

## Laws & Regulations on Setting Up Business in Japan

### Section 1. Incorporating Your Business

<Effective from May 2006>

Comparison of types of business operation (branch office, corporation, and limited liability partnership)

Table 1-2

|  | Branch office  | Subsidiary company<br>(Kabushiki Kaisha) K.K.  | Subsidiary company<br>(Godo Kaisha)   | Limited liability partnership<br>(LLP)  |
|--|--|--|---|---|
| <b>Restrictions on equity participation</b>                              | Notification must be filed with the Bank of Japan  | Notification must be filed with the Bank of Japan  | Notification must be filed with the Bank of Japan   | Notification need not be filed with the Bank of Japan   |
| <b>Capital</b>   | No capital   | 1 yen or more  | 1 yen or more   | 2 yen or more (if 2 partners)   |
| <b>Number of investors</b>   | -  | 1 or more  | 1 or more(*1)   | 2 or more(*2)   |
| <b>Liability of equity participants/parent company toward creditors</b>  | Unlimited  | Limited to amount of equity participation  | Limited to amount of equity participation   | Limited to amount of equity participation   |
| <b>Transfer of equity participation share</b>                            | No equity participation share  | May be transferred freely in principle. May be stipulated in articles of incorporation that approval of Board of Directors is needed for transfer of shares. | Unanimous approval of equity participants (members) required  | Unanimous approval of partners required   |
| <b>Number of executives required</b>                                     | Representative in Japan.<br>1 or more(*3)  | See Tables 1-3, 1-4  | No legally stipulated minimum.<br>In principle, all members are executive officers, but a representative member may be appointed(*1). | No legally stipulated minimum.<br>All partners are executive officers(*2).                      |
| <b>Legally stipulated term of office for executives</b>                  | No legally stipulated term   | See Tables 1-3, 1-4  | No legally stipulated term  | No legally stipulated term  |
| <b>Regular general meeting of shareholders (members)</b>                 | Not required   | In principle, must be held every year  | Not required  | Not required  |
| <b>Possibility of public offer of stock (equity participation share)</b> | No equity participation share  | Possible   | Not possible  | Not possible  |
| <b>Possibility of reorganization into joint-stock corporation</b>        | Not possible. Need to separately close branch office and establish joint-stock corporation(*5) | -  | Possible  | Not possible. Need to separately dissolve partnership and establish joint-stock corporation(*4) |
| <b>Distribution of profits and losses</b>                                | -  | Allocated according to equity participation ratio  | May be allocated at a different rate from equity participation rate if specified in   | May be freely allocated with the unanimous approval of partners                                 |

|                            |   |   |   |   |
|----------------------------|---|---|---|---|
|                            |   |   | articles of association   |   |
| <b>Taxation of profits</b> | Income arising within Japan is in principle taxed | Taxed according to profits of joint-stock corporation and profits allocated to shareholders | Taxed according to profits of Godo Kaisha and profits allocated to participants | No taxation of partnerships themselves. Taxation of profits allocated to partners |

(\*1) Although not stipulated in the new Company Law, a residence condition is expected to be imposed by government ordinance requiring that "one or more member with the right of representation must be an individual who has an address in and is resident in Japan, or a Japanese corporation." If this condition is imposed, foreign enterprises will be unable to establish Godo Kaisha by themselves.

(\*2) At least one representative must have an address in and be resident in Japan.

(\*3) One or more partner must be an individual who has an address in and is resident in Japan, or a Japanese corporation.

(\*4) "Closure of branch offices".

(\*5) "Closure of limited liability partnerships".

#### <Effective from May 2006>

Comparison regarding directors of joint-stock corporations after entry into effect of the new Corporate Law (if no committee is established)

Table 1-3

|   |             | Small and medium companies<br>(joint-stock corporations with capital of less than 500 million yen and total liabilities of less than 20 billion yen) |  | Large companies<br>(joint stock corporations with capital of 500 million yen or more or total liabilities of 20 billion yen or more) |  |
|---|-------------|--|--|--|--|
|   |             | Kabushiki Joto Seigen Kaisha<br>(joint-stock corporations subject to restrictions on the transfer of issued shares)                                  | Kokai Kaisha<br>(publicly traded joint-stock corporations that are not Kabushiki Joto Seigen Kaisha) | Kabushiki Joto Seigen Kaisha<br>(joint-stock corporations subject to restrictions on the transfer of issued shares)                  | Kokai Kaisha<br>(publicly traded joint-stock corporations that are not Kabushiki Joto Seigen Kaisha) |
| <b>Directors</b>                                    | <b>No.</b>  | Appointment of 1 or more required. Executive officer with right of representation if no representative director is appointed(*1).                    | Appointment of 3 or more required  | Appointment of 1 or more required. Executive officer with right of representation if no representative director is appointed(*1).    | Appointment of 3 or more required  |
|   | <b>Term</b> | 2 years in principle. Extendable up to 10 years.   | 2 years  | 2 years in principle. Extendable up to 10 years.   | 2 years  |
| <b>Board of directors<br/>(3 directors or more)</b> |             | Establishment optional. Establishment required if board of auditors is established.  | Establishment required   | Establishment optional. Establishment required if board of auditors is established.  | Establishment required   |
| <b>Representative director(s)</b>                   |             | Appointment possible if 2 or more directors appointed. Executive officer with right of representation(*1).   | Appointment of 1 or more required. Executive officer with right of representation(*1).               | Appointment possible if 2 or more directors appointed. Executive officer with right of representation(*1).                           | Appointment of 1 or more required. Executive officer with right of representation(*1).               |

|   |                             |   |                                   |  |                                   |
|---|-----------------------------|---|-----------------------------------|--|-----------------------------------|
| <b>Executive officers</b>                     |                             | Appointment not possible  |                                   |  |                                   |
| <b>Auditors</b>                               | <b>No.</b>                  | 1 or more may be appointed. However, appointment of 1 or more is required if a board of directors is established and no accounting counselor is appointed | Appointment of 1 or more required |  | Appointment of 3 or more required |
|   | <b>Term</b>                 | 4 years in principle. Extendable up to 10 years.  | 4 years                           | 4 years in principle. Extendable up to 10 years. | 4 years                           |
| <b>Board of auditors (3 or more auditors)</b> |                             | Establishment possible  |                                   |  | Establishment required            |
| <b>Accounting auditor</b>                     | <b>Appointment</b>          | Appointment possible  |                                   | Appointment necessary                            |                                   |
|   | <b>Term</b>                 | 1 year  |                                   |  |                                   |
| <b>Accounting councilor(*2)</b>               | <b>Appointment possible</b> | Appointment possible. However, 1 or more must be appointed if a board of directors is established and no auditor is appointed.                            | Appointment possible              |  |                                   |
|   | <b>Term</b>                 | 2 years in principle. Extendable up to 10 years.  | 2 years                           | 2 years in principle. Extendable up to 10 years. | 2 years                           |

(\*1) At least one director with the right of representation must have an address in and reside in Japan.

(\*2) An agent of a company newly established under the new Corporate Law who must be a certified public tax attorney or certified public accountant. An auditing councilor prepares financial documents in association with the directors, and may not hold another position as well, such as director, auditor, or accounting auditor.

#### <Effective from May 2006>

Comparison regarding directors of joint-stock corporations after entry into effect of new Company Law (if a committee is established)

Table 1-4

|   |             | <b>Small and medium companies (joint-stock corporations with capital of less than 500 million yen and total liabilities of less than 20 billion yen)</b> |  | <b>Large companies (joint stock corporations with capital of 500 million yen or more or total liabilities of 20 billion yen or more)</b> |  |
|---|-------------|--|--|--|--|
|   |             | <b>Kabushiki Joto Seigen Kaisha (joint-stock corporations subject to restrictions on the transfer of issued shares)</b>                                  | <b>Kokai Kaisha (publicly traded joint-stock corporations that are not Kabushiki Joto Seigen Kaisha)</b> | <b>Kabushiki Joto Seigen Kaisha (joint-stock corporations subject to restrictions on the transfer of issued shares)</b>                  | <b>Kokai Kaisha (publicly traded joint-stock corporations that are not Kabushiki Joto Seigen Kaisha)</b> |
| <b>Directors</b>                                | <b>No.</b>  | Appointment of 3 or more required  |  |  |  |
|   | <b>Term</b> | 1 year   |  |  |  |
| <b>Board of directors (3 or more directors)</b> |             | Establishment required   |  |  |  |

|   |                    |  |
|---|--------------------|--|
| <b>Representative director</b>                    |                    | Appointment not possible   |
| <b>Executive</b>                                  | <b>No.</b>         | Appointment of 1 or more required.<br>Appointment of representative executive officer if 2 or more(*).   |
|   | <b>Term</b>        | 1 year   |
| <b>Auditors</b>                                   |                    | Appointment not possible   |
| <b>Board of auditors<br/>(3 or more auditors)</b> |                    | Appointment not possible   |
| <b>Accounting<br/>auditor</b>                     | <b>Appointment</b> | Required   |
|   | <b>Term</b>        | 1 year   |
| <b>Accounting<br/>councilor</b>                   | <b>Appointment</b> | Possible (prepares financial statements in collaboration with directors)   |
|   | <b>Term</b>        | 1 year   |
| <b>Auditors committee</b>                         |                    | Establishment required (for auditing, etc. of performance of duties by executive officers).<br>Consists of 3 or more directors, of which at least half must be outside directors.  |
| <b>Nominating committee</b>                       |                    | Establishment required (to decide on proposed appointment and dismissal of directors for submission to the general meeting of shareholders).<br>Consists of 3 or more directors, of which at least half must be outside directors. |
| <b>Benefit committee</b>                          |                    | Establishment required (to determine compensation of executive officers, etc.).<br>Consists of 3 or more directors, of which at least half must be outside directors.  |

(\* ) At least 1 executive officer with the right of representation must have an address in and reside in Japan.

Source: Jetro