

## Client Alert

# International Executive Liability Update

The Amended Companies Act (ACA) is set to take effect on or before June 11, 2021

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## Japan

### Corporate indemnification of Directors and Officers

The existing Japanese Companies Act (CA2005) does not address indemnification of Directors and Officers. Rather, CA2005 allows a stock company, whether public or private, to partially exempt directors and officers from liability. The degree of exemption is based on a mathematical formula.

The Amended Companies Act (ACA), set to take effect on or before June 11, 2021 (exact date to be determined via Cabinet Order), introduces corporate indemnification for directors and officers. The Law allows a stock company to reimburse its directors and officers for judgments, settlements and advancement of costs via an indemnity agreement. Any such contract must be approved by the board (or by shareholders' resolution in the event there is no board). Indemnity is limited to matters involving alleged wrongful acts committed in the execution of a director's or officer's service on the board. Indemnification for losses arising out of willful misconduct or gross negligence are not permitted.

### Insurance Premium Payment

ACA also clarifies whether a company is permitted to pay the entirety of the D&O insurance premium. The existing Law leaves some question as to whether payment of the D&O premium by an entity creates a conflict of interest between the directors and officers and the company. This concern is eliminated by the affirmative statement in the ACA that a company is permitted to pay the entirety of the D&O insurance premium.

### Obligation to Appoint an Outside Director

Most publicly listed companies in Japan have outside directors. However, in the wake of recent, well publicized, corporate governance shortcomings, ACA mandates appointment of outside directors. The appointment obligation applies to public companies as well as non-listed large companies required to submit an Annual Securities Report. The codification of the required appointment of outside directors is intended reinforce good corporate governance and board independence in Japan.

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