by which a lawyer or a judicial scrivener helps a person by only writing legal documents with that

[440] <http://www.springs-law.com/service/tatemono.html>.
[441] Ibid.
[442] <http://www.nichibenren.or.jp/contact/cost/legal_aid.html>.
[443] <http://www.bengo4.com/intro/intro10_89.html>.
[444] Its legal form is an independent administrative agency under Ministry of Justice. <http://www.houterasu.or.jp/index.html>. The English version is <http://www.houterasu.or.jp/en/index.html>. Before 2006 the Association of Legal Aid (established in 1952) had given the service of legal aid and in 2006 it was handed over to JLSC. <http://www.houterasu.or.jp/houterasu_gaiyou/mokuteki_gyoumu/minjihouritsufujo/index.html>.
[445] <http://www.houterasu.or.jp/houterasu_gaiyou/mokuteki_gyoumu/minjihouritsufujo/index.html>.
[446] <http://www.houterasu.or.jp/houterasu_gaiyou/mokuteki_gyoumu/minjihouritsufujo/index.html>.

person's name, if making such documents is enough to solve the problem.[447] JLSC has its main office in Tokyo and 50 local offices in the cities where main district courts are located. Even though there is no office nearby, more than 10,000 lawyers and 5,000 judicial scriveners have contracts with JLSC and they give legal consultations in their law offices.

As to insurance against legal costs, there are liability insurances which include legal costs. Automobile insurance, fire insurance, or accident insurance may cover lawyer's fee, if a person has bought such a special lawyer's fee insurance. However, there is not so much information on insurance against legal costs in tenancy law cases.

Legal certainty in tenancy law

- How about legal certainty in tenancy law? (e.g.: are there contradicting statutes, is there secondary literature usually accessible to lawyers etc?)

Legal certainty in the Japanese tenancy law may be difficult to promise, unless the word, legal certainty or legal foreseeability means a relatively large range of possible results. There are many elements to make tenancy law unforeseeable. First of all, many tenancy law cases are settled without court decisions, either by the court conciliation, or by ADR undertaken by private or administrative organizations. That is, they are not officially published and therefore, not available for legal analysis, which would contribute to legal certainty. Secondly, the important doctrines have been developed by the courts, such as, the just cause doctrine with a balancing test, and its complementary eviction fee for termination of contract by a landlord, the doctrine of destruction of the mutual trusting relationship for cancellation due to breach of contract, etc. For instance, what kind of just cause can be admitted for termination of contract and how much eviction fee may be ordered by the court depends on each case and its particular situation. This uncertainty, however, might stem from the character of tenancy law itself, since it is about the foundation of people's life: the actors are various (whether the landlord is an old private person who built the building with credit or a huge developer, whether the tenant is a young person who is well-paid or a single mother with children, etc.) and therefore their circumstances are also diverse. To achieve fairness in tenancy law, it might be indispensable to have flexibility for the court to render decisions through those doctrines.

As for the statutes, ALBL as the special statute for the tenancy relationships applies first, and CC applies generally to the contractual relationships. Therefore, if there are two different kinds of provisions on the same issue, such as notice period (different period for the landlord and the tenant), the provision of ALBL applies first. Yet, the differentiation is not clear between useful expense under Arts. 608 (2) and 196 (2) as one side, and interior decorations and fixtures under Art. 33 of ALBL, as the other side. It is vague whether the object has become a part of the building (=the landlord's property) or not under Art. 608 (2), and whether the decoration is the one under Art. 33 of ALBL (=one which the tenant can remove <=tenant's property>), of which utility value is lessened if it is removed (see 6.5). Though Art. 33 has been used to cover the cases

[447] Ibid.

which do not fall in the category of Art. 608 of CC,[448] this point has been criticized by academics and discussed that both provisions should be consistently interpreted.[449]

There are secondary materials available for lawyers. They are commentary for ALBL, commentary for CC, legal periodicals, such as, 'Jurist', 'Hogaku Seminar,' 'Houritsu Jiho' which have commentaries on recent judicial decisions. As special volumes of Jurist, there are also 'Hyaku sen (100 legal cases)' with commentaries, 'Juuhan' (important cases), 'Soten' (issue), and as a special volume of Hogaku seminar, 'Kihon Konmentaru' (basic commentary). Legal academic articles are also available in those periodicals and law reviews of universities.

Swindler problems

- Are there "swindler problems" on the rental market (e.g. flats fraudulently advertised on the internet as rental offers by swindlers to whom the flats do not belong)?

There is no information on typical 'swindler problems' depicted in the questionnaire. However, there are problems of 'Otori Bukken (decoy object)', by which estate agents attract potential tenants, especially in the internet, although such an object does not exist or another tenant has already occupied. Such an estate agent puts information on a decoy object in the internet site and asks a customer to come to the office. When the customer comes to the office, the estate agent tells that somebody else has just made a contract over the dwelling, and gives information on other dwellings which are more expensive or are in less attractive conditions within that customer's affordability.[450] Or there is a problem of misleading advertisements. An advertisement indicates better conditions of the dwelling, but that dwelling does not have such conditions (e.g. a bigger room in the advertisement but the actual size is smaller). Those problems are recognized by the government and such acts are prohibited by the Act against Unjustifiable Premiums and Misleading Representations (Act No. 134 of 1962) and by the Notification by the Fair Trade Commission, on Art. 4 (1) 3 of the Act against Unjustifiable Premiums and Misleading Representations (Notification No. 14 of 1980, Fair Trade Commission).[451] If a business operator puts a misleading presentation, the commissioner (the head) of the Consumer Affairs Agency gives an administrative order. There is also a public interest corporation, the Real Estate Fair Trade Council of Federation, of which purpose is to prevent illegal attraction of customers by real estate agencies, to promote consumers' voluntary and rational choice, and to achieve fair competition among the business operators.[452]

[448] *Chushaku Minpo (15)*, 247 (Watanabe & Harada).
[449] Ibid, 243, 755-756 (Watanabe & Harada).
[450] e.g. A blog for promotion of safe transaction of rental dwellings, <http://www.dda.jp/category/10/blog/1> (though December, 2013 it will be terminated). There is another website of a real estate agent on this issue, <http://hayashidaichi.blog26.fc2.com/blog-entry-151.html>.
[451] The notification is in <http://www.caa.go.jp/representation/pdf/100121premiums_18.pdf>. See also the website of the Consumer Affairs Agency, Government of Japan for the issue especially on real estate business, <http://www.caa.go.jp/representation/keihyo/hyoji/kokujifudosan.html>.
[452] The Real Estate Fair Trade Council in Kansai area, <http://www.koutori.or.jp/about/index.html>, for the website of the federation, see <http://www.rftc.jp/index.html>.

In addition, Zero-zero rental housing and Oidashiya (see below 'Tenancy-related issues publicly/politically debated' in this section) can be classified as swindler problems.

Non-enforcement of tenancy law

- Are the areas of "non-enforcement" of tenancy law (such as legal provisions having become obsolete in practice)?

Art. 605 of CC (Perfection of leasehold): A lease of immovable property, when registered, shall also be effective against a person who subsequently acquires real rights with respect to the immovable property. It is rare that the tenant register his/her tenant's right, since it requires the landlord's cooperation and the landlord has no duty to do it (see 6.1 and 6.3).[453]

10-20 most serious problems in tenancy law and its enforcement

- What are the 10-20 most serious problems in tenancy law and its enforcement?

■ Shikikin, Kenrikin, Reikin and their return

As already mentioned in 1.5: Special features in Japan, security deposit (Shikikin) is often paid by the tenant at the conclusion of a rental contract. Under the name of 'deposit', normally the rest of the deposit after the necessary cost was deducted should be returned to the tenant at the termination of the contract. However, there is a custom of 'special agreement of non-refund (Shikibiki)' by which the landlord keeps some amount of money of the deposit or some percentage of it. Recently many cases regarding 'special agreement of non-refund' have been brought to the court and there have been lower court decisions which found it void in light of Art. 10 of the Consumer Contract Act (Act No. 61 of 2000). However, the Supreme Court found it valid (about 3.5 times as much as rent), unless the amount is too high and there are some significant concerns.[454]

Reikin (thanks money) / Kenrikin (money for right to rent the object), is the money paid by the tenant at the conclusion of a tenancy contract. This money will not be refund at the termination of the contract. Characteristics of this money are controversial, such as, gratitude to the landlord, prepayment of the rent, compensation for the vacancy after moving out, or cost for restoration. It is clarified in the contract that Reikin/Kenrikin will not be refund at the end of the contract. There are several cases on this issue, but the lower courts interpreted it as similar to renewal fee and found it not invalid under Art. 10 of the Consumer Contract Act. [455]

[453] *Chushaku Minpo* (15), 183-184 (Ikuyo).
[454] Supreme Court Decision on March 24, 2011, *Minshu* vol.65, no.2, 903; Supreme Court Decision on July 12, 2011, *Hanreitaimuzu* no.1356, 81.
[455] Sonobe, *'Wakariyasui,'* 51.

- Restoration disputes

Restoration disputes occurs at the end of the contract, since Art. 597 (1) (through Art. 616 of CC) is applied and interpreted that the returned thing should be restored as it used to be (original condition restoration).[456] Since Shikikin (deposit) was paid at the conclusion of a contract in order to cover the cost for restoration, restoration disputes contain also Shikikin return disputes.[457] The government made a guideline, 'Troubles and Guideline for Restoration' in 1998, which was revised in 2004 and 2011.[458] In this guideline a tenant is responsible for the decrease of the building's value, if it has been caused by the tenant willfully, negligently, or carelessly, or by other ways of usage other than the normal usage. Damages due to normal wear and tear are exemplified, such as, a dent in the floor or a carpet because of furniture, changed color of Tatami mat, color loss of wooden flooring, darkening of the wall where an electric appliance was set up (TV, refrigerator, etc.), holes of thumbtacks which do not need an exchange of the deeper part of the wall, exchange of the key without damage or loss caused by the tenant, breakdown of the equipment because of its life, and so forth. Those things are not the tenant's responsibility but the landlord's responsibility.

- Renewal fee

Renewal fee is the fee at the time of renewal of the rental contract, often every 2 year. It is based on a contractual clause and it will not be returned at the end of the contract. There have been many lawsuits to claim for the return of the renewal fee with different outcomes. However, the Supreme Court rendered the decision that the renewal fee was valid (see 1.5: Special features in Japan).[459]

- Zero-zero rental housing and Oidashiya (examples of Hinkon-business (=Poverty business, which makes profit by taking advantage of the poor)

A zero-zero rental object is a rental dwelling without Shikikin (deposit), Reikin (thanks money), and the estate agent fee. It became popular in 2008, after the economic crisis, since a growing number of non-regular workers could move into such a dwelling only with one month's rent.[460] However, once the rent payment is delayed, even a couple of days, the estate agent, the management company or the surety company changes the key, enters the room without permission, removes the furniture, or demands a penalty fee. The act of key exchange is often based on a contract of 'temporal use of the key for a building' which is out of the scope of ALBL.[461] A person or a company which undertakes such evacuation process, often illegally, is called 'Oidashiya.' There are

[456] Art. 597 (1) of CC: (1) A borrower must return borrowed Things at the time specified in the contract.
[457] Shiho Mukai, *Fudosanchintaishaku no Kadai to Tenbo (Problems and prospects of the renting immovable properties)* ed. H. Matsuo & A. Yamanome (Tokyo: Shojihomu, 2012), 234.
[458] <http://www.mlit.go.jp/jutakukentiku/house/jutakukentiku_house_tk3_000020.html>.
[459] Supreme Court Decision on July 15, 2011, *Minshu* vol.65, no.5, 2269.
[460] Honma, *Kyoju no Hinkon*, 5. On the other hand, it costs normally around 6 months' rent at the beginning of the contract. Tamashiro, 'Shohiseikatsu Sodan', 227.
[461] Honma, *Kyoju no Hinkon*, 6.

several lower court cases which found them tortious acts and ordered such companies to pay for the compensation.[462]

- Personal guarantor/joint surety

The requirement of a personal guarantor or a joint surety at the conclusion of the contract is a serious problem, especially for the people whose monetary and personal resources are limited, such as, the elderly, the unemployed, single mothers, foreigners, etc. (see 1.5: Special features in Japan). This is a traditional custom in the private rental market, which tenancy law cannot abolish and which might be partly stemming from the (too much) tenant-protective tenancy law. The government tries to cope with this problem by introducing the housing safety net program and its subsidy program using private vacant rental housing (see 3.2 and 3.3).[463]

- Surety company

Surety companies have appeared instead of a personal surety (see 1.5: Special features in Japan). A surety company pays rent for the tenant, but the collection of debts is very harsh and often demands penalty. It sometimes requires a joint surety for the surety contract with the company. Moreover, if the surety company with which a tenant has a contract goes bankruptcy, the tenant has to conclude a new surety contract with another company, which costs money.[464] This issue is also not directly covered by tenancy law and there is no regulation on this issue.[465]

- Rent arrear and eviction, and long procedural period

As already mentioned above, it is very difficult for a landlord to evict the tenant in spite of his/her rent arrears and it costs time and money to do it through the official judicial procedure (see 6.7 and 6.8). That is why there are ADR measures. However, the landlord cannot expect to get back the rent from the tenant as well as the landlord might have to pay eviction fee etc. in an ADR case, since in such a case the tenant simply does not have money to pay for the initial cost of a new dwelling (Shikikin, Reikin, the estate agent fee, etc.).[466] This may be also one reason why the selection of a tenant is very strict and it requires a personal guarantor.

- Company owned rental housing

Company housing has/had been playing a great role to compensate for the lack of public housing and the housing welfare system in Japan (see 3.1 and 3.2). However, the termination of an employment contract means termination of the rental contract (see 6.3).[467] This negative point was revealed in the last economic crisis in 2008 and 2009.[468]

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[462] Tokyo District Court Decision on July 30, 2010, H21 (wa) no. 12334; Himeji Summary Court Decision on December 22, 2009, H21 (ha) no.961. See the website of Japan conference to fight against Oidashiya, <http://www.ichounokai.jp/query110/query110.html>. Also see the article in the website of lawyers' consulting service, <http://www.bengo4.com/topics/287/?via=lw_mailmag>.
[463] <http://www.minkan-safety-net.jp/outline.html>.
[464] Tamashiro, 'Shohiseikatsu Sodan', 226.
[465] A bill of an Act to regulate surety companies was not passed in 2011. Ibid. 227.
[466] <http://www.legalclinic.jp/vacate/102/103.html>.
[467] Makoto Ishida,'Rodosha to Tatemono Chintaishaku,' *Fudosanchintaishaku no Kadai to Tenbo (Problems and prospects of the renting immovable properties)* ed. H. Matsuo & A. Yamanome (Tokyo: Shojihomu, 2012), 179.
[468] Honma, *Kyoju no Hinkon*, 7-9.

■ Share house

Share house is a new type of rental housing which requires some amount of deposit (a couple dozens of thousand Japanese Yen), but does not require Shikikin, Reikin, the estate agent fee, or a guarantor and it often has furniture or electric appliances.[469] There is no rigid definition of share house, and it can be a single room or shared room with somebody else (single or dormitory), and the building can be for women only, or with foreigners, and it can be from a small sized house to a large sized one. A dormitory is a room which accommodates more than 2 people and often has double-deck beds.

The contract type is usually fixed term rental contract (Type 3) and if the contract period is longer than 1 year, a termination notice should be given 6 months prior to the termination date under the tenancy law. However, it is often not properly done. In case of a dormitory of which rent is lower than the single type, the contract period is one month and therefore, the life stability of the tenant is not protected. In addition, if a share house business operator subleases the building and the occupancy percentage goes down under some level, the building management by such a business operator will become bad and in the worst case, the business itself may go bankruptcy. Furthermore, the share house contract is not concluded through an estate agent but through a real estate management company. Thus it is not obliged to give an explanation on 'the important things as to the object and the condition of the contract' which is normally given by a real estate transaction specialist in case the contract is concluded through an estate agent (Art. 35 of the Building Lots and Buildings Transaction Business Act). And there is no control for the content of the contract.[470] There is an organization, Japan Shared & Guest House Organization which offers a guideline for a management of a share house.[471]

■ Sublease

Sublease contract is a type of contract between a real estate company and a landowner who has unused land, in which the landowner built an apartment building and the real estate company (=sublease company) rent the whole apartment building. The sublease company recruits tenants, collects rent, manages and maintains the building.[472] This type of rental contract became popular in the economic babble era (in which the price of land went rapidly higher), since the interest of both parties were met: the landlord wanted to utilize the land without selling it, and the sublease company wanted to make profits from it. The sublease company obtained more profits with much less investment than if the company had had bought land and built a building. The sublease company guarantees the rent, whether the all dwellings are occupied or not, and the

[469] This section is based on Keiko Tamashiro, 'Shohiseikatsu Sodan', 227-230.
[470] <http://suumo.jp/journal/2011/06/19/3143/>.
[471] <http://www.jgho.org/>.
[472] Questions given by a Diet member, Takeshi Miyamoto at the budget Committee of the House of Representatives on April 15, 2013. For its protocol, see http://jha-adr.org/pdf/20130415.pdf, http://www.youtube.com/watch?v=x38dUJ2Zi2E. Hisakakazu Matsuoka, 'Fudosanjigyo to Tatemono Chintaishaku: Saburisu Hanketsu no Kozai,' in *Fudosanchintaishaku no Kadai to Tenbo (Problems and prospects of the renting immovable properties)* ed. H. Matsuo & A. Yamanome (Tokyo: Shojihomu, 2012), 361.

contract has a relatively long contractual period, for 10-30 years, since the landlord has to pay back the loan for the construction of the building to the bank. Many contracts were concluded in the economic babble era and therefore they have special contractual clauses, such as, 'prohibition of mid-term termination,' 'high penalty in case of mid-term termination,' 'minimum rent guarantee,' and 'automatic increase rent.' However, after the bubble burst and the rent of the market decreased, the sublease company could obtain only the decreased rent of the market from the subtenants, but had to pay the landowner the same amount of rent written in the sublease contract. The company was afraid that deficits would accumulate. Thus it claimed for rent decrease based on Art. 32 of ALBL, the mandatory provision regarding rent increase/decrease, since Art. 32 applies to the case in spite of contractual clause of, such as, 'prohibition of rent decrease.' The Supreme Court rendered that the sublease contract was also a type of rental contract which ALBL covered, and consequently Art. 32 applied to such a case (see 6.1 and 6.5).[473]

The problem is the disparity in information and negotiation power between the sublease company which is normally a huge real estate company and the landlord who is often a layman in the field of real estate business with a huge amount of loan to build an apartment building. Thus if the tenant-protective ALBL applies to a sublease case, the powerful party, namely, the sublease company is protected and the weaker party, the landlord is not. In short, the spirit of ALBL does not work in such sublease cases. Moreover, in many cases the sublease company subleases dwellings with furniture and electric appliances as weekly and monthly apartments, and in case of the termination of a contract, the company transfers all the tenants to other apartment buildings managed by the same company and removes all the leased things, too. That is, the apartments of the building will be returned to the owner with nothing equipped. The business of the owner, therefore, cannot go on.[474] The second top sublease company tries to reduce the number of managed dwellings since vacant dwellings increased after the Lehman shock.[475] Claims regarding sublease contract has increased. There were more than 100 complaints and claims were brought to the real estate ADR organization from 2010 to 2012.[476]

Since the sublease company subleases the object leased by the landlord, the Building Lots and Buildings Transaction Business Act does not apply to the act of the sublease company and therefore, there is no obligation to give an explanation of the important things as to the object and the condition of the contract (Art. 35 of the Building Lots and Buildings Transaction Business Act). The MLIT set up the Registration System of Rental Housing Management Company in 2011 (Notification No. 998 of MLIT).[477] However, this system does not work, since registration is voluntary and therefore

[473] Supreme Court Decision on October 21, 2003, *Minshu* vol. 57, no.9, 1213; Supreme Court Decision on October 21, 2003, *Hanreijiho* no.1844, 50; Supreme Court Decision on October 23, 2003, *Hanreijiho* no. 1844 at 54; Supreme Court Decision on November 8, 2004, *Hanreijiho* no.1883, 52; Supreme Court Decision on February 29, 2008, *Hanreijiho* no.2003, 51.

[474] A member of the House of Representatives, Takeshi Miyamoto, Questions at the Fist Subcommittee of the budget committee in the 183th ordinary Diet session on April 15, 2013. See the video in the Video Library of the House of Representatives, <http://www.shugiintv.go.jp/jp/index.php?ex=VL&media_type&deli_id=42657&time=40064.4>. For the official record of this meeting, see <http://www.shugiin.go.jp/index.nsf/html/index_kaigiroku.htm>.

[475] Ibid.

[476] <http://jha-adr.org/coloum/index20120811.html>.

[477] <http://www.mlit.go.jp/totikensangyo/const/sosei_const_fr3_000012.html>.

administrative measures (such as, administrative guidance, advice, recommendation by the Minister; erasure of the name of the company from the registration; or official announcement of such a company) can be done only to the company which has been already registered. Furthermore, it is a notification of the Ministry and therefore, there is no penalty for violation of the rules.[478] A concurring opinion of the Supreme Court case stated that the reduction of rent from a sublease company should not damage the income and the expenditure expected by the landlord at the conclusion of the contract.[479] There is still much to do to deal with sublease contract disputes.

Tenancy-related issues publicly/politically debated

- What kind of tenancy-related issues are currently debated in public and/or in politics?

    - Illegal rental rooms

Recently there are illegal, dangerous and unhealthy rental rooms of which building does not meet the Building Standards Act. Rooms in such a building are divided by inflammable walls without any windows and each room is so small that only one person can sleep there. Such a building is sometimes located in the middle of a residential area, but advertised as a rental office or a rental warehouse, where actually many people are living. Or a condominium or a house is renovated for having many rental rooms inside, which violates the Building Standards Act. The MLIT made two Press Releases on this issue in order to gather information and deal with it.[480]

According to the Asahi Newspaper, the rent of an illegal rental room itself is not so low in Tokyo (around JPY 50,000), with which a tenant can rent a normal apartment in the suburb. However, most of the tenants there do not have a regular work, do not have any personal guarantor, and cannot pay Shikikin and Reikin. The companies do not pay the transportation cost and therefore those workers have to stay in the central Tokyo. On the other hand, public housing is very competitive to get and public dwellings for single persons are scarce, and local governments have financial difficulties and try to reduce public housing.[481] On September 30, 2013, the number of buildings for which an administrative guidance was prepared for was 107, the number of buildings to which an administrative guidance was being given was 254. and the number of buildings which were being investigated was 392, out of 820 objects.[482] This is a recent phenomenon which the government has just started doing investigations and dealing with.

[478] Miyamoto, Question at the First Subcommittee of the budget committee.
[479] Supreme Court Decision on November 8, 2004, *Hanreijiho* no.1883, 52. Opinion of the Judge Shigeo Takii.
[480] Press Release on September 6, 2013, at <http://www.mlit.go.jp/common/001010619.pdf>.
[481] 'Ihokashirumu: Sumai no Hinkontaisaku Isoge (Illegal rental rooms: measures against poverty is urgent), Editorial article, 'Ihokashirumu: Sumaino Hinkontaisaku Isoge', *Asahi Newspaper*, 24 October 2013, page 16.
[482] Press Release on October 25, <http://www.mlit.go.jp/common/001016492.pdf>.

- Simple inns, capsule hotels, internet cafes, private video room, fast food shop, which are actually used as housing

There are facilities like simple inns, capsule hotels (a box in a shape of a capsule has a bed, where one can only sleep), internet cafes, private video room, which are actually used as housing, although they are not ruled by tenancy law. Simple inns and capsule hotels have rooms and they are ruled by the Hotel and Ryokan Management Act. Internet cafes or private video rooms have rooms of 1.5 Tatami mattress size with a long bed-sofa and a thin blanket where people can sleep.[483] The fee for the use of a room is lower than that of a normal hotel or the rent of a dwelling, and therefore, unemployed people or people who have difficulties to have a dwelling, for example, because of the system of a personal guarantor, use such places as their dwellings. Since they are out of the scope of tenancy law, its enforcement is impossible, though the stableness of the life is threatened.

- Earthquake related issues

The government (MLIT) started measures to give stable life for the earthquake victims, by offering public housing as well as by encouraging private companies to build apartment buildings with subsidies and tax reductions.[484] The government encourages also earthquake resistance renovation (see 3.4 and 3.6) and Housing Safety Net Business includes earthquake resistance renovations (see below).[485]

- Safety net by using private rental housing

There are groups of people who have difficulties to find dwellings in the private rental market. The government set up the Safety Net Business to solve the problems of people in need as well as the problems of vacancy in the private rental market (see 3.3). Problems regarding foreign tenants are also recognized, and the government and local governments take measures to deal with them by publishing a guidance to rent a private apartment, samples of contract, and other documents translated into several languages.[486]

- Civil Code reform

A reform of the law of obligations in the Civil Code is ongoing and the Legislative Council of the Ministry of Justice published an interim proposal for the amendment on February 26, 2013.[487] There are important amendments regarding rental contract, including provisions on Shikikin/deposit (new Article), restoration (Art. 616) and reduction of rent in case of partial impossibility to use and make profits of the dwelling (Art. 611). The updated information on the reform is in the website of the Ministry of Justice.[488]

[483] Honma, *Kyoju no Hinkon*, 4.
[484] <http://www.moj.go.jp/content/000104123.pdf>.
[485] <http://www.minkan-safety-net.jp/outline.html>.
[486] <http://www.mlit.go.jp/jutakukentiku/house/jutakukentiku_house_tk3_000017.html>.
[487] <http://www.moj.go.jp/content/000109163.pdf>, 156-167.
[488] <http://www.moj.go.jp/shingi1/shingikai_saiken.html>.

7 Effects of EU law and policies on national tenancy policies and law

7.1 EU policies and legislation affecting national housing policies

7.2 EU policies and legislation affecting national tenancy law

7.3 Table of transposition of EU legislation

This section is not applicable to Japan.

8 Typical national cases (with short solutions)

8.1 Restoration and refund of the deposit (Shikikin)

Fact:

Tenant X concluded a tenant contract for a dwelling with Landlord Y. The content of the contract was: monthly rent of JPY 100,000, monthly management fee of JPY 7,000, and deposit (=Shikikin) of JPY 300,000. In addition there are special contractual clauses on (1) the tenant's restoration duty according to the table of classification of responsibilities for repairs and (2) the tenant's duty to pay for renewals of papered sliding doors (fusuma and shoji) and Tatami, and housecleaning. After the termination agreement between the parties, X returned the keys and handed over the dwelling to Y. One month later Y transferred JPY 50,000 to the X's bank account as the rest of the deposit. X sued Y for return of the whole amount of deposit.

Result:

The court made a judgment in favor of the tenant X and ruled that the Y should return the whole amount of deposit to the tenant X.

Ground:

There was an important Supreme Court decision on the contractual clause on the tenant's duty to restore normal wear and tear from ordinary use (Supreme Court Decision on December 16, 2005, *Hanreitaimuzu* no.1200, 127). The Supreme Court acknowledged that the cost of normal wear and tear arising from the rental use was included in the monthly rent and such tenant's duty to restore normal wear and tear was too much burden on the tenant. Consequently, it is necessary for such tenant's duty to be valid that the both parties clearly agreed with that special contractual clause by such means that the range of the tenant's duty is concretely written as a contractual clause, or the landlord explained it orally in case it is not clear in the contract.

In line with this Supreme Court decision, the lower courts tend to make decisions that such a contractual clause on the tenant's duty to restore normal wear and tear is invalid and the landlord should return the deposit. However, since the Supreme Court made that contractual clause valid if it is clearly enough agreed by the tenant, in some cases such a contractual clause was found valid and the tenant had a duty to restore normal wear and tear.

8.2 The landlord's duty to repair

Fact:

Tenant X concluded a rental contract of a dwelling for monthly rent of JPY 100,000 and monthly management fee of JPY 5,000 with Landlord Y. The dwelling had

an air-conditioning, a gas oven, and a gas-hot water supplying apparatus from the beginning. After X moved in the dwelling, X found that the air-conditioning and the gas oven were broken. X asked for repairs of both of the apparatuses, but Y did not repair them. The gas-hot water supplying apparatus got also broken down 2 months after the handover of the dwelling, but Y left it for more than half a year. X paid JPY 75,000, that is, JPY 30,000 less than the normal rent for one month and then paid nothing following 2 months. Y cancelled the contract without giving a notice because of rent arrears based on the contractual clause of an immediate cancellation in case of one-month rent arrear. Y sued X for the unpaid rent and handover of the dwelling.

Result:

The court rendered the decision in favor of the tenant X. The cancellation based on X's breach of contract is invalid.

Ground:

Tenant has a right to defend his/her simultaneous performance according to Art. 533 of CC and therefore, X can refuse to pay the rent at least up to the amount of the cost for such repairs. At the time of Y's declaration of the will of cancellation, X had not paid the rent for about two months (two months and JYP 30,000) and that amount was still within the cost of repairs. Thus X did not fail to perform his obligation and cancellation based on breach of the duty to pay rent is not valid.

According to Art. 606 of CC the landlord has a duty to repair. If the landlord does not repair, the tenant can either refuse to pay the rent up to the amount of the cost for the repair or the tenant can repair by himself and request for the reimbursement of such cost (Art. 608 (1) of CC). However, the court often finds the tenant's non-payment of the whole rent invalid, if the hindrance at the use of the dwelling is not so salient. Therefore, the cancellation from the landlord in such a case tends to be admitted by the court.

8.3 Renewal of contract and the renewal fee

Fact:

Tenant X concluded a rental contract of a dwelling with Landlord Y for a monthly rent of JPY 38,000. There was a special contract clause on renewal fee, of which amount was 2 months' rent, and which should be paid every year, every time the contract was renewed. X paid this renewal fee 3 times in the past. In the fourth year X continued to live in the dwelling after the contract period was expired, and therefore, the contract was deemed to be renewed. However, X did not pay the renewal fee. X sued Y for the return of renewal fee which X had already paid on the ground that the contract clause on renewal fee was a violation of Art. 10 of Consumer Contract Act.
*Based on the Supreme Court Decision on July 15, 2011, *Minshu* vol.65, no.5, 2269.

c.f. Art. 10 of Consumer Contract Act (Nullity of clauses that impair the Interests of consumers unilaterally):

Any Consumer Contract clause that restricts the rights or expands the duties of the Consumer more than the application of provisions unrelated to public order in CC, the Commercial Code (Act No. 48 of 1899) and any other laws and regulations, and that

unilaterally impairs the interests of the Consumer, in violation of the fundamental principle provided in the second paragraph of Article 1 of CC, is void.

Result:

The Supreme Court found the contract clause on renewal fee valid and therefore X should pay the unpaid renewal fee of JPY 76,000.

Ground:

The contract clause on renewal fee which is clearly and concretely written in the contract does not violate Art. 10 of Consumer Contract Act, unless there are no conditions which are extremely disadvantageous for the tenant, such as, that the amount of renewal fee is too high in light of the period of the contract.

8.4 Rent arrear and self-enforcement

Fact:

Tenant X rented a dwelling for JPY 35,000 from Landlord Y1. The management company Y2 undertook all the management of the rental building of Y1. X had 6 months' rent arrears because he had lost his job. Y2 tried to collect money persistently and consequently evicted X from the dwelling by force, moved furniture to outside and changed the lock. X lost the dwelling on that day and was forced to sleep in an internet café (24 hours open) at that night. X sued Y1 and Y2 for damages for furniture and consolation caused by their tortious act of self-enforcement under Art. 709 of CC.
*Based on the Osaka High Court Decision on June 10, 2011, *Hanreijiho* no.2145, 32.

Result:

Y1 and Y2 are liable as joint tortfeasors and should pay for damages.

Ground:

Self-enforcement is illegal and there are few exceptional cases which were admitted by the court. By the way, unpaid rent is another matter and therefore the court orders that the tenant should pay the rent, if the landlord has sued the tenant for rent payment.

8.5 Keeping an animal

Fact:

Tenant X rented a house from Landlord Y. There was a contract clause on prohibition of keeping animals (e.g. dogs or cats) except little birds or fish without Y's written consent. Twenty days after the handover of the house the managing company A found that X had a fennec fox in that house. Managing company A demanded that X should stop keeping it, but X continued to keep it. Two months later Y declared the will of cancellation of the contract and requested that X should move out of the house within 30 days. After 30 days, however, X still continued to live in the house keeping that animal. Therefore, Y sued X for handover of the house based on the end of the contract.

Result:

Y's declaration of the will of cancellation was valid and therefore X should hand over the house.

Ground:

X did not stop keeping a fennec fox after requested by the managing company, and X continued to have it in spite of the contract clause on prohibition of keeping animals. Therefore, the mutual trusting relationship between X and Y was destroyed at the time of Y's declaration of cancellation and therefore the cancellation was valid.

8.6 Change of the dwelling without a consent of the landlord

Facts:

Tenant X started renting a building for the purpose of running a sport café from Landlord Y. There were several obligations in the contract, such as, a prohibition to change the outside and the inside of the building without a written consent of Y and an obligation to keep the business hours from 11:00 a.m. to 3:00 a.m. on the next day. X painted the outside wall white and put wooden white frames on which neon signs were set. X changed inside of the building too, setting a speaker by using nails and screws. One year later Y's daughter who lived in the same building requested that X should remove the wooden frames, but X refused to do it. Another one year later Y declared the will of cancellation of the contract in the written form. Then six months later Y required that X should remove the wooden frames and other things in front of the shop, as well as that X should should keep the business hours until 3:00 am. Two months later Y declared the will of cancellation of the contract due to the destruction of the mutual trusting relationship caused by X's breach of contract. Y sued X for the handover of the building due to destruction of the mutual trusting relationship between X and Y, and for damages at the amount of one month's rent.

Result:

Cancellation was found valid and X should hand over the building. However, damages were not admitted because X paid rent monthly until the end of the trial.

Ground:

X did not perform his contractual obligations, such as, the changes without a consent of Y and longer opening hours than those specified in the contract. The mutual trusting relationship between X and Y had been already destroyed at the time of the Y's second declaration of will of cancellation. However, X had paid monthly rent until the trial was over, therefore, the court did not grant damages to Y.

8.7 Termination of a sublease contract due to the tenant's breach of contract

Facts:

Tenant A rented a dwelling from Landlord Y. A (sublessor) subleased that dwelling legally to X (sublessee) with Y's consent. However, A did not pay the rent for 6 months and Y cancelled the original contract due to A's breach of contract. Y requested X to hand over of the dwelling based on the cancellation of the original contract. X refused to hand over the dwelling and claimed that X should have an opportunity to pay the unpaid rent.

*Based on the Supreme Court Decision on May 30, 1974, *Shumin* no.112, 9.

Result:

X should hand over the dwelling. If the original contract is cancelled due to rent arrears of the tenant A (sublessor), Y can demand that X (sublessee) should hand over the dwelling without giving a notice to X as well as without giving an opportunity to X to pay the delayed rent based on Art. 613 of CC.

Ground:

Based on Art. 613 (1) of CC sublessee X has a duty to return the object (the dwelling) directly to the landlord Y.

8.8 Neighbor's disturbing behavior and the landlord's duty

Facts:

Tenant X concluded a rental contract on a dwelling, number 201 of public housing with City Y. The neighbor tenant A living in the above dwelling 301 was extremely sensitive about noise and could not stand any kind of noise, which was caused even by the normal ordinary life from the neighborhood. A shouted at neighbors saying that they caused noise and as a revenge A made loud noise in his room 301. After moving into the dwelling 201, X was disturbed by the neighbor A because of A's antisocial behavior. X decided to move out of the room 201 due to A's disturbing behavior. X sued City Y for damages caused by Y's (landlord's) non-performance of obligation to hand over the dwelling in the condition in which a tenant could make use of or take the profits of the rented object peacefully.

*Based on the Osaka District Court Decision on April 13, 1989, *Hanreitaimuzu* no.704, 227.

Result:

The court acknowledged Y's non-performance of obligation and ordered Y to pay compensation to X.

Ground:

Y had known A's antisocial behavior from the former tenant of 201, but nonetheless Y handed over the dwelling 201 to X without fixing this deficit of 201 as a rental object, that is, its lack of the normal status for using and taking the profits of the dwelling. This is recognized as Y's non-performance of obligation. Moreover, the neighbor A had a duty as a tenant not to disturb other neighbors which was implicitly included in the rental contract between A and Y. This point considered, A's behavior violated the contract and destroyed the mutual trusting relationship between A and Y. Y could have cancelled the contract with A due to the destruction of the mutual trusting relationship and demanded that A should hand over the dwelling 301. Since Y did not do that, Y's act was non-performance of obligation as a landlord.

8.9 The landlord’s termination of the contract and just cause

Fact:

Tenant X rented a dwelling of Landlord A. Y purchased the building and the land from A in order to sell them to an developer of urban renewal. Y gave X a notice in order to terminate the contract based on Y's property right. X claimed that he had a right to possession based on rental right. An additional concern was that the building was so old that it did not meet the standard of earthquake resistance, even about six on the seven-point Japanese scale.
*Based on the Tokyo District Court Decision on August 10, 2011, H21 (wa) no. 28365.

Result:
The termination of the contract was admitted by the court with an eviction fee.

Ground:
Y had no necessity to use the building for own use, that is, no just cause in this sense. However, since there was a serious risk of collapse of the building in an earthquake 6 point on the seven-point Japanese scale, it was found necessary to demolish the building by the court. X's necessity to use the building was not so significant, since X used it for storage. Nevertheless X would have loss due to the termination of the contract. This loss should be compensated by the eviction fee of JPY 1,500,000, and with this eviction fee Y's just cause was admitted by the court.

After the Great East Japan Earthquake in 2011, the demand for safety of the buildings has increased. Whether the building is earthquake resistant or not may become a significant element to admit a just cause for the termination of a rental contract.

8.10 Sublease contract and rent reduction

Fact:
Landlord Y built a high building on Y’s ground by obtaining a loan, JPY 18,100,000,000 from a bank, after Y and a real estate company X had agreed upon that Y rent the whole building to X. The lease agreement between X and Y (sublease contract) contained following clauses: (1) Y rents X the whole building and X manages the building as a office building by subletting offices to subleassees; (2) The contract period is 15 years and at the end of the period both parties can renew the contract for another 15 years. During the contractual period neither party can terminate the contract except the collapse of the building due to an avoidable disaster or a serious breach of contract by either party; (3) The rent is JPY 1,977,400,000 per year and the management fee is JPY 316,400,000 per year; (4) The rent will increase automatically 10 % of the previous rent every 3 years; (5) and X pays Shikikin (deposit), JPY 4,943,500,000 to Y.
The economic bubble burst and the market rent decreased drastically. Therefore, X requested rent decrease and paid less amount of rent than it had been agreed in the contract. Y used the deposit to compensate for the unpaid rent, but it did not cover the whole amount. Y sued X for the unpaid rent JPY 5,268,995,795 and the damage due to the delayed payment, and additionally for damages caused by X’s non-performance of duty based on breach of duty of explanation. On the other hand, X brought a lawsuit to obtain a declaratory judgment that the rent had been reduced based on the declaration of rent decrease under Art. 32 (1) of ALBL (right to request increase or decrease in rent).

*Based on the Supreme Court Decision on October 21, 2003, *Minshu* vol.57, no.9, 1213.

Result:

The Supreme Court rendered the decision that X's request of rent decrease was valid based on the mandatory provision of Art. 32 (1) of ALBL. In order to determine how much rent decrease is appropriate, however, the court (lower court) should take it into consideration that Y has debts due to this sublease contract.

Ground:

The said sublease contract is recognized as one of rental contract which is governed by ALBL, and therefore, also by Art. 32 (1).

There are many academic criticisms against this decision, since such a sublease contract is an agreement of both parties that they take risks of fluctuations of rent, especially subleassor X, a big real estate company. In addition, Art. 38 (7) stipulates clearly that 'the provisions of Article 32 shall not apply in cases where there are special clauses pertaining to rent revision.' There is an inconsistency in the logic of this Supreme Court decision.

9 Tables

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9.3 Abbreviations

ADR Act = Act on Promotion of Use of Alternative Dispute Resolution
ALBL = Act on Land and Building Leases
CC = Civil Code
CCA = Consumer Contract Act
CPA = City Planning Act
CPLA = Compulsory Purchase of Land Act
GHLC = Government Housing Loan Corporation
GK-TK scheme = Godo kaisha-Tokumei Kumiai scheme
HFA = Housing Finance Agency
HSC = Housing Supply Corporation
JASSO = the Japan Student Service Organization
JFBA = Japan Federation of Bar Associations
JFHO = Japan Federation of Housing Organizations
JHFA = Japan Housing Finance Agency
JLSC = Japan Legal Support Center
LAA = Land Allocation Act
METI = Ministry of Economy, Trade, and Industry
MLIT = Ministry of Land, Infrastructure, Transport and Tourism
MOJ = Ministry of Justice
NCAC = National Consumer Affairs Center
SME Finance Facilitation Act = Small and Medium-sized Enterprise Finance Facilitation Act

SPC Act = Act on the Securitization of Assets
SPVs = specific purpose vehicles
TMK scheme= Tokutei Mokuteki Kaisha scheme
UR = Urban Renaissance Agency
URA = Urban Renewal Act