Legal Services-IP March to May in Review

5/29/20



March 30 Webinar: COVID-19 Legal Issues



CONTRACTUAL LAW EMPLOYMENT LAW FORCE MAJEURE

Continuity Network

MONDAY 30 12:00-13:15





Chris Jacobson, Registered Foreign Lawyer, Fukuoka International Law Office

Takuo Misaki, Attorney at law, Matsuda & Partners (Labor Law)

HOSTED BY THE ACCJ LEGAL SERVICES & INTELLECTUAL PROPERTY COMMITTEE

THIS IS A FREE VIRTUAL EVENT

This event will present a selection of topics challenging businesses around two principle areas of law: labor law and commercial contacts. Challenges include labor issues such as how to handle employee concerns and questions, and on the commercial side, how to deal with contractual challenges and supply chain risks.



Covid-19 Legal Challenges

By the Legal Services & IP (Intellectual Prope

ACCJ VIRTUAL EVENT

n Monday, March 30, the American Chamber of Commerce in Japan (ACCJ) Legal Services & IP Committee (LSIP) held a webinar as not of the dwark of Court I and the court binar as part of the chamber's Covid-19 virtual event series. More than 70 people attended to hear about challenges and solutions acing companies as to their employee's health data, role changes, and work-from-home issues. Also covered was how to handle contract delays and performance with customers and suppliers. The panel, moderated by LSIP Co-Chair Catherine O'Connell

featured Vice-Chair Chris Jacobson speaking on commercial conracts and force majeure, as well as Takuo Misaki addressing labor law. the current Covid-19 pandemic, emp Additional comments were provided by Co-Chair Scott Warren. a caveat: this is not meant as legal advice for your specific issue, which likely will require a detailed review of the pertinent facts involved. Instead, this provides generic information that may help you understand and consider the overall legal landscape involved in handling Covid-19 effectively.

STAFF ISSUES

emperature-scan my employees and require them to submit their personal health data?

his question poses issues on two fronts: personal information and employment law. Regarding the personal information aspect, Japans ct on the Protection of Personal Information (APPI) states that a business shall not obtain personal information by deception or other rongful means. It does not require the consent of the subject in each went of personal information collection. However, the same law (and its enforcement ordinance) states

that, regarding certain health records, the consent of the subject is required. Therefore, it would appear the law considers health Accordingly, it is desirable to obtain consent prior to conducting a the boundary of what the rature scan to avoid any risk of giving raise to claims based on the APPI or perhaps even an invasion of privacy tort claim.

wever, it is unclear specifically what form of consent is needed. For example, as a practical matter, an employer may issue an email to employees, update its work rules, and perhaps post signs indicating its intent to temperature-scan employees for the of Covid-19 prevention. Unless the employee objects, it may be keyword being "may," as it is unclear how vould be decided).



Catherine O'Connell

egal Services & IP Committee

If an employee refuses to consent, whether a disciplinary action i possible gives rise to an employment law issue and will be viewed, in part, by balancing the need to conduct temperature scans to protect the safety of the workplace against the need to protect the privacy of an employee. As the employer is obligated to procure the safety of its employees and its workplace-and as the severity of the Covid-19 crisis deepens-the balance may tip in the direction of allowing disciplinary action against a refusing employee. In the United States, it has generally been accepted that, due to

employees to ensure a safe working er to most countries in the European Un employer from collecting such data their own regulations. No matter where the data is col such sensitive health data be prope

What steps are required to shor

change employee roles during Unless there is an employment employers allow them to wo working hours or exempts an to the discretionary decision in such cases is a different if Changing an employee's of labor set forth in the c demanding that a chef wo that the contract with the working a comp

Can employees' with Under Japanese la this generally depe due to reasons at

if an employee is b

Chris Jacobso Vice-Chair Legal Services

*•mperature-scan

ACC:

only to essential employees, and k

employees generally do not h

The Covid-19 crisis presents a conundrum in this respect. The situation in Japan has been that there is no government edict preventing people from going to work. So, if the employer refuses to allow its

employees to work, this may be seen as a discretionary decision (i.e. attributable to the employer). With the April 7 declaration of a state of emergency by the government, the impossibility of labor may be seen as being due to such declaration and not the decision of the employer. (Again, the operative word is "may," as it is not clear how this may be determined by the courts.) There is also an issue regarding whether 60 percent or 100 percent

of a worker's wages need to be paid. Generally, 100 percent is due when an employer decides to stop work even though work is possible, and 60 percent when work becomes impossible due to a reason which is not controllable for the employer, such as the failure by a supplier to deliver supplies, but is still within the scope of issues which the employer should manage.

CONTRACT ISSUES

How do I deal with delayed performance of my supplier? In this unprecedented situation, the first thing you must do is read the terms and conditions of the agreement, purchase order, or other document you have with your supplier, assuming there is If you have such, please identify if it has what is known as a "force majeure" provision. These provisions cover of

ontract is delayed or frustrated. Many such n. nature" and other similar situations.

A few items to note:

- Of course, the force majeure provision may also benefit supplier, who may be looking at it just as you are doing You need to be careful not to abuse the right to assert a majeure provision, and most jurisdictions will requi
- ness in handling and mitigation of the s by both parties. Some force majeure clauses, or other parts of the agreem
- may have specific notice and dispute handling provisi must be followed. Please review the contract carefully to e you comply with all of the relevant obligations.

If you do not have an agreement with a force maje there are no detailed terms and conditions in the order or ot ocument, or your transaction is orally based, consider the a natives to force majeure discussed below.

What legal and practical options are available to me to ca contracts in addition to force majeure?

Where there is no force majeure provision, or no contract, most jurisdictions may provide for other remedies. In Japan, there are a few rules that may apply:

Rule of impossibilit

- Rule of exemption from breach of contract liability due to a reason not attributable to the breaching party
- Rule of significant circumstantial change Note that, in general, the interpretation by a court in Japan tend to be very strict, looking only to the wording of the prov (if a force majeure provisio n or other provision exists) or struing the fact situation causing the impossibility. In the case of California, and most other US jurisdictie

octrines of impossibility and frustration of purpose will a when a party contractual performance is made impos impracticable by intervening and unforeseeable events. Cal.C Code 1511(2) states that performance can be excused "... w it is prevented or delayed by an irresistible, superhuman c or by the act of public enemies . . ." Again, the scope of appl cation will differ by state and jurisdiction, so consult yo attorney about your specific situation.

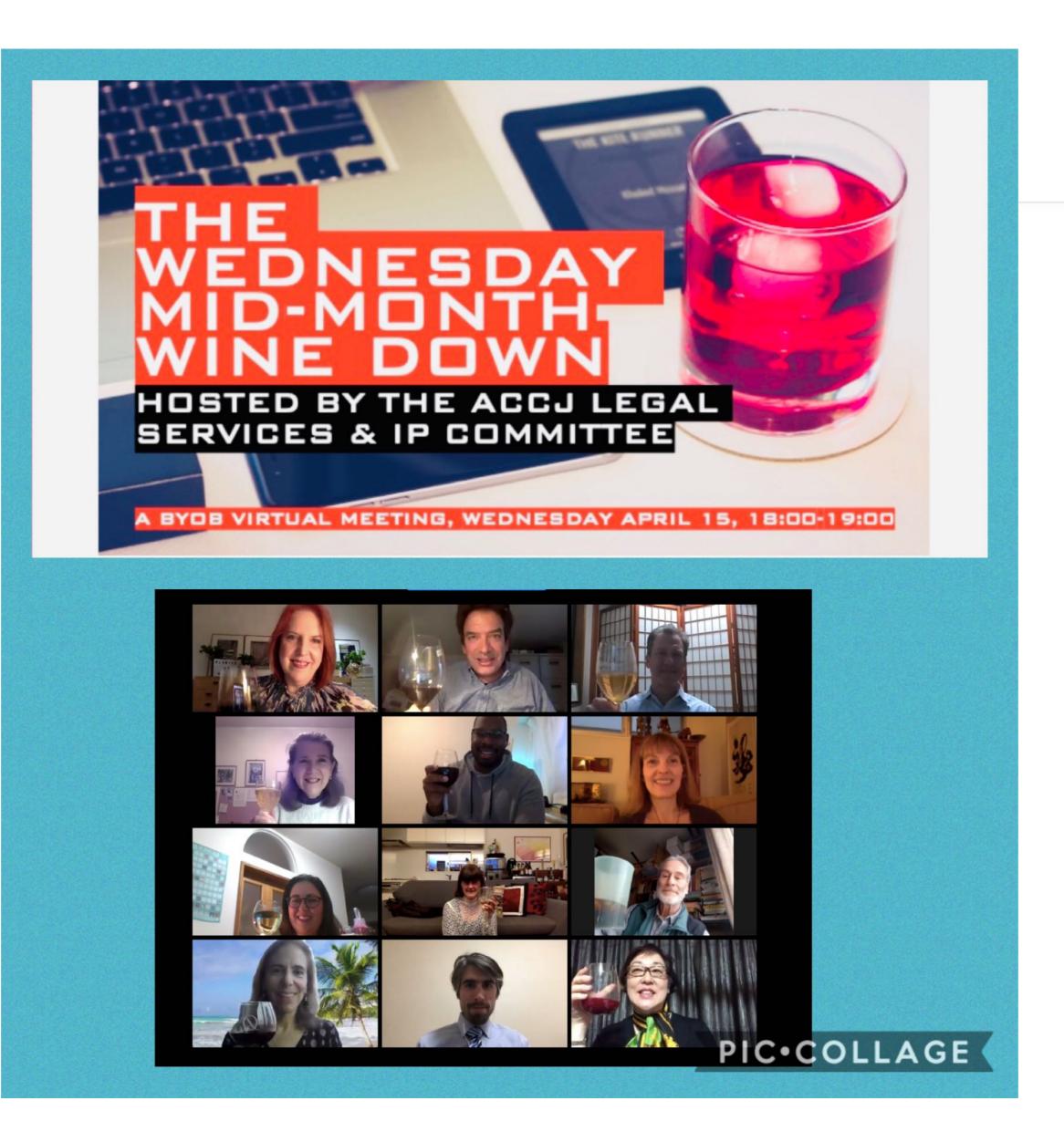
An indirect, but important, concern is whether such an e may be covered by any business interruption or other relevant insurance you or your supplier may have. In general, such ir ance is often based on ph ysical property damage that prenance, not on contagion. After the spread of severe a ARS) from 2002 to 2004, some b nsurers added provisions to exclude the effects of contag diseases from coverage. However, it is important to your insurance policies to see if such policies may provide some relief.

egal Services & IP Committee





April 15 Networking : Mid-Month Wednesday Wine Down





May 22 Webinar : Japanese Legal Landscape

AN INTRODUCTION TO THE ANESE EGAL ANDSCAPE





Date: Friday, February 28, 2020 Time: 18:00-20:00 Venue: ACCJ Tokyo Boardroom Speakers: Maika Kawaguchi, Squire Patton Boggs; Jeffrey Jackson, Jackson Sogo Gyoseishoshi Law Office; Sane Sekiya, Tri-Star Legal Office Hosting Committee: Legal Services and IP Member Fee: ¥500



An Introduction to the Japanese Legal Landscape





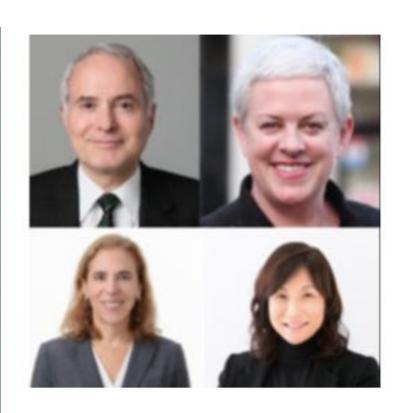
May 29 Networking: Fun Friday Month-end Wine Down





Webinar: The Role of Non-Executive Directors (LS&IP Committee are co-sponsoring committee)

THE ROLE OF 4 NON-EXECUTIVE DIRECTORS: THE RIGHT SKILLSETS



PIC.COLLAGE

THE ROLE OF NON-EXECUTIVE DIRECTORS: THE RIGHT SKILLSETS AND MINDSET

SPEAKERS:

- Nicholas Benes, Representative Director of the Board Director Training Institute of Japan, and non-executive Director at Imagica Group and Advantest
- Melanie Brock, CEO of Melanie Brock Advisory, and non-executive Director at Sega Sammy Holdings Inc.
- Jenifer Rogers, General Counsel for Asia for Asurion and non-executive Director at Mitsui & Co. Ltd., Kawasaki Heavy Industries Ltd. and Nissan Motor Co., Ltd.

MODERATOR: Yumiko Murakami, Head of OECD Tokyo Centre

HOSTING COMMITTEES: Women in Business, Financial Services Forum, Alternative Investment, Human Resource Management, Legal Services and IP



Japan Entry Ban: Letter to MOJ & MAF

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the japan times

NATIONAL

Japan to expand entry ban to visitors from India and 10 other nations



Large screens on a building in Tokyo's Shinuku district show a live broadcast of Prime Minister Shinzo Abe's Monday news conference on the lifting of the state of emergency. | REUTERS

the japan times

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NATIONAL / SOCIAL ISSUES

Foreign residents stranded abroad by Japan's coronavirus controls

Japan is the only Group of Seven member denying entry to long-term and permanent residents



Foreign residents queue in front of Tokyo Regional Immigration Bureau on May 12. Its entry restrictions have sparked a strong reaction from the international community in Japan. | KYODO

PIC.COLLAGE



(January 30 Networking Party) Let's hope we can get back to in person events soon!

