

THE RIGHT OF ALIENS TO ENGAGE IN THE TRANSPORTATION BUSINESS
UNDER JAPANESE LAW

I. Land Transportation

In Japan the national railways are operated by the State under the Japan National Railways Law.^{1/} With the exception of the national railways, an alien or a foreign corporation desiring to engage in the transportation business by using railways must obtain permission from the Minister of Transportation in accordance with the provisions of the Local Railways Law and the Tramways Law.^{2/} Similarly, any alien desirous of engaging in the trucking business must obtain a license from the same Minister under the Road Transportation Law and the Express Business Law.^{3/} There exist no provisions expressly prohibiting an alien from operating a transportation business under these laws.

II. Marine Transportation

Any alien who intends to do business in marine transportation must obtain a license from the Minister of Transportation under the provisions of the Marine Transportation Law and the Harbor Transportation

^{1/} Law No. 256, December 20, 1948.

^{2/} Article 12 of Law No. 52, April 10, 1919, as amended by Law No. 120, 1967; Article 3 of Law No. 76, April 4, 1921, as amended by Law No. 140, 1962.

^{3/} Article 4 of Law No. 183, June 1, 1951, as amended by Law No. 62, 1972; Article 4 of Law No. 241, December 7, 1949, as amended by Law No. 96, 1971.

Law. ^{4/} Although the above two laws do not expressly deny to aliens the right to engage in the marine transportation business, Article 42-3 of the latter Law provides that "the provisions of this Law, except those of Article 28 to 31 inclusive [concerning antitrust and fair trade], shall not apply to the case where the marine transportation business is operated by anyone other than a person who has the Japanese nationality or a juridical person or other association established under Japanese laws and ordinances."

However, cabotage by aliens is expressly prohibited under the ^{5/} Ship Law:

None other than Japanese ships shall call at any port not open to foreign commerce and navigation or shall transport goods or passengers between Japanese ports, except in cases where otherwise provided by law or treaty, where she is going to avoid ship-wreck or capture, or where she has obtained permission of the competent Minister.

Thus, with certain exceptions, no alien is permitted to engage in transportation of freight shipments between Japanese ports. Nevertheless, there is no provision expressly closing the transportation business to aliens using overseas routes beyond Japanese ports.

III. Air Transportation

^{6/} Under the Civil Aeronautics Law, an alien or a foreign corporation

^{4/} Law No. 187, June 1, 1949, as amended by Law No. 130, 1971.

^{5/} Law No. 46, March 8, 1899, as amended by Law No. 161, 1962.

^{6/} Law No. 231, July 15, 1952, as amended by Law No. 96, 1971.

intending to engage in scheduled or non-scheduled air transport business within the territory of Japan or in the international freight business must obtain a license from the Minister of Transportation. Pertinent provisions of the above Law are as follows:

Article 127. No aircraft having the nationality of any foreign state (excepting any aircraft which is used for the business of any foreign international transport enterprise and any aircraft which is used for transportation by any person who has obtained permission under Article 130-2) shall be used for navigation between points inside Japan. However, the same shall not apply in cases where permitted by the Minister of Transportation.

Article 129. ...a person referred to in any item of paragraph 1 of Article 4, may, upon receiving permission from the Minister of Transportation, run a business to transport passengers or freight on any flight referred to in Article 126, paragraph 1 (including the one between points within Japan which is performed in continuance thereof) for remuneration on demand of other persons.

Article 130-2. Any aircraft having the nationality of any foreign state (excepting any aircraft which is used for the enterprise of any foreign international air transport enterprise) shall obtain permission from the Minister of Transportation, when it engages in the transportation for remuneration of passengers or freight, for taking off or landing inside Japan by a flight referred to in Article 126, paragraph 1, item 1 (including a flight between points within Japan which is made in continuance thereof) or by a flight referred to in item 2 of the same paragraph (including a flight between points within Japan which is made in continuance thereof).

Article 4. 1. An aircraft owned by any one of the following persons shall not be eligible for registration:

- (1) Any person who does not have Japanese nationality;
- (2) Any foreign state or public entity or its equivalent in any foreign state;
- (3) Any juridical person or body established in accordance with the laws and ordinances of any foreign state;

(4) Any juridical person of which the representative is any one of those mentioned in the preceding items or of which more than one-third of the officers are such persons or more than one-third of voting interests is owned by such persons.

2. [Omitted.]

When aliens hold more than one-third of a domestic corporation's voting rights or offices, the corporation may be deemed to be foreign under Article 4, paragraph 1, item (4) of the above law.

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