

Differences in Law Cruise and General Shipping

From a Japanese Law Perspective

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Contents

1. Introduction

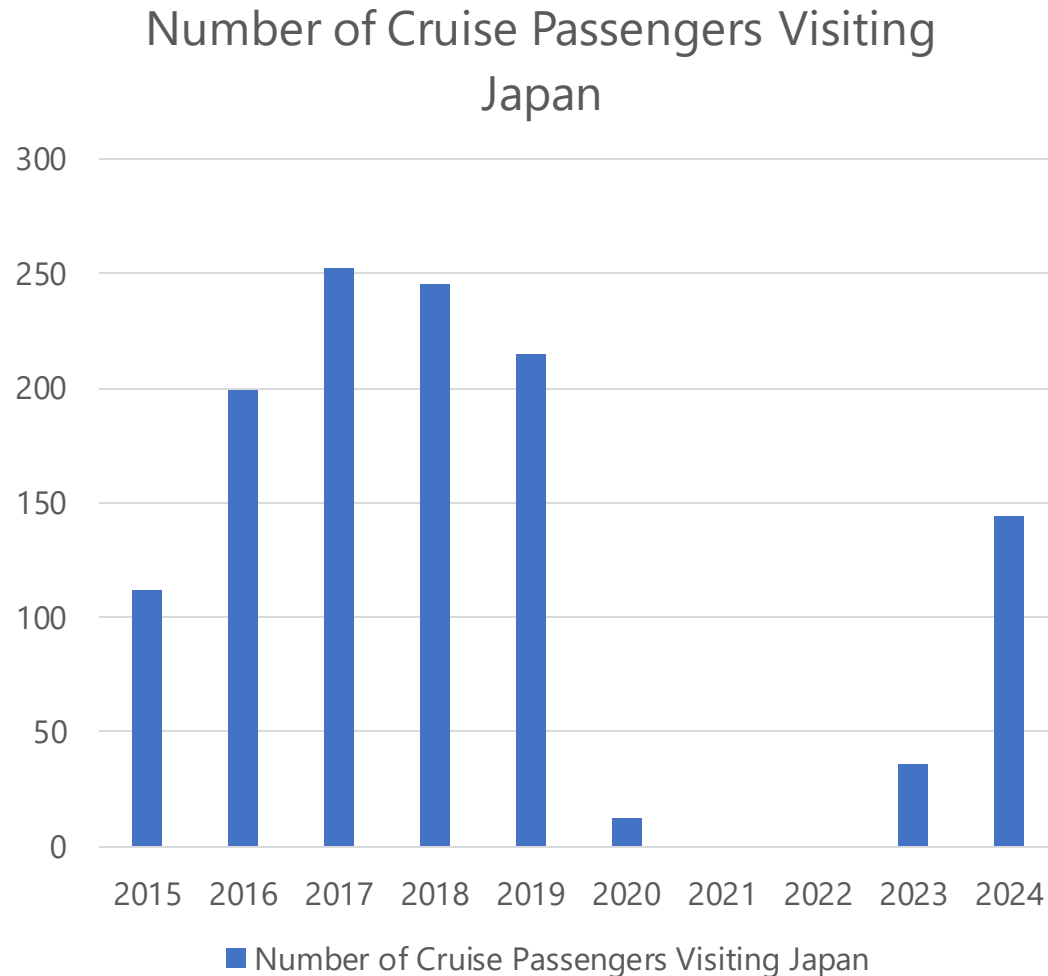
- Cruise industry in Japan
- Features of cruise contracts

2. How Japanese law approaches cruise contracts

- Rules applicable to Cruise Contracts
- Carriage of passengers
- Travel contracts

3. Challenges

Cruise Industry in Japan: Inbound Visitors



According to the statistics (preliminary figures) released by the Ministry of Land, Infrastructure, Transport and Tourism (MLIT)

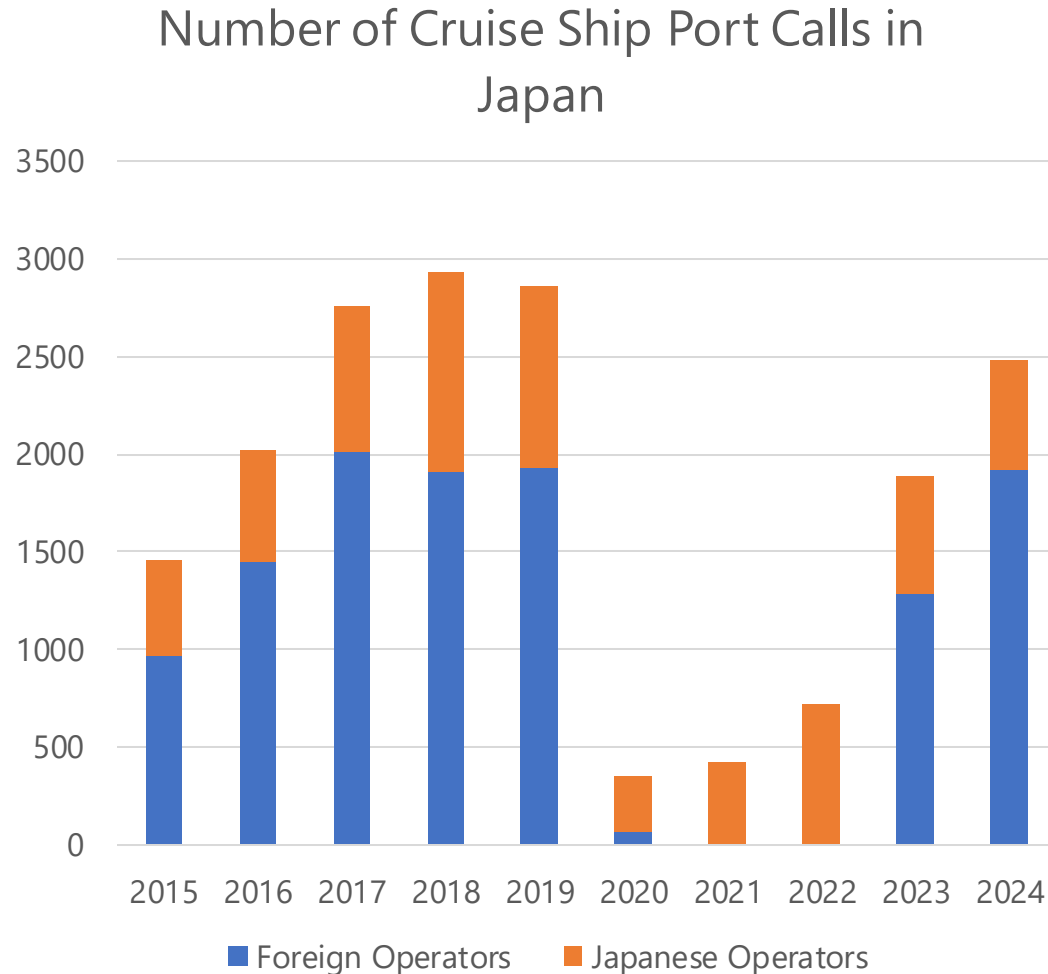
- The number of international visitors entering Japan by cruise ship has recovered to 1.438 million, which is about 57% of the 2017 record

(Total inbound visitors: about 36.870 million, see <https://statistics.jnto.go.jp/graph/#graph--inbound--travelers--transition>)

- Most passengers are from East Asia

(See the MLIT press release on 28 Feb 2025: https://www.mlit.go.jp/report/press/port04_hh_000500.html, last visited on 6 May 2025)

Cruise Industry in Japan: Port Calls



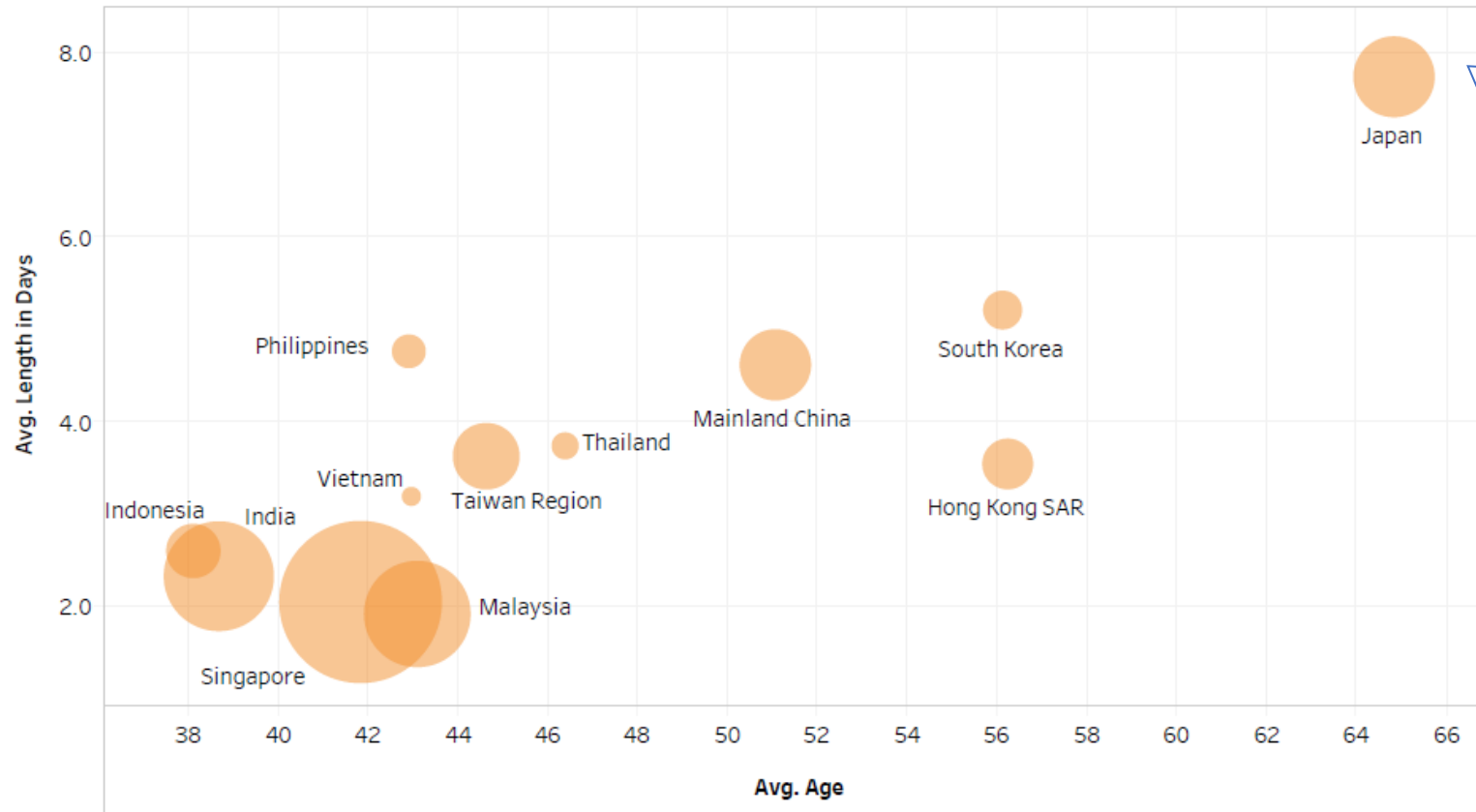
- The same statistics show the recovery of the number of cruise ship calls at Japanese ports to 2,479 (foreign ships: 1,923, Japanese ships: 556), which is about 85% of the pre-pandemic peak in 2018

(See the MLIT press release on 28 Feb 2025: https://www.mlit.go.jp/report/press/port04_hh_000500.html, last visited 6 May 2025)

Cruise Industry in Japan: Passengers

Average Age and Cruise Length from Top Source Markets, 2023

Bubble size indicates relative passenger volume



Passenger Volume
296.5 K (2019)→11.6 K
(2021)→ 42.3 K (2022)→
203.3 K (2023)

Average Duration:
6.4 Days (2019)→1.6 Days
(2021)→3.1 Days (2022)→
7.7 Days (2023)

Average Age:
57.1 (2019)→42.5 (2021)
→48.6 (2022) →**64.8 (2023)**

The chart is sourced from *CLIA 2023 Asia Market Report*, p. 2, available at <https://cruising.org/research-and-reports>, last visited on 6 May 2025

Features of Cruise Contracts

- Mixed contracts
 - Travel, transport, accommodation, entertainment etc.
 - Transport aspects are often ancillary
 - Consumer contracts (typically)
 - Athens Convention only covers the liability of carrier and unharmonized national laws come into play in other areas
- Liability issues arise in various contexts
 - Death or personal injury caused by a 'shipping incident'
 - Death or personal injury not caused by a shipping incident but in the course of carriage
 - Loss of or damage to luggage that occurred during the course of carriage
 - Other various events amounting to a breach of cruise contract or negligence

Japanese Law: International Dimension

- Japan is neither a party to the 1974 Athens Convention nor its 2002 Protocol
- Effectiveness of a choice-of-forum clause in consumer contracts is doubtful
 - A consumer may rescind an arbitration agreement (Article 3, the Schedule to the Arbitration Act)
 - Validity of a jurisdiction agreement in consumer contracts is restricted (Article 3-7 (5), Civil Procedure Code)
- Effects of a choice-of-law clause in consumer contracts are curtailed by the law of the consumer's habitual residence
 - A consumer may declare to invoke any mandatory provisions of the law, regardless of the choice-of-law clause (Art 11 (1), The Act on General Rules for Application of Laws)
 - If no choice-of-law agreement is found, the law of the consumer's habitual residence applies (Art 11 (2), AGRAL)

Japanese Domestic Law: Overview

- Public regulations (relatively loose for international contracts)
 - Mode-by-mode transport regulations
 - Licence; insurance requirements for passenger carriers under relevant regulations
 - There is no passenger rights legislation equivalent to that in the EU.
 - Regulations on travel agencies
- Private law rules (with no provisions specific to cruise contracts)
 - Commercial Code
 - Special rules for 'contract for carriage of passengers' applicable to all modes of transport
 - Civil Code
 - Remedies for breach of contract; tort liability
 - Incorporation of general terms and conditions
 - Consumer Contract Act
 - Invalidity of unfair contract terms

Japanese Law: Carriage of Passengers

- Article 590, Commercial Code

A carrier is liable to compensate for any damage that a passenger has suffered due to the carriage; provided, however, that this shall not apply if the carrier proves that it has exercised due care in performing the carriage.

- Article 591, Commercial Code

1. Any special agreement to exempt or limit the liability of a carrier for damages caused by the death or bodily injury of a passenger (excluding those mainly caused by delay in carriage) is void.
2. The preceding paragraph shall not apply in the following cases:
 - i. where carriage is conducted in circumstances where a large-scale fire, earthquake or any other disaster has occurred or is likely to occur.
 - ii. where the carrier undertakes to carry a person, who is likely to face a serious risk of death or bodily harm due to vibration, or any other conditions normally associated with transport.

Japanese Law: Carriage of Passengers

- Liability for damages suffered by passengers due to the carriage
 - Presumed-fault liability
 - No seaworthiness obligation
 - Carrier's duty of care for passengers' safety
 - Liability for the death or personal injury of a passenger is mandatory
 - How the wording 'due to the carriage' should be interpreted is not entirely clear
- Liability for loss of, damage to, or delay of luggage
 - Carry-on luggage: a passenger needs to establish carrier's fault to claim compensation (Art 593, Commercial Code)
 - Checked luggage: the liability regime (presumed-fault liability) applicable to a cargo carrier applies (Art 592, Commercial Code)
- No statutory limits on the recoverable amount of damages

Japanese Law: Travel Contracts

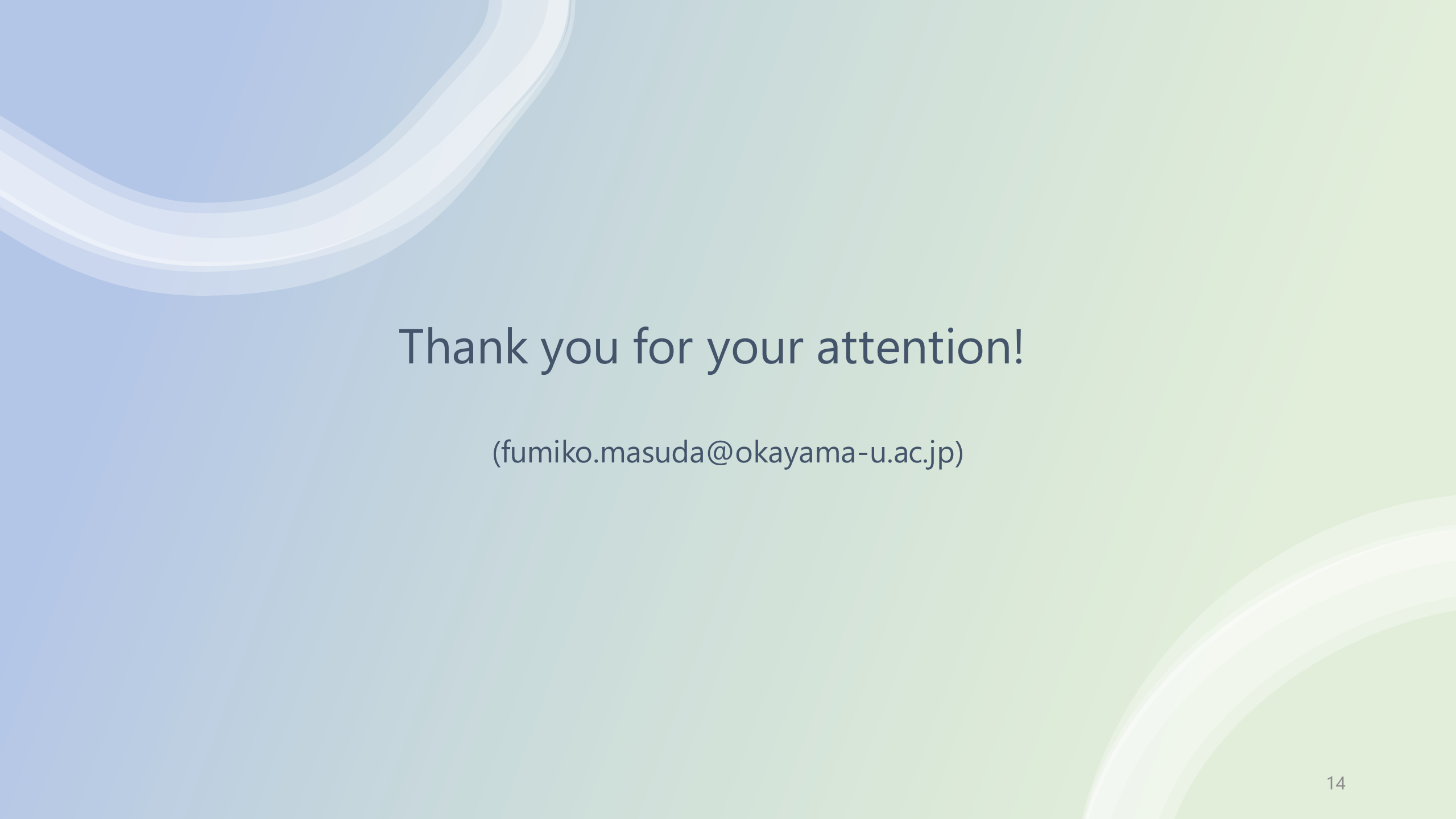
- Not a nominate contract in the Civil or Commercial Code
 - General contract law applies
 - If general terms and conditions are properly incorporated, they determine the parties' rights and obligations
- Travel Agency Act
 - Registration is required to operate travel agency businesses
 - Standard terms and conditions approved by the MLIT
 - Travel agencies undertake to arrange travel, manage itinerary and take due care for travellers' safety
 - Travel agencies do not guarantee that transport or accommodation services are duly provided as promised
 - Special Compensation and Itinerary Guarantee Liability Systems independent of whether a travel agency is legally liable, combined with liability insurance held by travel agencies

Challenges

- Inbound visitors
 - Vulnerability as travellers
 - They are unlikely to attempt to resolve legal disputes in Japan
- Outbound travellers
 - Consumer or passenger protections by law exist, but...
 - Does protection by the law of domicile or the law of habitual residence function well in cases of cruise travel?
 - Could alternative dispute resolution (ADR) offer a better solution for travellers?
 - Travel agency serves as a single point of contact

Challenges: In International Setting

- Japan is not a party to the Athens Convention and its Protocol
 - The number of Contracting States is limited
 - 25 Contracting States to PAL 1974; 34 to PAL PROT 2022
 - China is a party to 1974 Athens Convention
 - Chinese decisions are not enforceable in Japan due to the lack of reciprocity (Art 118 (iv), Civil Procedure Code)
- Would acceding to the 2002 Protocol offer a solution?
 - Is the Athens Convention sufficient to protect cruise travellers?
 - Compulsory insurance is a notable benefit
 - Improve the likelihood of recognition and enforcement of foreign judgments
 - How are passengers' claims handled in practice?



Thank you for your attention!

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