

How to set up business in Japan

Types of incorporation and recent trend

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Japan is one of the favored locations for global businesses to set up their first base in Asia in the light of increasing importance of the Asian market and its important role in Asia as a business center in the region, a gateway to other Asian countries and a trend setter.

The aim of this article is to give a brief overview of types of incorporation and recent trend.

Forming a subsidiary company

A global business that wishes to commence operations in Japan will often want to form a subsidiary company as a vehicle for conducting its affairs.

A company formed in Japan is a distinct legal entity with the ability to own assets and employ workers. It is also subject to Japanese taxation. The rules relating to the operation and regulation of companies are set out in the Companies Act.

A number of different types of business entity can be created in Japan, including a joint-stock corporation (Kabushiki-Kaisha (K.K.)), limited liability company (Godo-Kaisha (LLC)), limited partnerships (Goshi-Kaisha) and unlimited partnerships (Gomei-Kaisha). All types of companies are established by completion of the required procedures stipulated in the Companies Act and relevant laws, including preparation and notarization of articles of incorporation and remittance of capital or payment of investment, and registration of establishment.

The article of incorporation consists of matters required to be stated to make the article of incorporation valid and matters not required to be stated but become effective if being stated. A K.K. is required to state purpose, trade name, place of principal office, amount of assets or minimum amount of assets contributed at the time of establishment, name and postal address of incorporators, and the number of issuable shares in the article of incorporation. A LLC is required to state purpose, trade name, place of principal office, name and postal address of members, statement that all members are limited liability members, and amount of assets contributed.

It is common practice in Japan to select a K.K. or LLC because those types of companies offer higher social credibility and liability of equity participants is limited to the amount contributed.

Most subsidiaries are formed as private companies by stipulating in articles of incorporation that approval of board of directors' meeting or shareholders' meeting is required for transfer of shares, and can be converted into public companies at a later date if the need arises. Public companies may offer their shares for sale to the public on a national exchange by fulfilling the requirements for listing. However, public companies are subject to greater rules and regulations than private companies.

Key features of K.K. and LLC

Limited Liability

The liability of the shareholders or members is limited to the amount of capital contributed.

Management

A K.K. is generally governed by a board of directors, which designates the representative director(s) to manage its day-to-day operations. In accordance with the Companies Act, certain major decisions require approval by shareholders at a shareholders' meeting. Representative directors must be individuals and at least one of them must be an individual who has an address in Japan and is resident in Japan. Management of a LLC is initially vested in its members. Members may delegate management to a managing member. Both individuals and companies are eligible to become members, but at least one of them must be an individual who has an address in Japan and is resident in Japan.

Capitalization

The number of shares that may be issued is limited by the statement in the company registration, which may be changed by the approval of the shareholders at a shareholders' meeting. Conversely, because membership interests represent a percentage of ownership, the number of membership interests is unlimited.

Recent trend in company registration

According to the statistical date of the number of company registration provided by Ministry of Justice, the number of K.K. established was nearly 6 times larger than that of LLC established in 2013. The figure reflects the fact that K.K. is the most credible and prevailing type of incorporation to do business in Japan.

	The number of K.K. established	Percentage change from the previous year	The number of LLC established	Percentage change from the previous year
2008	99,777		5,503	
2009	89,521	-10.3%	5,884	+6.9%
2010	89,304	-0.2%	7,269	+23.5%
2011	87,109	-2.5%	9,246	+27.2%
2012	86,973	-0.2%	11,031	+19.3%
2013	87,368	+0.5%	14,729	+33.5%

*Statistical data of the number of company registration provided by Ministry of Justice in 2013

However, the number of LLC is rapidly increasing every year based on its cheaper cost of incorporation and flexibility in structure and profit sharing.

A LLC has long been popular among venture companies and start-ups. But in recent years, well known large companies aggressively make use of LLC to seek greater flexibility. To give an example, Apple Japan Inc., which was K.K., has been dissolved and was united into Apple Japan LLC. This seems to be the trend for the foreseeable future.

About the Author



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* Please visit page 34 for detailed introduction.

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