



# ICLG

The International Comparative Legal Guide to:

## Telecoms, Media & Internet Laws & Regulations 2019

**12th Edition**

A practical cross-border insight into telecoms, media and internet laws and regulations

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**Publisher**  
Rory Smith

**Published by**  
Global Legal Group Ltd.  
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# Japan

Hiromi Hayashi



Mori Hamada &amp; Matsumoto

Akira Marumo



## 1 Overview

### 1.1 Please describe the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction, in particular by reference to each sector's: (i) annual revenue; and (ii) 3–5 most significant market participants.

According to the report of the results of the research issued by the Ministry of Internal Affairs and Communications (*Soumu Shou*) (“MIAC”) in March 2017, the businesses relating to telecommunications and information, which include, among others, the telecoms and internet infrastructure sectors, generated approximately ¥14,034 billion of annual sales for FY 2015. The annual sales generated by the broadcasting business, which includes, among others, audio-visual media distribution through broadcasting, were approximately ¥3,458 billion for FY 2015.

There are several prominent operators in the various businesses relating to telecommunications and information, such as the group companies of NTT (Nihon Denshin Denwa K.K.), especially NTT East Corporation (“NTT East”), NTT West Corporation (“NTT West”) and NTT Docomo Corporation (“NTT Docomo”), KDDI Corporation and Softbank Corp. In the area of broadcasting, several major companies, such as Nippon Television Network Corporation and Fuji Television Network Inc., provide television programmes through terrestrial-based television broadcasting. Nihon Housou Kyoukai, which is unique in its status as a national public broadcasting entity, is also one of the major providers of television programmes. The principal major players in the areas of satellite-based television broadcasting and cable TV broadcasting are Skyperfect JSAT Corporation and Jupiter Telecommunications Co., Ltd.

Regulatory matters on liberalisation and foreign investments will be discussed under questions 1.2 and 1.4.

### 1.2 List the most important legislation which applies to the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction.

Unlike other countries, Japan has traditionally treated the telecommunications business as two distinct categories from a regulatory point of view: telecommunications (*tsushin*); and broadcasting (*housou*). *Tsushin* is defined as sending, delivering or receiving codes, sounds or pictures by wire, wireless means or any other electromagnetic means, which includes internet. *Housou* is generally defined as sending telecommunications for the purpose of being directly received by the public. The major difference between

the regulation of telecommunications (*tsushin*) and broadcasting (*housou*) is that the confidentiality of telecommunications content is protected; thus, the regulation of telecommunications content is avoided as much as possible. In contrast, broadcasting (*housou*) content is regulated in accordance with public welfare.

	Wire	Wireless
<b>Basic Law</b>	Cable Telecommunications Law	Radio Wave Law
<b>Telecommunications</b>	Telecommunication Business Law (the “TBL”) Law concerning Nippon Telegraph and Telephone Corporation (Nihon Denshin Denwa K.K.) (“NTT”) (the “NTT Law”) and others	
<b>Broadcasting</b>	Broadcast Law	

As noted above, the TBL applies only to telecommunications, and the Broadcast Law applies only to broadcasting. The TBL primarily regulates the provision of electronic communications networks or services regarding telecommunications (*tsushin*). The TBL permits competition in Japan, although several other laws restrict foreign ownership.

### 1.3 List the government ministries, regulators, other agencies and major industry self-regulatory bodies which have a role in the regulation of the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction.

MIAC and the relevant subordinated administrative agencies regulate telecoms audio-visual media distribution through the broadcasting and internet sectors. See also question 2.3.

### 1.4 In relation to the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors: (i) have they been liberalised?; and (ii) are they open to foreign investment?

Under the TBL, there are no restrictions on direct or indirect foreign ownership; however, under the NTT Law, direct or indirect foreign ownership of one-third or more of NTT is prohibited. There are general foreign ownership restrictions on holding a radio station licence, although the restrictions on a radio station providing telecommunications services were abolished. Under the Broadcast Law, the following entities or parties are basically not eligible to hold a broadcaster licence: (a) a person whose nationality is not Japanese; (b) a foreign government or its representative; (c) a foreign entity;

and (d) a company or entity in which any of the aforementioned entities or persons is the executive director, or holds one-fifth or more of the voting rights.

## 2 Telecoms

### General

#### 2.1 Is your jurisdiction a member of the World Trade Organisation? Has your jurisdiction made commitments under the GATS regarding telecommunications and has your jurisdiction adopted and implemented the telecoms reference paper?

Yes, Japan has been a member of the World Trade Organisation since January 1, 1995. It adopted the WTO Basic Telecommunications Agreement in 1997 and the telecoms reference paper.

#### 2.2 How is the provision of telecoms (or electronic communications) networks and services regulated?

Telecommunications networks or services are mainly regulated by the TBL. See also questions 1.2 and 2.6.

#### 2.3 Who are the regulatory and competition law authorities in your jurisdiction? How are their roles differentiated? Are they independent from the government?

MIAC is the governmental body that has the regulatory authority under the TBL and other relevant laws to grant any permission, licence or approval that is required for any telecoms activity. The competition law authority is the Fair Trade Commission (“FTC”), an independent administrative agency with the authority to prevent unfair trade or market dominance. MIAC and FTC jointly issued the “guidelines for the promotion of competition in the telecommunications business field” (originally issued in November 2001, with the latest revision being issued in May 2016), and they collaborate to promote further competition in the telecoms field.

#### 2.4 Are decisions of the national regulatory authority able to be appealed? If so, to which court or body, and on what basis?

Yes, MIAC decisions may be appealed to Japanese courts pursuant to the Administrative Case Litigation Act. The appellant may seek, for example, the revocation of an MIAC order on the basis that the order has wrongfully affected the appellant’s legal interest.

### Licences and Authorisations

#### 2.5 What types of general and individual authorisations are used in your jurisdiction?

It is difficult to classify the authorisations into general authorisations and individual authorisations. As for telecommunications services, the TBL generally classifies a telecommunications carrier as either (i) a registration carrier, or (ii) a notification carrier, as follows:

A carrier installing cable facilities, such as (i) terminal facilities that are installed in multiple municipalities, or (ii) relay facilities that are installed in multiple prefectures, is required to register with MIAC. Other carriers not operating at such levels are required only to notify MIAC prior to providing telecoms services.

The registration procedure typically takes about 15 days, depending on the services to be provided and the circumstances under which they will be provided. It is desirable also to unofficially consult with MIAC (usually for an additional one to two months) before filing an application for registration. If only notice is required, the prior unofficial consultation with MIAC, if necessary, will take a few days if all the relevant information is provided.

Under the TBL, the fee for registration with MIAC is ¥150,000, but no fee is necessary for notification to MIAC.

The TBL further requires other authorisations, which will be explained in question 2.6; this question will also explain authorisations regarding broadcasting.

#### 2.6 Please summarise the main requirements of your jurisdiction’s general authorisation.

##### (1) Telecommunications (*tsushin*) (see also question 2.5)

###### (a) Approved carrier (*nintei jigyousha*)

A carrier intending to conduct telecoms business by installing telecommunications circuit facilities, and those which intend to exercise a right-of-way to install transmission lines (such conduct or exercise is, collectively, a “public utility privilege”), may, separately from telecoms business entry procedures such as registration or notice, be granted a public utility privilege for all or part of its telecoms business by obtaining MIAC approval.

###### (b) Universal service carrier

Any telecoms carrier which provides universal telecommunications services (“Universal Services”) must establish tariffs and submit these to MIAC prior to implementation of the services (see question 2.16). The TBL defines Universal Services as telecommunications services, the availability of which should be secured all over Japan because they are essential to the lives of the people in Japan. Under a TBL ordinance, services for public calls, home telephone calls, and urgent calls to police or fire stations are included in Universal Services. Universal Services are funded by NTT East and NTT West and other service providers that benefit by connecting to the facilities of these providers.

###### (c) A carrier installing telecoms facilities

With a few exceptions, any telecoms carrier installing telecoms facilities for use by its telecoms business (certain telecoms facilities as stipulated in Article 41 of the TBL) must submit notices to MIAC regarding its compliance with technical and administration rules and the appointment of a chief telecommunications engineer. See question 2.9 for further information regarding special regulations for a carrier installing Type I or Type II Designated Facilities.

###### (d) A carrier providing international services

Any telecoms carrier which provides international telecoms services is required to obtain prior authorisation from MIAC before making any arrangements with a foreign government, entity or individual with respect to any telecoms business.

##### (2) Broadcasting (*housou*)

Regulation of the television broadcasting business primarily consists of (i) the Broadcast Law (*Housou Hou*), and (ii) the Radio Wave Law (*Denpa Hou*).

###### (a) Broadcast Law

The Broadcast Law sets forth general principles to regulate broadcast content (i.e., TV programmes). For example, broadcasters, including (a) terrestrial-based television broadcasters, (b) satellite-based television broadcasters, and (c) cable TV broadcasters, must not harm public peace

and must take a neutral political position (Article 4). A broadcaster is required to draw up standards for its television programmes and produce programmes that satisfy such standards (Article 5). Under the Broadcast Law, any person or entity planning to be a terrestrial-based television broadcaster or a satellite-based television broadcaster (*kikan-housou-jigyousha*) is generally required to obtain an authorisation from MIAC. Further, any person or entity planning to be other types of broadcasters, including a cable TV broadcaster (*ippan-housou-jigyousha*), is required to be registered with MIAC.

#### (b) Radio Wave Law

The Radio Wave Law regulates the use of radio waves and thus may apply to both telecommunications and broadcasting using radio waves. Under the Radio Wave Law, any person or entity planning to establish a radio station is required to obtain a licence from MIAC, except for cases involving certain specialised radio stations.

In order to obtain a radio station licence, an applicant must submit to MIAC a standard application form containing information such as (i) the purpose of the radio station, (ii) its facilities' locations, and (iii) the type and frequency of radio waves to be used. If the radio station plans to provide broadcasting services, certain other information, such as a business plan, items for broadcasting and the area for broadcasting, must also be provided.

MIAC's review of the application will include consideration of the existence of an adequate financial basis to operate the planned business and conformity with standards provided in the relevant MIAC ministerial ordinance. Note that MIAC will allocate available radio frequency (see "Frequency Plan" described in question 3.2); thus, approval of a radio station licence will be subject to such planning, and in the case of the radio station providing broadcasting services, broadcast content and broadcast area requirements.

### 2.7 In relation to individual authorisations, please identify their subject matter, duration and ability to be transferred or traded. Are there restrictions on the change of control of the licensee?

In general, licences may not be transferred or traded, but exceptions exist depending on the type of licence. A telecoms carrier's registration, for example, may be transferred to a third party if its entire telecoms business is transferred (including by merger (*gappei*) or corporate split (*kaisha bunkatsu*), in which that third party succeeds to the entire telecoms business).

On May 22, 2015, the TBL was revised (the "Revised TBL"), and the revisions took effect on May 21, 2016. Under the Revised TBL, if a telecoms carrier installing Type I or Type II Designated Facilities plans a merger, a corporate split or a business transfer, it must apply for a renewal of its registration, with certain exceptions.

The duration of a licence depends upon its type or kind. In the case of notice and registration for a telecoms carrier, there is no stated licence duration. In the case of a radio station licence, the duration is five years, with certain exceptions.

## Public and Private Works

### 2.8 Are there specific legal or administrative provisions dealing with access and/or securing or enforcing rights to public and private land in order to install telecommunications infrastructure?

Yes, as stated in question 2.6, with MIAC approval, an approved carrier (*nintei jigyousha*) may have certain rights to use land under the TBL.

## Access and Interconnection

### 2.9 How is wholesale interconnection and access mandated? How are wholesale interconnection or access disputes resolved?

Generally, a telecoms carrier installing telecoms facilities must interconnect its facilities with other telecoms carriers if so requested by other carriers and there is no justifiable reason under the TBL to reject the request. A carrier providing Universal Services is required to submit for MIAC's approval the terms and conditions (including tariffs) of its services; it must provide telecoms services in accordance with such terms and conditions (see question 2.14).

As NTT group companies (please see question 1.1) have large-scale facilities (e.g., cables direct to users' homes), such facilities could potentially prevent other carriers from providing services. Under the TBL, the NTT group companies' facilities are categorised as Type I or Type II designated facilities ("Designated Facilities"). Like other telecoms carriers holding Designated Facilities, NTT group companies are required to submit to MIAC, and generally, as in the case of a carrier installing Type I Designated Facilities, they must also obtain MIAC's approval regarding the terms and conditions (including tariffs) of interconnection with other carriers, interconnect their telecoms facilities in accordance with such terms and conditions, and provide services to other carriers equally (see question 2.14).

The chart below describes how disputes are resolved.

	Mediation	Reconciliation	Consultation Order	Award
Object	<ol style="list-style-type: none"> <li>1. Interconnection of telecoms facilities</li> <li>2. Shared use of telecoms facilities</li> <li>3. Provision of wholesale telecoms services</li> <li>4. Installation/maintenance of telecoms facilities for interconnection</li> <li>5. Utilisation of land and works for interconnection</li> <li>6. Provision of information for interconnection</li> <li>7. Entrustment of work</li> <li>8. Utilisation of facilities for provision of services</li> <li>9. Operation of facilities for provision of services</li> <li>10. Utilisation or operation of radio wave facilities operated by non-licensed party</li> </ol>		<ol style="list-style-type: none"> <li>1. Interconnection of telecoms facilities</li> <li>2. Shared use of telecoms facilities</li> <li>3. Provision of wholesale telecoms services</li> </ol>	
Acting Party	Either consultation party	Both consultation parties	Either consultation party	
Neutral Party	TBDSC Mediator	TBDSC Arbitrators (3)	Minister (referring to TBDSC for deliberation)	
Major Procedures	<ol style="list-style-type: none"> <li>1. Interview</li> <li>2. Mediation offer</li> </ol>	<ol style="list-style-type: none"> <li>1. Reply</li> <li>2. Hearing</li> <li>3. Facts investigation</li> <li>4. Settlement offer</li> <li>5. Judicial decision</li> </ol>	<ol style="list-style-type: none"> <li>1. Hearing</li> <li>2. Order</li> </ol>	<ol style="list-style-type: none"> <li>1. Reply</li> <li>2. Award</li> </ol>

	Mediation	Reconciliation	Consultation Order	Award
<b>Options to Challenge Procedural Result</b>	Refusal to accept proposed mediation	None	1. Lodging opposition (only for a party who was notified by a notice posted on the notice board of a hearing and did not appear) 2. Lawsuit to seek revocation (w/n six mos.)	1. Civil action to increase or decrease monetary award (w/n six mos.) 2. Lodging opposition (except for the above) 3. Lawsuit to seek revocation (w/n six mos.)

(Source: MIAC, *Fair Settlement of Disputes in the IT Era* (8<sup>th</sup> ed., Nov. 2008), Ch. 1.)

**(a) MIAC Order**

MIAC may, under certain circumstances stipulated by the TBL, order a telecoms carrier installing telecoms facilities to start or reopen negotiations (if suspended) with another carrier regarding an agreement to interconnect the former's telecoms facilities, if the former refuses to enter into such an agreement.

**(b) MIAC Award**

In the event carriers negotiating the interconnection of telecoms facilities fail to agree on such items as monetary payments, a carrier (or carriers) may apply to MIAC for an award (*saitai*) under the TBL. Likewise, if an MIAC order has already been issued, the relevant carrier (or carriers) may apply to MIAC for an award. If MIAC grants an award, the parties are deemed to have come to an agreement. Any carrier dissatisfied with the financial conditions of an award may seek an increase or decrease by filing a lawsuit within six months of the day on which that carrier is notified of the award result.

**(c) Mediation (*assen*) and Reconciliation (*chusai*) by Commission**

A carrier may choose to apply to the MIAC-run Telecommunications Business Dispute Settlement Commission (the "TBDS") for mediation or reconciliation in the above cases, but a carrier may not proceed with both an MIAC award and a mediation or reconciliation at the same time.

- (a) As stated in question 2.9, charges for Universal Services and interconnection for a carrier installing Type I Designated Facilities are generally subject to MIAC approval.
- (b) Interconnection charges for a carrier installing Type II Designated Facilities require notice to MIAC.
- (c) MIAC may, under certain circumstances under the TBL, change the charges under items (a) and (b) above (see question 2.14).

Charges for wholesale lease lines are not subject to price or cost regulation, and providers may decide prices at their own discretion. If providers cannot reach an agreement in order to provide services by using wholesale lease lines, pursuant to the TBL, MIAC may grant an award.

**2.12 Are any operators subject to: (a) accounting separation; (b) functional separation; and/or (c) legal separation?**

Under the TBL, the separation of accounting, functional and legal duties is not explicitly required, but the following requirements do exist:

- Telecoms carriers providing Universal Services and certain other services, and installing Type I Designated Facilities and Type II Designated Facilities, are required to organise their accounting pursuant to the relevant law (Article 24 of the TBL).
- Telecoms carriers installing Type I and Type II Designated Facilities are required to disclose their accounting documents (e.g., balance sheets and profit and loss statements) to the public (Article 30-6 of the TBL).
- Telecoms carriers installing Type I and Type II Designated Facilities may not, among other things, (i) use any information that they obtain from an interconnection with other telecoms carriers for purposes other than interconnection, and (ii) prioritise certain telecoms carriers without good reason (Articles 30-3 and 30-4 of the TBL).
- Officers and directors of a telecom carrier installing Type I Designated Facilities may not serve as officers or directors of its affiliates (Article 31-1 of the TBL).

In addition, NTT East and NTT West may not operate telecoms businesses across certain prefectural boundaries, such as long-distance telecoms business, pursuant to the NTT Law. Further, consolidation between telecoms carriers is regulated under the Antimonopoly Law.

**2.10 Which operators are required to publish their standard interconnection contracts and/or prices?**

Operators providing Universal Services and services provided by Type I Designated Facilities are required to publicly disclose tariffs which set forth fees and other terms and conditions, and post them at their offices. Further, operators providing services using Type I Designated Facilities and Type II Designated Facilities are required to publicly disclose the tariffs which set forth interconnection charges.

**2.11 Looking at fixed, mobile and other services, are charges for interconnection (e.g. switched services) and/or network access (e.g. wholesale leased lines) subject to price or cost regulation and, if so, how?**

Charges for interconnection are generally determined by the carrier which provides the connection, with some exceptions, such as the following:

**2.13 Describe the regulation applicable to high-speed broadband networks. On what terms are passive infrastructure (ducts and poles), copper networks, cable TV and/or fibre networks required to be made available? Are there any incentives or 'regulatory holidays'?**

Generally, a telecoms carrier installing telecoms facilities must interconnect its facilities with other telecoms carriers if so requested by other carriers and there is no justifiable reason under the TBL to reject the request. If the copper/fibre networks or other infrastructure are Designated Facilities, a telecom carrier holding Designated Facilities is required to submit to MIAC, and generally as in the case of a carrier installing Type I Designated Facilities, it must also obtain MIAC's approval regarding the terms and conditions (including tariffs) of interconnection with other carriers, interconnect their telecoms facilities in accordance with such terms and conditions, and provide services to other carriers equally (see question 2.9).

## Price and Consumer Regulation

### 2.14 Are retail price controls imposed on any operator in relation to fixed, mobile, or other services?

Providers of telecoms businesses, including fixed and mobile services that are either registered with, or have submitted notification to, MIAC under the TBL are not required to submit a tariff or price chart unless they provide Universal Services (see question 2.6) or have Designated Facilities (see question 2.9). Such providers may decide the prices for their services at their own discretion. However, MIAC has the authority to order providers to correct or improve their business if, among other things, fees or charges are not calculated fairly and clearly or services are provided in an inappropriate manner, in either case, to the extent that they impede consumers' benefits.

Providers of Universal Services or those having Designated Facilities are required to submit their tariffs to MIAC and to provide their services in accordance with such tariffs. MIAC has the authority to order providers to correct or amend the tariffs if, among other things, the tariffs fail to set forth a method for calculating fees or charges fairly and clearly.

### 2.15 Is the provision of electronic communications services to consumers subject to any special rules (such as universal service) and if so, in what principal respects?

As described above, the TBL regulates the provision of electronic communications services. The TBL's principal aim is to secure consumer benefit by ensuring fair provision of services, especially with respect to fundamental public services. In this regard, the TBL requires providers to: (i) give prior notice to consumers if services are to be suspended or discontinued; (ii) explain their terms and conditions to consumers; and (iii) process complaints and inquiries from consumers properly and promptly. Further, under the Revised TBL, in order to protect consumer interest, providers are required to deliver written material to consumers who enter into agreements with those providers regarding the services designated by MIAC. In addition, MIAC has published guidelines for the protection of consumers. As for Universal Services, please see questions 2.6 and 2.14.

## Numbering

### 2.16 How are telephone numbers and network identifying codes allocated and by whom?

Telephone numbers, including mobile telephone numbers, and the network identifying codes are allocated by MIAC following a successful application by the relevant telecoms business provider. Telecoms business providers are required to file an application identifying the necessity for telephone numbers and other items.

### 2.17 Are there any special rules which govern the use of telephone numbers?

MIAC must maintain a Telecoms Numbering Plan (the "Numbering Plan") in accordance with the TBL and the regulation regarding the telecoms number (the "Number Regulation"). A telecoms business provider is required to use the numbers only for the provision of telecoms business, treat users equally, and identify the type or

content of telecoms services by the number under the Number Regulation. If a telecoms business provider fails to comply with the Number Regulation, MIAC may invalidate the allocation of numbers. In addition, if MIAC changes the Numbering Plan, MIAC may change the allocated numbers.

### 2.18 Are there any obligations requiring number portability?

Number portability for mobile telephones started in 2006, with the issuance of the Rule for Numbers for Telecommunications, which sets forth the obligation requiring number portability.

## 3 Radio Spectrum

### 3.1 What authority regulates spectrum use?

The Radio Wave Law gives MIAC the authority to allocate frequency spectrum to private telecommunications operators for the establishment of radio transmission stations. Unlike other jurisdictions, which allot frequency spectrums through an auction system, the use of radio frequency spectrum in Japan is allocated at the discretion of MIAC after consultation with the Radio Regulatory Council and consideration of the plans submitted by the operators. In March 2011, the MIAC established a "Panel regarding Spectrum Auction" to consider the implementation of a spectrum auction system. In December 2011, this panel released a report supporting an auction system for 4G mobile telecommunications. Following the publication of this report, a bill to amend the Radio Wave Law to introduce an auction system was submitted to the Diet in 2011. However, due to the shift of political power in Japan in 2012, the Diet was dissolved while deliberations on the bill were ongoing. The bill was not passed and has not been discussed by the Diet since 2012. In January 2013, MIAC announced that it does not have any immediate plans to request the Diet to amend the Radio Wave Law to implement an auction system.

### 3.2 How is the use of radio spectrum authorised in your jurisdiction? What procedures are used to allocate spectrum between candidates – i.e. spectrum auctions, comparative 'beauty parades', etc.?

MIAC generally implements the Frequency Plan by considering the business plans submitted by telecoms carriers.

### 3.3 Can the use of spectrum be made licence-exempt? If so, under what conditions?

Yes. Certain types of radio stations that discharge weak radio waves (as designated by the enforcement rule of the Radio Wave Law), such as phone handsets for home use and wireless card systems, are exempt from licensing under the Radio Wave Law.

### 3.4 If licence or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?

Fees for applications for a licence to establish radio stations under the Radio Wave Law vary from less than ¥10,000 to around ¥150,000, depending on the power of the radio station emission. There is a registration fee of ¥30,000 per station generally, but the registration fee for a broadcasting station is ¥150,000. Further,

annual fees for usage of frequency spectrum vary from less than ¥1,000 to over ¥100,000,000, depending on the type of radio station (such as mobiles, satellites or others), the power of the radio station emission and the area of the radio station.

### 3.5 What happens to spectrum licences if there is a change of control of the licensee?

Any person who intends to establish radio transmission stations to be used for allocated spectrum must first obtain a licence from MIAC. In case of a licence for radio transmission stations providing telecommunications services, a change of control of the licensee is not a cause to rescind the licence or to require a notification to MIAC.

### 3.6 Are spectrum licences able to be assigned, traded or sub-licensed and, if so, on what conditions?

Under the Radio Wave Law, a spectrum licence generally may not be assigned, traded or sub-licensed; however, it may be assigned in conjunction with an inheritance, a merger (*gappei*), a corporate split (*kaisha bunkatsu*), or a business transfer upon MIAC approval.

## 4 Cyber-security, Interception, Encryption and Data Retention

### 4.1 Describe the legal framework for cybersecurity.

One of the basic principles, if not the most important principle, of the TBL is the secrecy of communications. The secrecy of communications protects not only the contents of communications but also any information that would enable someone to infer the meaning or the contents of communications. In this regard, access log and IP address data are protected under the secrecy of communications. The TBL does not explicitly provide how a telecoms carrier may deal with cyber-attacks without breaching the secrecy of communications. However, in line with the significant increase in malware and other forms of cyberattack, MIAC issued the “First Report from the Study Group on Properly Dealing with Telecommunications Business Cyber-attacks” in April 2014, the “Second Report from Study Group for Properly Dealing with Telecommunications Business Cyber-attacks” in September 2015 and the “Third Report from Study Group for Properly Dealing with Telecommunications Business Cyber-attacks” in September 2018. All reports address whether a telecoms carrier may deal with cyber-attacks and the issues that may arise in connection with the secrecy of communications. The findings of the First and Second Reports are included in the guidelines dealing with cyber-attacks and the secrecy of communications issued by the Council for the Stable Use of the Internet, a council composed of five associations, including the Japan Internet Providers Association (“JAIPA”). It has not been determined whether and when the guidelines will be revised based on the Third Report.

Further, MIAC established, with internet service providers, cable TV service providers, software security service vendors, and other companies, the Advanced Cyber Threats response Initiative (“ACTIVE”) to assist internet users with preventing malware infection and to enhance cybersecurity.

### 4.2 Describe the legal framework (including listing relevant legislation) which governs the ability of the state (police, security services, etc.) to obtain access to private communications.

As the secrecy of telecommunications is protected under the TBL, access to private communications is generally prohibited. The MIAC guidelines regarding the protection of personal information (the latest revision was issued in April 2017) in telecoms businesses state that telecoms carriers may not provide personal information to third parties without the prior consent of the owner of the personal information. However, telecoms carriers may provide the requested information without the required consent if, among others, national or municipal governments or authorities need the information for the due performance of their duties pursuant to applicable laws, and prior consent will harm that due performance.

### 4.3 Summarise the rules which require market participants to maintain call interception (wire-tap) capabilities. Does this cover: (i) traditional telephone calls; (ii) VoIP calls; (iii) emails; and (iv) any other forms of communications?

Telecoms carriers are not required to maintain call interception (wire-tap) capabilities.

### 4.4 How does the state intercept communications for a particular individual?

If the authorities seek call interception, they are required to follow the procedures set forth in the Criminal Procedure Law and other relevant laws. Qualified prosecutors and policemen may have access to information pursuant to a court-issued warrant, which should specify, among other things, the suspect’s name, a summary of the suspected crime, which call to intercept, how and where an interception is planned, the planned period for carrying out the interception, and other conditions for interception. The interception is permitted only regarding certain significant crimes, and the period of the interception term may not exceed 10 days, unless a court extends the term, but only up to 30 days.

### 4.5 Describe the rules governing the use of encryption and the circumstances when encryption keys need to be provided to the state.

The “Standard for Security and Reliability of the Information Network” issued by MIAC sets forth certain rules to maintain the secured network, which include the obligation to use encryption for confidential telecommunications. Telecoms carriers are generally not required to provide encryption keys to the state.

### 4.6 What data are telecoms or internet infrastructure operators obliged to retain and for how long?

As the confidentiality of telecommunications is protected under the TBL, retention of telecommunications data is generally prohibited. The MIAC guidelines regarding the protection of personal information in telecoms businesses state that telecoms carriers are allowed to obtain certain limited personal information only where

such information is necessary to provide the services; however, the retaining or recording of telecommunications content is not allowed. Recording of the date and time of telecommunications, which does not include recording of the content, is allowed to the extent that it is necessary for telecoms carriers' operations, such as billing. According to the guidelines, a telecoms carrier may, but is not required to, retain such information for a period necessary for the purpose (such as billing), and must delete such information after such period.

## 5 Distribution of Audio-Visual Media

### 5.1 How is the distribution of audio-visual media regulated in your jurisdiction?

Audio-visual content is distributed through (a) terrestrial-based television broadcasting, (b) satellite-based television broadcasting, (c) cable TV broadcasting, (d) game software, (e) movie content, (f) video content, and (g) internet content (original video-based net content).

Audio-visual content is protected under the Copyright Law. In this regard, in order to manage the copyrights of audio-visual content appropriately, the Audiovisual Rights Management Association was established in June 2011.

The distribution by way of broadcasting of audio-visual media, such as (a) terrestrial-based television broadcasting, (b) satellite-based television broadcasting, and (c) cable TV broadcasting, is mainly regulated by the Broadcast Law. See also questions 1.2 and 2.6.

The distribution by way of internet is mainly regulated by the TBL.

### 5.2 Is content regulation (including advertising, as well as editorial) different for content broadcast via traditional distribution platforms as opposed to content delivered over the internet or other platforms? Please describe the main differences.

Terrestrial-based television broadcasting businesses which provide traditional distribution platforms are regulated mainly by the Broadcast Law.

The Broadcast Law requires terrestrial television broadcasters to establish and publicly disclose standards for television programmes. It does not, however, require the inclusion of specific matters in those standards. The Japan Commercial Broadcasters Association (*Nihon Minkan Housou Renmei*) has a template for those standards, which commercial broadcasting companies usually incorporate or refer to in their own standards. Those standards provide for restrictions on advertising, including requirements for broadcasters to make it clear that advertising is for commercial purposes, to ensure viewers do not feel uncomfortable on account of the broadcasting time of the advertisement, and to ensure that the volume of advertising per week is 18% or less of the total broadcasting hours. Note that the Broadcast Law prohibits *Nihon Housou Kyoukai*, as a national public broadcasting entity, from broadcasting advertisements for commercial purposes on behalf of third parties.

Further, those standards provide for the general principles in making television programmes. For example, broadcasters should respect legal requirements and human rights, be careful about the content (e.g., violence or unlawful behaviour) of programmes prepared for children and young people, and consider broadcasting times of programmes, bearing in mind that children and young people may be watching during those times.

In contrast, providers of content delivered over the internet without any hardware such as a set-top box (e.g., over-the-top service providers) are generally not regulated by the Broadcast Law and the TBL.

### 5.3 Describe the different types of licences for the distribution of audio-visual media and their key obligations.

See question 2.6.

### 5.4 Are licences assignable? If not, what rules apply? Are there restrictions on change of control of the licensee?

Under the TBL, the status of a registration carrier or notification carrier is not assignable, except in conjunction with an inheritance, a merger (*gappei*), or a corporate split (*kaisha bunkatsu*) in which all of the telecoms business is transferred to another entity. See also questions 2.7 and 3.6.

## 6 Internet Infrastructure

### 6.1 How have the courts interpreted and applied any defences (e.g. 'mere conduit' or 'common carrier') available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?

Internet service providers ("ISPs") may have immunity against certain liabilities unless certain conditions set forth under the relevant law are met. An ISP may not enjoy immunity for infringement upon a third party's information if: (i) the ISP was technically able to prevent the dispatch of that information, and the ISP knew or should reasonably have known of the infringement; or (ii) the ISP itself dispatched the information.

### 6.2 Are telecommunications operators and/or internet service providers under any obligations (i.e. to provide information, inform customers, disconnect customers) to assist content owners whose rights may be infringed by means of file-sharing or other activities?

A party whose right is infringed by information on the internet may ask ISPs to disclose the name, address and other information of the infringing party if (i) the infringement is apparent, and (ii) pursuant to relevant law, the infringed party has a good reason for such disclosure. Further, JAIPA issued guidelines regarding requests for the deletion of information with respect to infringement. If ISPs do not respond to such requests, they may lose their immunity (see question 6.1).

### 6.3 Are there any 'net neutrality' requirements? Are telecommunications operators and/or internet service providers able to differentially charge and/or block different types of traffic over their networks?

MIAC released a report regarding network neutrality in September 2007 (the "Net Neutrality Report"). The Net Neutrality Report identified two issues as critical to network neutrality – fair allocation of network development costs and fair access to the network by

telecommunications operators, including content providers – and, given the need to enable the network to absorb rapid increases in traffic, discussed who should bear the costs of such development and whether telecommunications operators may engage in packet-shaping (or traffic-blocking) to ensure the network’s service quality. In particular, MIAC discussed whether heavy users should be required to pay additional charges based on their packet usage, and whether distributors of rich content should be required to pay ISPs for additional charges. Currently, there is no specific law prohibiting the requirement of such payment, and the Net Neutrality Report essentially concluded that these matters should be left to the market. As for packet-shaping, four associations comprising telecommunications operators issued a guideline for this in May 2008, pursuant to the discussion in the Net Neutrality Report. The guideline provides that packet-shaping may violate the TBL, because it violates the confidentiality of telecommunications content which is protected under the TBL, but it may be permitted in an exceptional situation, such as general users experiencing difficulty accessing a network due to heavy users’ traffic or if a specific

application is excessively occupying the network. The guideline also states that telecommunications operators should let users know, in the tariffs, of the possibility of packet-shaping and how and when it would occur.

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#### 6.4 Are telecommunications operators and/or internet service providers under any obligations to block access to certain sites or content? Are consumer VPN services regulated or blocked?

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Under the Act on Development of an Environment that Provides Safe and Secure Internet Use for Young People, telecommunications operators who are engaged in a business relating to providing internet services to teenagers are required to adopt measures to limit the exposure of teenagers to harmful information – for example, information inducing them to commit a crime, information that stimulates sexual drive, or information containing atrocious descriptions such as of murder. No specific law regulates VPN services.



#### Hiromi Hayashi

Mori Hamada & Matsumoto  
Marunouchi Park Building  
2-6-1 Marunouchi Chiyoda-ku  
Tokyo 100-8222  
Japan

Tel: +81 3 5220 1811  
Email: [hiromi.hayashi@mhmjapan.com](mailto:hiromi.hayashi@mhmjapan.com)  
URL: [www.mhmjapan.com](http://www.mhmjapan.com)

Hiromi Hayashi is a Partner at Mori Hamada & Matsumoto, which she joined in 2001. She specialises in communications law and regulation, and authored the Japanese portion of *Telecommunication in Asia* in 2005. Her other areas of practice are international and domestic transactions, takeover bids and corporate restructuring. She was admitted to the Bar in 2001 in Japan and in 2007 in New York. She worked at Mizuho Corporate Bank from 1989 to 1994 and at Davis Polk & Wardwell in New York from 2006 to 2007.



#### Akira Marumo

Mori Hamada & Matsumoto  
Marunouchi Park Building  
2-6-1 Marunouchi Chiyoda-ku  
Tokyo 100-8222  
Japan

Tel: +81 3 5225 7738  
Email: [akira.marumo@mhmjapan.com](mailto:akira.marumo@mhmjapan.com)  
URL: [www.mhmjapan.com](http://www.mhmjapan.com)

Akira Marumo is a Partner at Mori Hamada & Matsumoto. He has a broad range of experience in telecoms regulations and corporate and finance matters. He co-authored *Multimedia Business and Laws* in 1995, *Law Concerning Providers’ Liabilities* in 2002 and the Japanese portion of *Telecommunication in Asia* in 2006. He received an LL.B. from the University of Tokyo in 1991 and an LL.M. from Columbia University School of Law in 1997. He was admitted to the Bar in 1993 in Japan and in 1998 in New York. He is a member of the Tokyo Bar Association and of the New York State Bar Association.

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## MORI HAMADA & MATSUMOTO

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Mori Hamada & Matsumoto is a full-service international law firm based in Tokyo, with offices in Fukuoka, Nagoya, Osaka, Beijing, Shanghai, Singapore, Yangon Bangkok and Ho Chi Minh, and a Jakarta desk. The firm has over approximately 470 attorneys and a support staff of approximately 480, including legal assistants, translators and secretaries. The firm is one of the largest law firms in Japan and is particularly well-known in the areas of mergers and acquisitions, finance, litigation, insolvency, telecommunications, broadcasting and intellectual property, as well as domestic litigation, bankruptcy, restructuring and multi-jurisdictional litigation and arbitration. The firm regularly advises on some of the largest and most prominent cross-border transactions representing both Japanese and foreign clients. In particular, the firm has extensive practice in, exposure to and expertise on telecommunications, broadcasting, the internet, information technology and related areas, and provides legal advice and other legal services regarding the corporate, regulatory, financing and transactional requirements of clients in these areas.

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59 Tanner Street, London SE1 3PL, United Kingdom  
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255  
Email: [sales@glgroup.co.uk](mailto:sales@glgroup.co.uk)

[www.iclg.co.uk](http://www.iclg.co.uk)