

Laws & Regulations on Setting Up Business in Japan



Preface

The Japan External Trade Organization (JETRO) has long provided various resources for foreign businesses interested in setting up operations in Japan in order to promote FDI.

"Laws & Regulations on Setting Up Business in Japan" is a JETRO booklet designed with the foreign business in mind, providing information on laws, regulations and procedures on registration of incorporation, visas, taxes, human resource management, and trademark and design protection systems. First published in October 2004, the 5th edition has now been revised to incorporate changes in these areas since then.

It is our hope that this publication will serve as an excellent resource for companies planning to establish operations in Japan and will make doing business in Japan easy.

Interested investors are also encouraged to visit our website at <http://www.investjapan.org>, which provides not only the same information as this booklet but also updates on amendments and other changes to investment-related systems and institutions.

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**Invest Japan Division, Invest Japan Department
Japan External Trade Organization (JETRO)**

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SECTION 1 Incorporating Your Business

1.1 Types of operation in Japan

Foreign companies generally establish a business presence in Japan in one of four modes.

1.1.1 Representative office

Representative offices are established as locations for carrying out preparatory and supplemental tasks aimed at enabling foreign companies to engage in full-scale business operations in Japan. These offices may conduct market surveys, collect information, purchase goods and implement publicity/advertising efforts, but they are not permitted to engage in sales activities. The establishment of representative offices does not require registration. A representative office cannot ordinarily open bank accounts or lease real estate in its own name, so agreements for such purposes must instead be signed by the head office of the foreign company or the representative at the representative office in an individual capacity.

1.1.2 Branch office

Foreign companies wishing to engage in business operations in Japan must establish a branch office or a subsidiary company. The simplest means for a foreign company to establish a base for business operations in Japan is to set up a branch office. The branch office can begin business operations as soon as an office location is secured, the branch office representative determined, and the necessary information registered. A Japanese branch office is a business location that provides services in Japan decided upon by an organization authorized by the foreign company, and ordinarily is not expected to engage in independent decision making. A branch office does not have its own legal corporate status, but instead is deemed to be encompassed within the corporate status of the foreign company. In general, therefore, the foreign company is ultimately responsible for all debts and credits generated by the activities of its Japanese branch office. A Japanese branch office, however, may open bank accounts and lease real estate in its own name.

1.1.3 Subsidiary company

A foreign company establishing a subsidiary company in Japan must choose to establish the subsidiary company as a joint-stock corporation (Kabushiki-Kaisha (K.K.)), limited liability company (Godo-Kaisha (LLC)), or similar entity stipulated by Japan's Corporate Law. Both unlimited partnerships (Gomei-Kaisha) and limited partnerships (Goshi-Kaisha) are granted corporate status under the Corporate Law, but they are rarely chosen in practice because equity participants bear unlimited rather than limited liability. All types of subsidiary companies can be established by completing the required procedures stipulated by law and then registering the corporation. A subsidiary is a separate corporation from the foreign company, so the foreign company will bear the liability of an equity participant stipulated by law for all debts and credits generated by the activities of the subsidiary. Other methods by which a foreign company may invest in Japan using a Japanese corporation but without establishing a subsidiary are by establishing a joint venture with a Japanese enterprise or investment company, and by equity participation in a Japanese enterprise.

1.1.4 Limited liability partnership (LLP)

It is also possible to do business by using a Yugen Sekinin Jigyo Kumiai. This type of entity, considered the Japanese version of a limited liability partnership (LLP), is not a corporation, but a partnership formed only by the equity participants, who have limited liability.

LLPs are also distinguished by the fact that internal rules can be freely determined by agreement between the equity participants, and that taxes are levied on profits allocated to equity participants without LLPs themselves being liable for taxation.

1.2 Comparison of types of business operation

Foreign companies generally engage in business operations by establishing a branch office, subsidiary company, or limited liability partnership, and the legal differences between each of these are summarized in the following table.

Table 1-1

	Branch office	Subsidiary company		Limited liability partnership (LLP)
		Kabushiki-Kaisha (joint-stock corporation)	Godo-Kaisha (limited liability company (LLC))	
Restrictions on equity participation	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
Capital	No capital	1 yen or more ¹⁾	1 yen or more ¹⁾	2 yen or more (if 2 partners)
Number of investors	–	1 or more	1 or more	2 or more ³⁾
Liability of equity participants/parent company toward creditors	Unlimited	Limited to amount of equity participation	Limited to amount of equity participation	Limited to amount of equity participation
Transfer of equity participation share	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
Number of executives required	Representative in Japan. 1 or more ²⁾	See Tables 1-2, 1-3	No legally stipulated minimum. In principle, all members are executive officers, but a representative member may be appointed ²⁾	No legally stipulated minimum. All partners are executive officers ³⁾
Legally stipulated term of office for executives	No legally stipulated term	See Tables 1-2, 1-3	No legally stipulated term	No legally stipulated term
Regular general meeting of shareholders (members)	Not required	In principle, must be held every year	Not required	Not required
Possibility of public offer of stock (equity participation share)	No equity participation share	Possible	Not possible	Not possible
Possibility of reorganization into joint-stock corporation	Not possible. Need to separately close branch office and establish joint-stock corporation ⁴⁾	–	Possible	Not possible. Need to separately dissolve partnership and establish joint-stock corporation ⁵⁾
Distribution of profits and losses	–	Allocated according to equity participation ratio	May be allocated at a different rate from equity participation rate if specified in articles of association	May be freely allocated with the unanimous approval of partners
Taxation of profits	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 establishment with capital of zero yen is theoretically possible, approval is granted ex post facto, and it is not in practice possible to incorporate a company without paying in capital.

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 for more than 1 year, or a Japanese corporation.

4) See 1.6.1 "Closure of a branch office".

5) See 1.6.3 "Dissolution and liquidation of limited liability partnerships".

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Comparison regarding directors of Kabushiki-Kaisha (joint-stock corporations) (if no committee is established)

Table 1-2

		Small and medium companies (joint-stock corporations with capital of less than 500 million yen and total liabilities of less than 20 billion yen)		Large companies (joint stock corporations with capital of 500 million yen or more or total liabilities of 20 billion yen or more)		
		Kabushiki Joto Seigen Kaisha (joint-stock corporations subject to restrictions on the transfer of issued shares)	Kokai Kaisha (publicly traded joint-stock corporations that are not Kabushiki Joto Seigen Kaisha)	Kabushiki Joto Seigen Kaisha (joint-stock corporations subject to restrictions on the transfer of issued shares)	Kokai Kaisha (publicly traded joint-stock corporations that are not Kabushiki Joto Seigen Kaisha)	
No committee established	Directors	No.	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
		Term	2 years in principle. Extendable up to 10 years	2 years	2 years in principle. Extendable up to 10 years	2 years
	Board of directors (3 directors or more)		Establishment optional. Establishment required if board of auditors is established	Establishment required	Establishment optional. Establishment required if board of auditors is established	Establishment required
	Representative director(s)		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⁾
	Executive officers		Appointment not possible			
	Auditors	No.	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
		Term	4 years in principle. Extendable up to 10 years	4 years	4 years in principle. Extendable up to 10 years	4 years
	Board of auditors (3 or more auditors)		Establishment possible			Establishment required
	Accounting auditor	Appointment	Appointment possible		Appointment necessary	
		Term	1 year			
	Accounting councilor ²⁾	Appointment possible	Appointment possible. However, 1 or more must be appointed if a board of directors is established and no auditor is appointed	Appointment possible		
		Term	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 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.

Comparison regarding directors of Kabushiki-Kaisha (joint-stock corporations)
(if a committee is established)

Table 1-3

		Small and medium companies (joint-stock corporations with capital of less than 500 million yen and total liabilities of less than 20 billion yen)		Large companies (joint stock corporations with capital of 500 million yen or more or total liabilities of 20 billion yen or more)		
		Kabushiki Joto Seigen Kaisha (joint-stock corporations subject to restrictions on the transfer of issued shares)	Kokai Kaisha (publicly traded joint-stock corporations that are not Kabushiki Joto Seigen Kaisha)	Kabushiki Joto Seigen Kaisha (joint-stock corporations subject to restrictions on the transfer of issued shares)	Kokai Kaisha (publicly traded joint-stock corporations that are not Kabushiki Joto Seigen Kaisha)	
Committee established	Directors	No.	Appointment of 3 or more required			
		Term	1 year			
	Board of directors (3 or more directors)		Establishment required			
	Representative director		Appointment not possible			
	Executive	No.	Appointment of 1 or more required. Appointment of representative executive officer if 2 or more 1)			
		Term	1 year			
	Auditors		Appointment not possible			
	Board of auditors (3 or more auditors)		Appointment not possible			
	Accounting auditor	Appointment	Required			
		Term	1 year			
	Accounting councilor	Appointment	Possible (prepares financial statements in collaboration with directors)			
		Term	1 year			
	Auditors committee		Establishment required (for auditing, etc. of performance of duties by executive officers). Consists of 3 or more directors, of which at least half must be outside directors			
	Nominating committee		Establishment required (to decide on proposed appointment and dismissal of directors for submission to the general meeting of shareholders) Consists of 3 or more directors, of which at least half must be outside directors			
	Benefit committee		Establishment required (to determine compensation of executive officers, etc.). Consists of 3 or more directors, of which at least half must be outside directors			

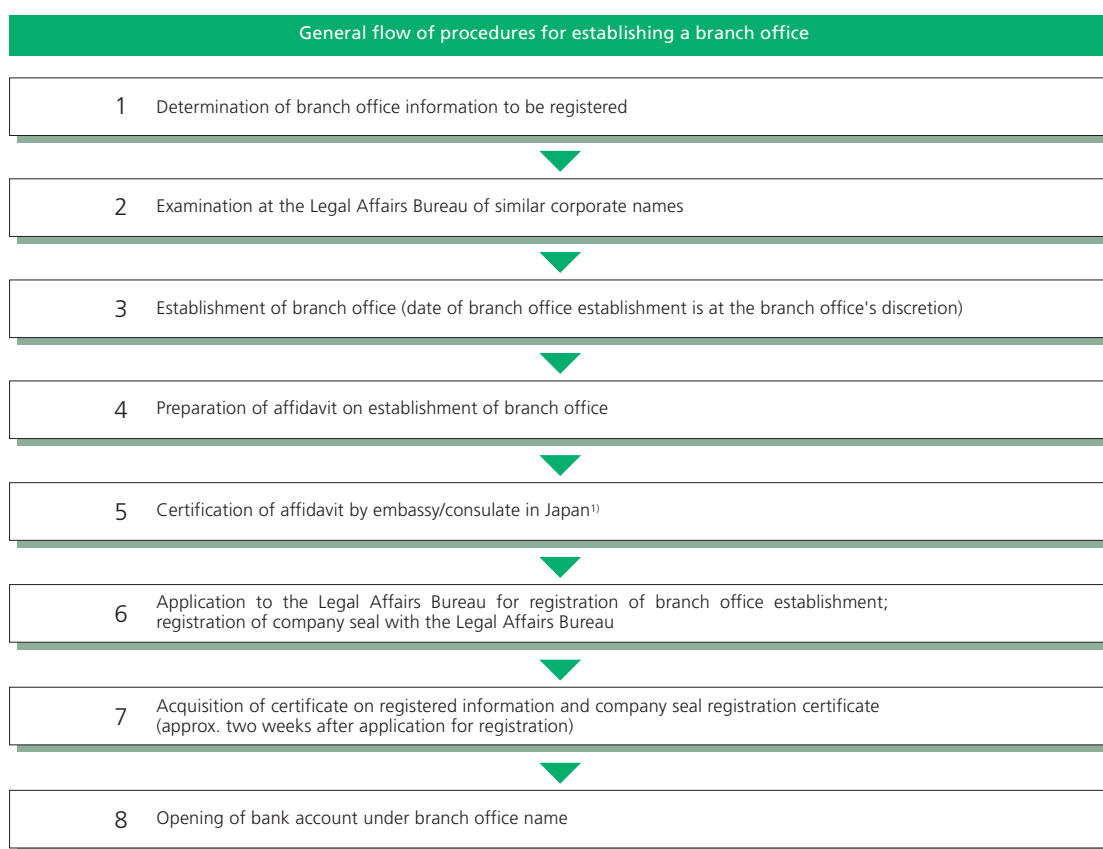
1) At least 1 executive officer with the right of representation must have an address in and reside in Japan.

1.3 Procedures for registering establishment

1.3.1 Registration of establishment of a branch office

A branch office may begin business operations after registering its establishment with the Legal Affairs Bureau; branch offices of foreign companies must register in accordance with the registration requirements for Japanese corporations of most similar form to that of the foreign company. In order to select the most similar form of Japanese corporations and to determine the information to be registered, reference should be made to the foreign company's articles of incorporation, establishment certificate, registration certificate, and other such documentation. Once the details of the branch office to be registered—the address of the branch office, the representative in Japan, the date of establishment of the branch office and the disclosure method for balance sheets—are determined, the information that must be registered can be ascertained.

Document(s) certifying the information to be registered must be submitted when applying for registration of the establishment of a branch office, and the certified document(s) must be issued by the competent authorities in the home country of the foreign company. It is often convenient to use an "affidavit" on information for registration certified by that country's embassy/consulate in Japan ¹⁾.



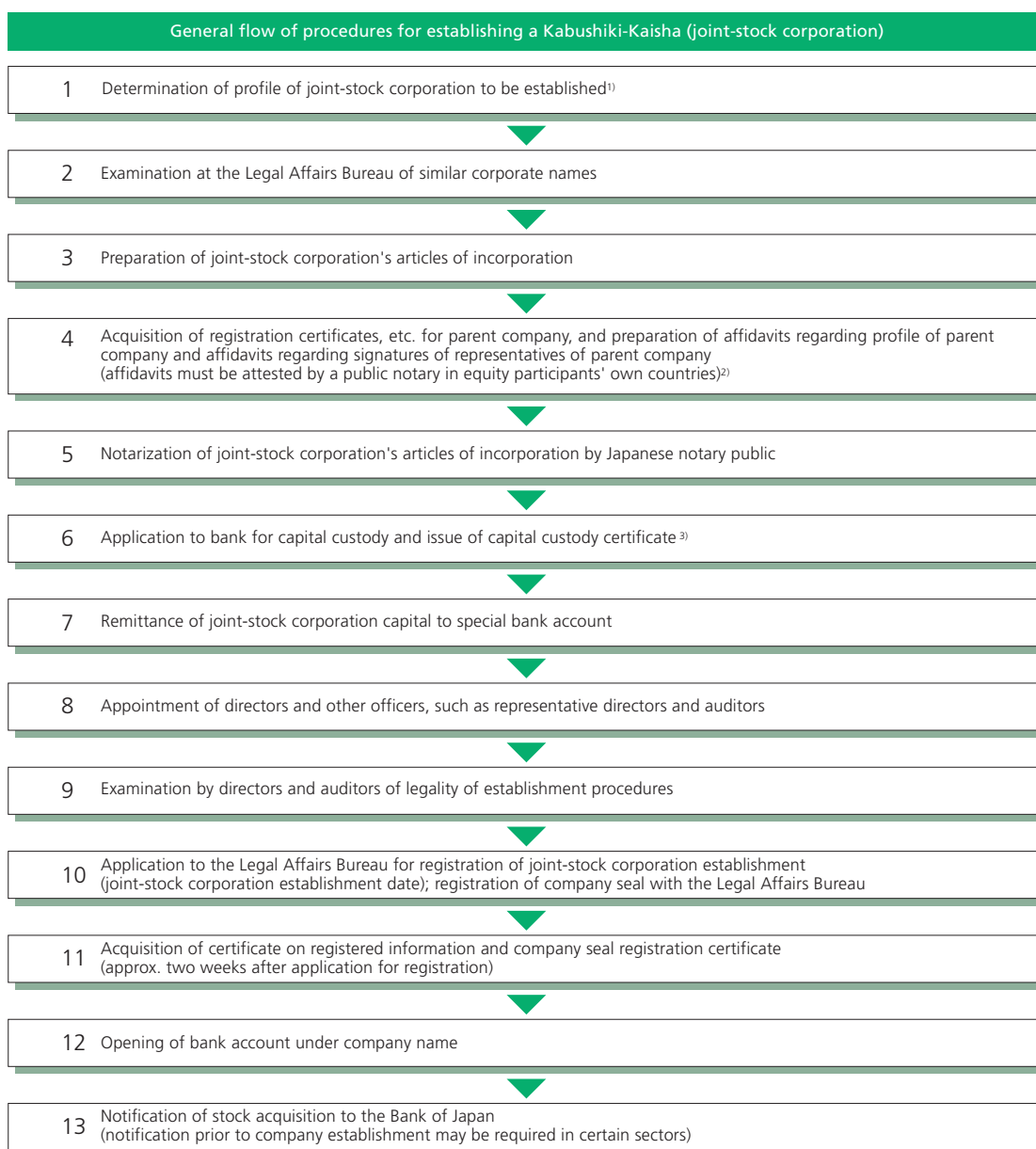
(Note) Time required: about one month after determination of branch office information to be registered

1) If your embassy does not provide notary services, certification by a public notary in your home country is required.

1.3.2 Registration of establishment of a subsidiary company

Subsidiary companies are established through registration with the Legal Affairs Bureau. The application date for registration will also be the date of establishment, and the company may carry out business operations from that date. Some of the documents needed for the subsidiary establishment procedures should be prepared in the home country of the foreign company: document(s) certifying the profile of the foreign company, document(s) certifying the representative authority of the foreign company's representative and document(s) certifying the authenticity of the signature of the foreign company's representative.

The foreign company's articles of incorporation, establishment certificate, registration certificate and other official documents as well as an affidavit notarized by a notary public in the home country of the foreign company are ordinarily used. These documents will be required in completing the procedures for certifying the subsidiary company's articles of incorporation in Japan. These documents may also be needed when requesting a financial institution in Japan to take custody of the subsidiary's capital and issue a capital custody certificate. The capital custody certificate is a certificate issued by a financial institution when the full amount of the subsidiary's capital has been remitted to a special account specified by the financial institution asked to take custody. The certified articles of incorporation and the capital custody certificate will both be needed when applying for registration of company establishment.



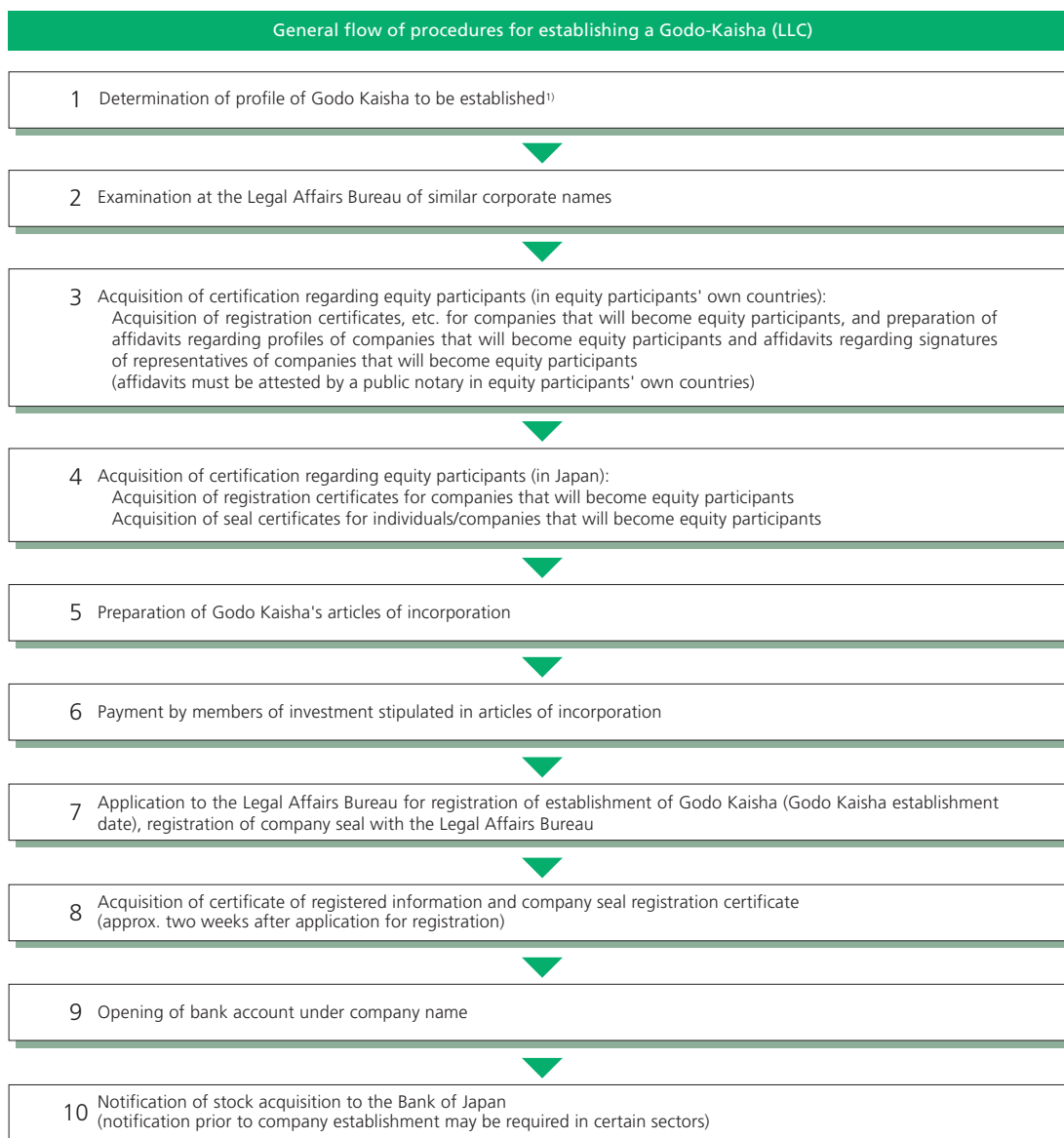
(Note) Time required: about two months after determination of profile of company to be established

1) This profile should contain information including the following: trade name, location of head office, business objectives, business year, amount of capital, issue price of shares, existence of provisions restricting transfer of shares, existence of board of directors, names of directors and representative directors, terms of directors, names of equity participants, and values of their investments.

2) If an individual or corporation with an address in Japan is the promoter of a joint-stock corporation and a foreign enterprise is the underwriter of shares in that corporation when it is established (such a situation is called a "formation with outside offering," or *Boshu Setsuritsu*), affidavits regarding the parent companies may not be required. While in this case shares issued when the joint-stock corporation is established are shared by the promoter and foreign enterprise, the joint-stock corporation may be made a 100% subsidiary of the foreign enterprise by subsequently transferring the shares held by the promoter.

3) If a joint-stock corporation is incorporated with the joint equity participation of an individual or corporation with a bank account in Japan, it may not be necessary to apply to a bank for capital custody and issuance of a capital custody certificate. In this case, it is sufficient for the capital to be paid into the joint equity participant's bank account in Japan, and for documentary evidence to be submitted by the representative director of the joint-stock corporation in place of a bank-issued capital custody certificate in order to certify that payment of the full amount of capital has been received.

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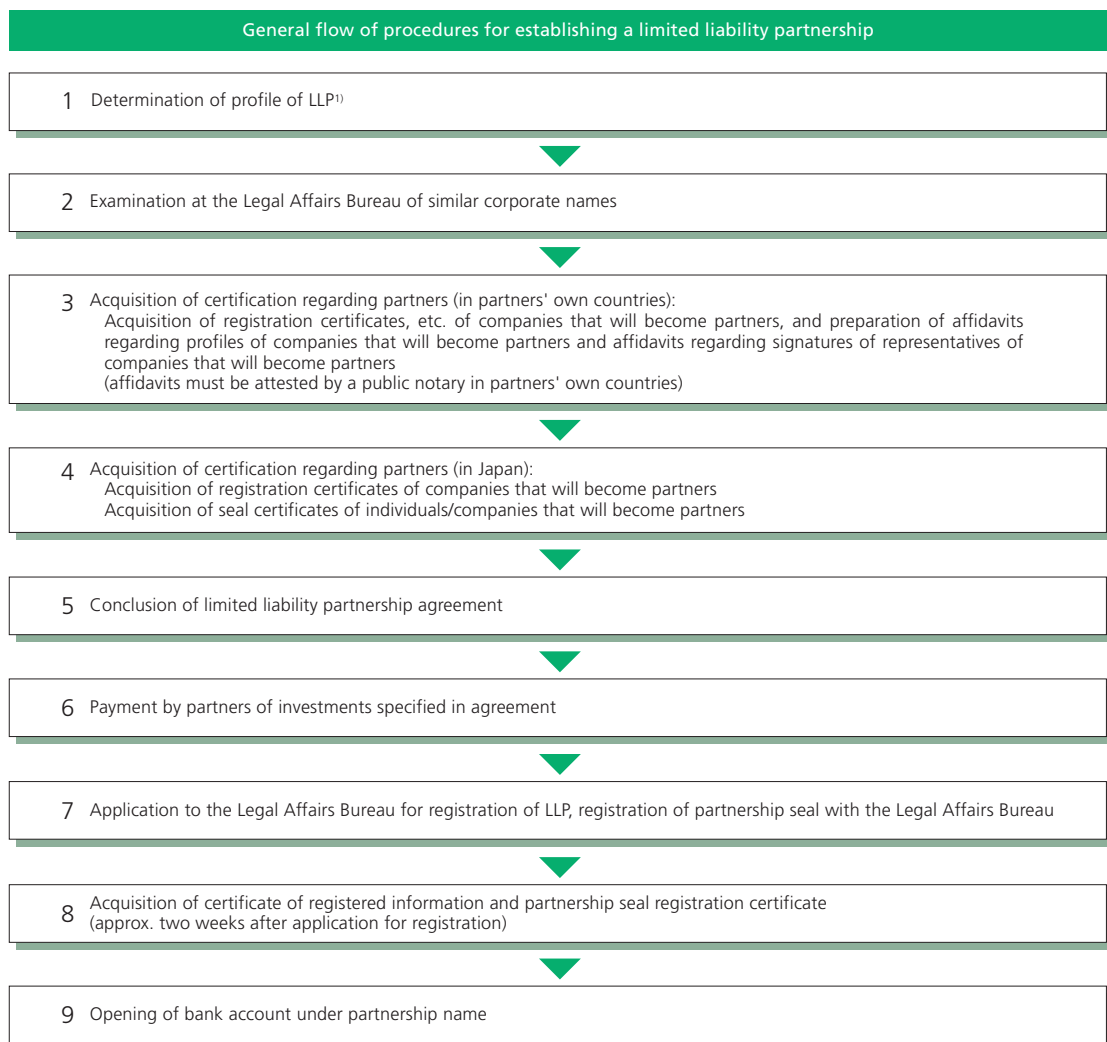


(Note) Time required: about one month after determination of profile of company to be established

1) This profile should contain information including the following: trade name, location of head office, business objectives, business year, amount of capital, names of members (equity participants) and values of their subscriptions, names of representative members, and names of executive officers (representative members in the case of a corporation).

1.3.3 Registration of establishment of limited liability partnership

A limited liability partnership is formed when two or more individuals or corporations conclude a limited liability partnership agreement, pay the investment specified in the agreement, and register the entity thus established. As the law does not describe in detail how LLPs should operate, unlike in the case of joint-stock corporations, details are laid down in LLP agreements. Accordingly, finalizing the content of the LLP agreement is the most important stage in the process of establishment of an LLP. Furthermore, as a partnership must be established in partnership with an individual resident in Japan or a Japanese corporation, several documents need to be prepared in both Japan and the country of the foreign party.



(Note) Time required: about one month after determination of profile of partnership to be established

1) This profile should contain information including the following: name of partnership, location of business establishment, business objectives, business year, names of members and their investments, date of entry into effect of the LLP agreement, and period of existence.

1.4 Information listed in articles of incorporation

Articles of incorporation list "absolute matters" and "relative matters." Absolute matters are matters that must be stated for the articles of incorporation to be valid, and relative matters are matters that do not have legal effect unless stated in the articles of incorporation.

1.4.1 Matters listed in articles of incorporation of Kabushiki-Kaisha (joint-stock corporations)

- Absolute entries
Purpose, trade name, place of principal office, value or minimum amount of assets contributed at time of incorporation, name and address of each promoter
- Main relative entries
Names of persons contributing in kind, assets to be contributed, value of the assets, and number and type of shares assigned therefore; assets to be taken over after the coming into existence of the corporation, value thereof, and name of transferor; incorporation expenses incurred by the corporation; appointment of auditor(s); appointment of board of directors; rules on allocation of profits

1.4.2 Matters listed in articles of incorporation of Godo-Kaisha (limited liability companies)

- Absolute entries
Purpose, trade name, place of principal office, names and addresses of members, statement that all members are limited liability members, and the purpose and value of members' contributions
- Relative entries
Relative entries may be freely determined provided that they do not contravene the Corporate Law

1.4.3 Limited liability partnerships (LLPs)

- Absolute entries in partnership agreements
Business, name, location of office, names and addresses of partners, date of entry into effect and duration of partnership agreement, purpose and value of partners' contributions, and accounting year of partnership
- Main relative entries in partnership agreements
Statement that unanimous agreement of partners is not required for alterations to the partnership agreement, statement that unanimous agreement of partners is not required for decisions on conduct of business

1.5 Certificate on registered company information and company seal registration certificate

Once registration of establishment has been completed for a Japanese branch office or a subsidiary company, a certificate on registered company information can be obtained from the Legal Affairs Bureau. The certificate on registered company information is a document officially certifying a company's registered information.

The principal information to be registered for a joint-stock corporation is as follows:

- Corporate name
- Location of head office
- Business purposes
- Method of giving public notice
- Total number of shares to be issued
- Types and numbers of outstanding shares
- Rules on the limitation of transfer of shares
- Amount of capital
- Directors and dates of appointment
- Representative directors and dates of appointment
- Auditors and dates of appointment
- Date of company establishment

The certificate on registered company information must ordinarily be presented whenever opening a bank account, filing notifications with administrative authorities, purchasing assets for which name registration is required (real estate, securities, vehicles, telephone lines, etc.), and concluding important agreements with business partners.

On certain occasions, the company seal registration certificate will need to be submitted along with the certificate on registered company information. The company seal registration certificate is a document publicly certifying the company seal that has been registered. This certificate is used to confirm whether or not company seals placed on applications, filings, contracts, etc., have been placed there with legitimate authorization from the company; the certificate may be obtained from the Legal Affairs Bureau after completion of establishment registration. The company seal as well as the names of the persons authorized to use the seal must be registered with the Legal Affairs Bureau when applying for establishment registration. The representatives of the branch office/subsidiary company are the only parties authorized to use the company seal, and their personal seal registration certificates or signature certificates must be presented when registering the company seal.

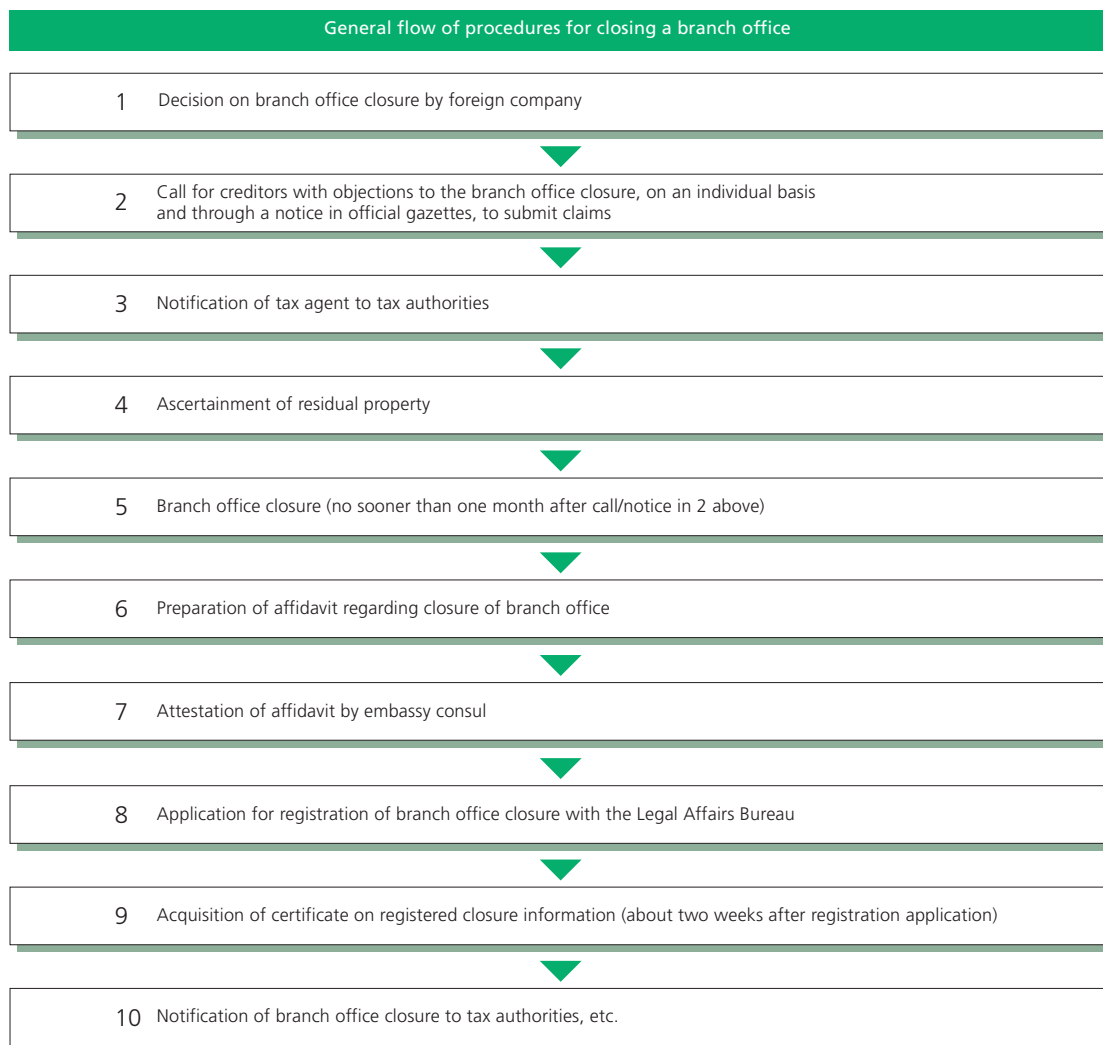
In the event of changes to the registered information or the company seal, the prescribed modification procedures must be completed promptly. Applications for registration of changes to registered information must be submitted to the Legal Affairs Bureau within two weeks of the changes for subsidiary companies, and within three weeks of the changes for branch offices.

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1.6 Closure of branch offices or subsidiary companies

1.6.1 Closure of a branch office

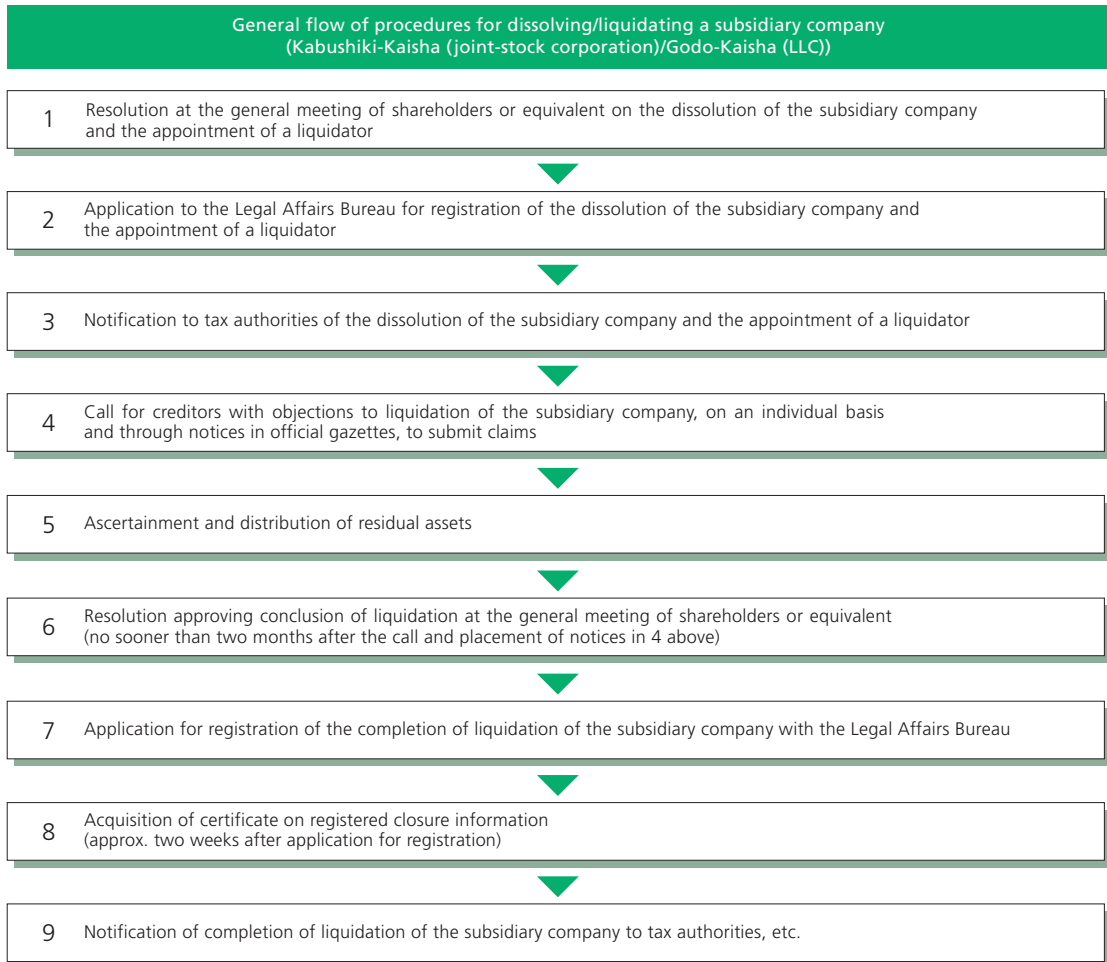
The following procedures must be completed to close a branch office. Creditors of the branch office must be given a period of no less than one month prior to the closure to submit objections to the closure of the branch office.



These procedures for closing a branch office must also be completed when upgrading a branch office to a subsidiary company. Because a branch office cannot be directly reorganized into a joint-stock corporation (Kabushiki-Kaisha (K.K.)) or a limited liability company (Godo-Kaisha (LLC)), the branch office closure procedures and the subsidiary company establishment procedures must be carried out simultaneously. In such instances, however, the branch office's assets may be passed on to the subsidiary through investment in kind.

1.6.2 Dissolution and liquidation of a subsidiary company

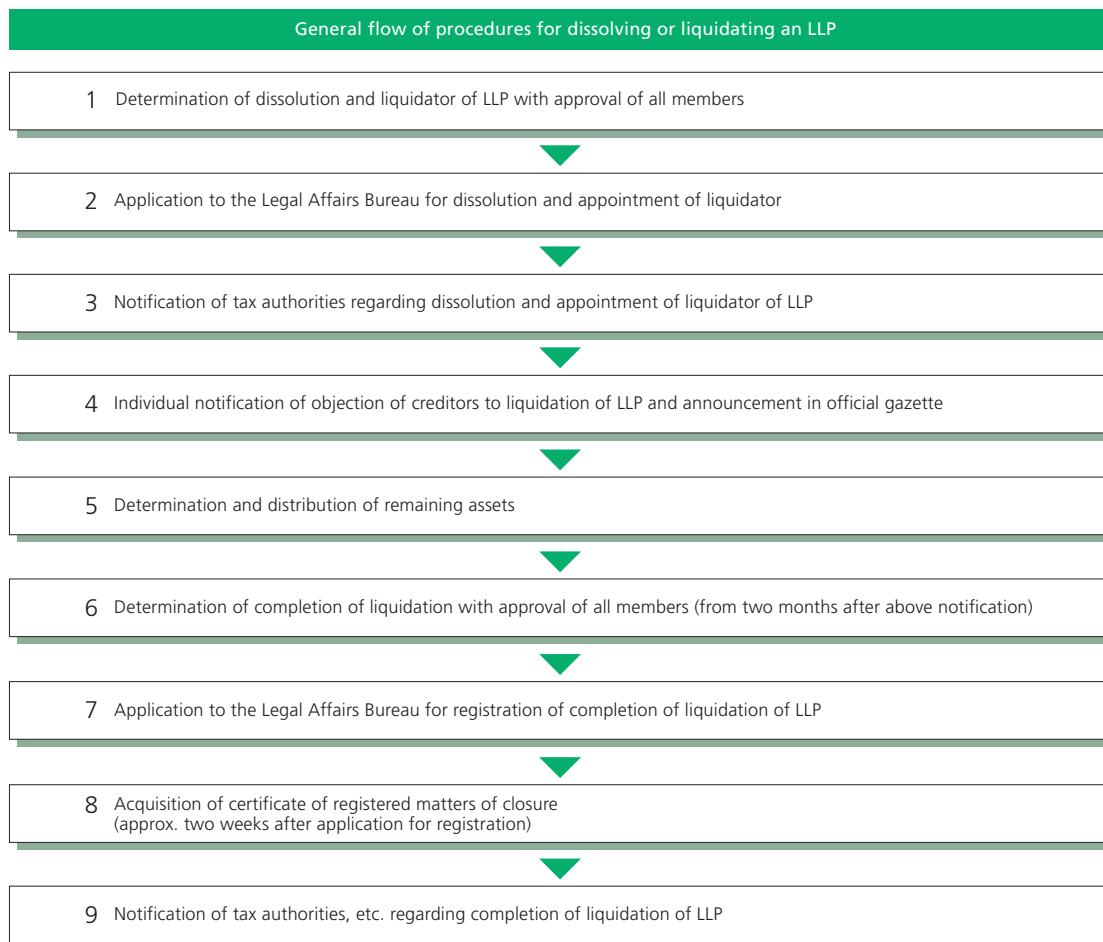
The following procedures must be completed when dissolving/liquidating a subsidiary company. Creditors of the subsidiary company must be given a period of no less than two months prior to the liquidation to submit objections to the liquidation of the subsidiary company. Should the subsidiary company have negative net assets, the corporation cannot independently complete the liquidation procedures below but instead must follow special liquidation procedures under the direction of a court.



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1.6.3 Dissolution and liquidation of limited liability partnerships

In the case of the dissolution or liquidation of an LLP, the following procedures must be followed. As in the case of the dissolution or liquidation of a Japanese corporation, it is necessary to provide a period of at least two months for creditors to lodge objections regarding liquidation.



Reference

1. Consultation with specialists on business establishment

Attorneys, judicial scriveners and administrative scriveners (gyoseishoshi lawyers) are among the specialists who may be consulted on the establishment of branch offices and companies. These specialists can be asked to prepare various documents on a client's behalf (e.g., documentation related to the establishment of Japanese branch offices and Japanese corporations, transfers of location, changes of executives, changes of business purposes, increases in capital, organizational changes, mergers, dissolution, etc.). Commercial registration applications for submission to the Legal Affairs Bureau are the exclusive province of judicial scriveners and attorneys.

2. Procedures for establishing a representative office

Representative offices aimed at the collection and provision of information may be freely established without any registration requirements under the Japanese Commercial Code; no notification need be provided to tax offices, as representative offices do not engage in business operations in Japan and thus are not subject to corporate tax. However, representative offices established by foreign banks, insurance companies, securities companies, or other financial institutions are exceptions; prior notification must be provided to the Financial Services Agency for such representative offices (as stipulated in the Banking Law, Securities Exchange Law and other laws).

A bank account opened by a representative office will ordinarily be registered jointly in the name of the office and an individual representative, as in "(name of representative), Japan Representative Office, (name of company)." The documentation generally required for a representative office to open a bank account is as follows:

- Passport of representative
- Certificate of alien registration of representative
- Company brochure
- Leasing agreement
- Bank seal

SECTION 2 Visas and Status of Residence

2.1 Entry procedures

Any foreign national wishing to enter Japan must have a valid passport, which, in principle, contains a visa corresponding to his/her purpose of entry into Japan obtained in advance from a Japanese embassy, consulate or other Japanese diplomatic mission abroad (hereinafter, "Japanese diplomatic mission abroad"). Upon landing in Japan, the foreign national must then be screened by, and receive a landing permission stamp from, an immigration officer at the port of entry, who will decide on the foreign national's status of residence and period of stay (however, as discussed later in 2.6 and 2.8 below, this visa requirement does not apply to entry by nationals of countries with which Japan has reciprocal visa exemption arrangements for temporary visitor visa or to entry by foreign nationals having re-entry permission).

2.2 Relation between visa and status of residence

Within the context of entry and residence procedures, visa and status of residence are two terms easily and often confused. The two differ as follows:

2.2.1 Visa

A visa is a recommendation required for entry into Japan received in advance from a Japanese diplomatic mission abroad that certifies that the passport is a valid passport and that there are no impediments to allowing the passport holder to enter Japan within the scope of that visa (however, as discussed later in 2.6 and 2.8 below, this visa requirement does not apply to entry by nationals of countries with which Japan has reciprocal visa exemption arrangements for temporary visitor or to entry by foreign nationals having re-entry permission).

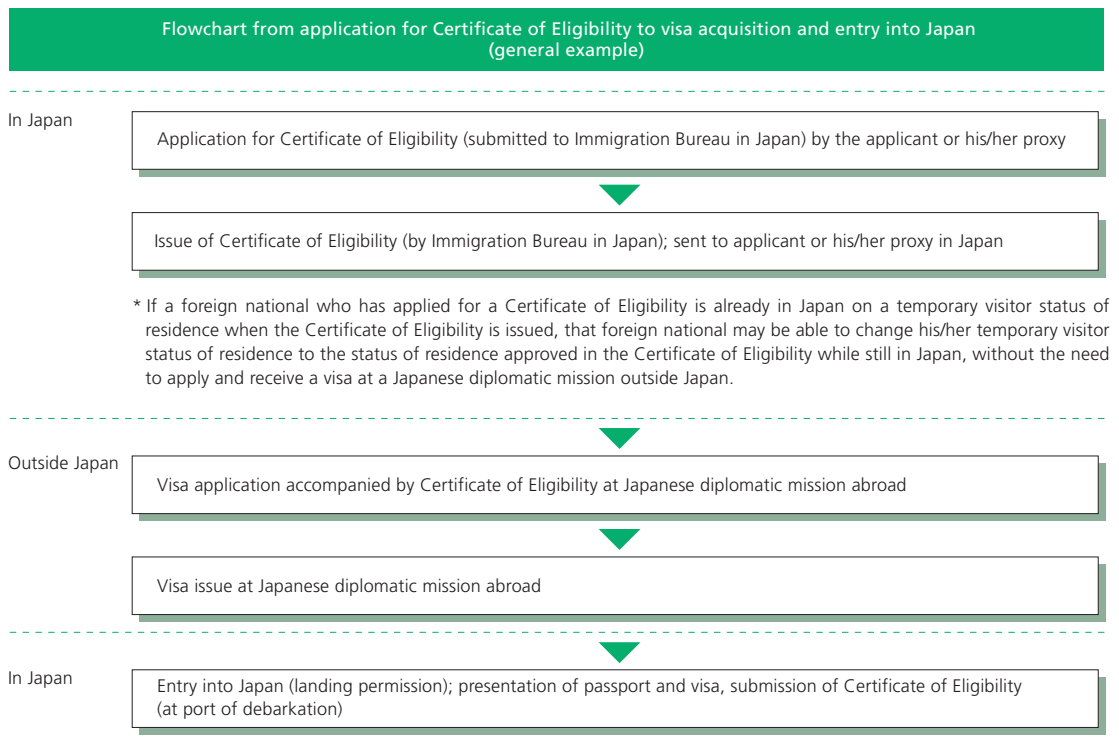
2.2.2 Status of residence

Foreign nationals entering and residing in Japan must generally receive landing permission upon arriving at their port of entry, at which time their status of residence in Japan will be determined. In other words, the status of residence constitutes the grounds on which a foreign national is permitted to stay in Japan; it is a qualification enabling the foreign national to carry out the activities stipulated in the Immigration Control and Refugee Recognition Act and to reside in Japan for the purpose of carrying out those particular activities. The scope of activities in which a foreign national may engage during his/her stay in Japan is determined according to his/her status of residence. Except where a permit to engage in an activity other than that permitted by the status of residence is obtained, the foreign national must not, in principle, engage in any activities generating an income other than those permitted by his/her status of residence.

2.3 Process from acquisition of Certificate of Eligibility to acquisition of visa

Visas are applied for and received at Japanese diplomatic missions abroad. However, Japanese diplomatic missions abroad may be unfamiliar with circumstances in Japan, leading to delays and other difficulties in screening applications for long-term stay visas such as those for foreign nationals seeking to work in Japan. In light of this, the Immigration Bureau in Japan often screens these applications to determine whether or not the activities intended by the foreign national wishing to enter and reside in Japan correspond to the conditions for the visa being sought; if it is determined that these activities do in fact meet the visa conditions, a Certificate of Eligibility is issued. If this Certificate of Eligibility is presented to a Japanese diplomatic mission abroad together with a visa application, the conditions for entry/residence will ordinarily be deemed satisfied and a visa promptly issued. A Certificate of Eligibility is not applicable to temporary visitor visa.

A Certificate of Eligibility need not be obtained in all cases when applying for a visa to work in Japan; for example, depending on the scale of the company by which the foreign national will be employed, applications for visas can sometimes be submitted directly to the Japanese diplomatic mission abroad.



2.4 Types of working statuses

2.4.1 Principal working statuses related to investment in Japan

Below are shown the principal statuses of residence related to investment in Japan and the activities authorized in Japan for each status (excerpted from the website of the Japanese Ministry of Justice; please refer to <http://www.moj.go.jp/ENGLISH/information/icrr-23.html> for information on other statuses, etc.).

Table 2-1

Investor/Business Manager	① A person who invests in, commences and operates a business in Japan, ② a person who operates a business in Japan on behalf of the foreign nationals or foreign corporations that invested in and commenced that business (the chief executive officer or representative director responsible for that business), or ③ a person engaged in the management of a business in Japan on behalf of the foreign nationals or foreign corporations that invested in and commenced that business (e.g. a director or department manager employed in the management of that business under the chief executive officer or representative director).
Legal/Accounting Services	Activities to engage in the legal or accounting business. An applicant must be a foreign attorney, a foreign certified public accountant or those with some other legal qualifications.
Engineer	Activities to engage in services that require technology and/or knowledge pertinent to physical science, engineering, or other natural science fields, on the basis of a contract with a public or private organization in Japan.
Specialist in Humanities/International Services	Activities to engage in services that require knowledge pertinent to jurisprudence, economics, sociology or other human science fields, or to engage in services that require specific ways of thought or sensitivity based on experience with foreign culture, on the basis of a contract with a public or private organization in Japan.
Intra-company Transferee	Activities on the part of personnel who are transferred to business offices in Japan for a limited period of time from business offices that are established in foreign countries by public or private organizations which have head offices, branch offices or other business offices in Japan and who engage at the business offices in the activities described under "Engineer" or "Specialist in Humanities/International Services."
Skilled Labor	Activities to engage in services that require industrial techniques or skills belonging to special fields, on the basis of a contract with a public or private organization in Japan.

2.4.2 Documentation needed when applying for a Certificate of Eligibility

The following documentation is generally needed when applying for a Certificate of Eligibility for all working statuses:

- ① Application for Certificate of Eligibility
- ② One full-face photograph (4 cm in height x 3 cm in width)
- ③ Return-mail envelope (with 380 yen postage affixed)
- ④ Document certifying academic qualifications (may not be necessary in some cases)
- ⑤ Curriculum vitae (may not be necessary in some cases)
- ⑥ Certified copy of the company register of a Japanese company
- ⑦ Company brochure of a Japanese company
- ⑧ Financial statements or business plan of a Japanese company

In addition to the above, submission of a copy of an employment agreement, certificate of employment, foreign company's business brochure, business license, and similar documents will be required depending on the type of status of residence.

2.4.3 Documentation needed when applying for a working visa

The following documentation is generally needed when applying for a working visa at a Japanese diplomatic mission abroad after a Certificate of Eligibility has been issued:

- ① Application for visa
- ② Passport
- ③ Certificate of Eligibility
- ④ Full-face photograph (1-2 photos, 4.5 cm in height x 4.5 cm in width)

2.4.4 Relation between type of operation in Japan and status of residence

A foreign company can establish a business presence in Japan in one of four ways, as described in 1.1 "Types of operation in Japan". Typically, however, companies do so by establishing a representative office, branch, or subsidiary company. The relationship between each of these types of operation and the status of residence of their representatives is determined by the conditions and criteria for each status, but the following is generally likely to be applicable:

Representative of representative office/branch — "Intra-company Transferee"

Representative of subsidiary company — "Investor/Business Manager"

The status of residence of foreigners (except persons falling under the category of "Investor/Business Manager") employed by a representative office, branch or subsidiary company will be "Intra-company Transferee" or other statuses matching each employee's academic/work record and the nature of his/her work in Japan ("Specialist in Humanities/International Services," "Engineer," etc.).

2.5 Temporary visitor visa and status

Temporary visitor status covers tourism, recuperation, sports, visits to relatives, field trips, participation in short courses or meetings, business liaison and similar activities undertaken staying temporarily in Japan. Holders of temporary visitor status may not engage in working activities. Some concrete examples of the type of person involved in business who would be covered by this status are as follows:

- Persons staying in Japan for the purpose of field trips and inspections (e.g. plant tours and trade fair visits)
- Persons participating in short courses and briefings organized by companies
- Persons participating in conferences and other meetings
- Persons sent to Japan for business liaison, business negotiations, contract signing, after-sales service, advertising or publicity, market research or other short-term business activities

Market research and other activities in preparation for investing in and commencing a business in Japan are normally considered to fall under temporary visitor status. There are three periods of stay permitted under temporary visitor status: 90 days, 30 days and 15 days.

2.6 Reciprocal visa exemptions for temporary visitor

The countries listed on the website of the Ministry of Foreign Affairs of Japan have concluded reciprocal visa exemption arrangements with Japan, and nationals of these countries wishing to engage in activities that fall within the scope of a temporary visitor are not required to receive a visa to enter Japan. However, these visa exemption arrangements will naturally not apply to foreign nationals intending to work or engage in other activities for compensation.

·List of countries that have visa exemption arrangements with Japan

http://www.mofa.go.jp/j_info/visit/visa/02.html#a (on the website of the Ministry of Foreign Affairs of Japan)

2.7 Alien registration

Foreign nationals residing in Japan longer than a stipulated period must complete alien registration in accordance with the provisions of the Alien Registration Law.

2.7.1 Purpose of alien registration

The Alien Registration Law is designed to establish clearly the residence and identity of foreign nationals residing in Japan through alien registration. This registration provides data used for administering immigration control as well as education, welfare, medical care and other services available to foreign nationals.

2.7.2 Foreign nationals required to register

Foreign nationals must apply for alien registration at the municipal office in the city, ward, town or village in which they reside within 90 days of entering Japan (except when re-entering Japan on a re-entry permit) or, for foreign nationals born in Japan, within 60 days of their birth. However, foreign nationals departing Japan within 90 days of their landing date, and those born in Japan departing within 60 days of birth, are not required to apply for registration.

2.7.3 Jurisdiction and method of application

The application process for alien registration must be completed at the municipal office in the city, ward, town or village in which the foreign national resides. For the new registration applicant must provide the required information in an Application for Alien Registration, available at the municipal office, and submit this form together with his/her passport and two full-face photographs (photographs not required for persons less than 16 years of age). As a general rule, the foreign national must personally appear at the municipal office to complete these registration procedures. However, if the foreign national is less than 16 years of age or is unable to complete the procedures personally due to illness or other physical disability, a family member or relative (unless less than 16 years of age) living with that foreign national may complete registration on his/her behalf.

2.8 Re-entry permission

2.8.1 What is re-entry permission?

A foreign national residing in Japan who wishes to leave Japan temporarily within his/her permitted period of stay and, after traveling to his/her home country or a third country, to enter and reside in Japan again with the same status of residence as before needs to apply for and receive re-entry permission. Under this system, a foreign national who receives re-entry permission before leaving Japan does not need to apply for an entry visa again at a Japanese diplomatic mission abroad prior to re-entering Japan, and can reside in Japan after re-entry with the same status of residence held prior to leaving Japan. Please note that departing Japan without receiving this re-entry permission will result in forfeiture of the status of residence and the period of stay previously granted.

2.8.2 Types of re-entry permits

There are two types of re-entry permits: single re-entry permit, which allows only one re-entry into Japan during the period of validity, and multiple re-entry permit, with which one can leave and re-enter Japan any number of times during the period of validity. Multiple re-entry permit is especially convenient for those persons who must often travel back and forth between Japan and the parent company or other foreign business locations. It is not possible to obtain re-entry permission exceeding the permitted period of stay in Japan. In addition, persons staying in Japan on a temporary visitor status of residence are not normally eligible for re-entry permission.

2.8.3 Application method

As a general rule, the foreign national must personally appear at the Regional Immigration Bureau (or branch office thereof) having jurisdiction for the location in which he/she resides to apply for re-entry permission. However, if the foreign national is under the age of 16 or is unable to appear personally due to illness or some other reason, a parent or spouse may apply on his/her behalf. The applicant also need not appear personally at the Immigration Bureau if applying through an application agent who has been authorized by the Immigration Bureau or has registered with the Immigration Bureau as an application agent.

2.8.4 Necessary documentation, fees, etc.

- Application for re-entry permission
- Passport (re-entry permit will be delivered into the passport)
- Alien registration card
- Payment of fees through the purchase of revenue stamps
 - 3,000 yen for single re-entry permit
 - 6,000 yen for multiple re-entry permit

2.9 Family members accompanying working foreign nationals

Spouses and children dependent on working foreign nationals are granted a "Dependent" status of residence and are permitted to engage in the day-to-day activities of a dependent spouse or child of a working foreign national residing in Japan. Activities such as attendance at school fall within the scope of activities of a "Dependent," but work for compensation is in principle prohibited; part-time work (in principle no more than 28 hours per week) is possible if permission to engage in activities other than that permitted under the status of residence previously granted is received.

Applications for Certificates of Eligibility and subsequent visa for "Dependents" may be submitted at the same time as those applications for the working foreign national, but applications for "Dependents" may also be submitted after the working foreign national has first received status of residence to work in Japan.

2.10 Extension of period of stay and change of status of residence

2.10.1 Extension of period of stay

The period of stay is decided together with the status of residence when the foreign national lands in Japan or changes his/her status of residence, and the foreign national may only reside in Japan for this stipulated period of stay.

Consequently, a foreign national wishing to continue the same activities in Japan with his/her present status of residence beyond this stipulated period of stay must apply for an extension of this period of stay no later than the last day of that period of stay. Extensions will not be granted if the purpose of the stay has already been completed or there are other problems connected with the status of residence.

Applications for extensions of periods of stay may ordinarily be submitted up to two months before the expiration date of the period of stay. The period of stay for working statuses, except for certain statuses including "Entertainers" engaged in artistic activities, "Diplomats," "Officials," and "Designated Activities," will be either one year or three years.

2.10.2 Change of status of residence

A foreigner residing in Japan who wishes to cease the activities in which he/she is currently engaged and to engage exclusively in activities belonging to a status of residence other than that which he/she presently holds must apply and receive permission for a change of status of residence. For example, a foreign national dispatched from a parent company in a foreign country to a subsidiary in Japan and currently residing in Japan on an "Intra-company Transferee" status of residence who wishes to resign from the company to which he is dispatched and to invest in and operate his own company needs to apply and receive permission for a change to "Investor/Business Manager" status of residence. Applications for a change in status of residence are not automatically approved, and permission will not be granted if the new activities do not correspond to the requirements and criteria of the status of residence sought.

Reference

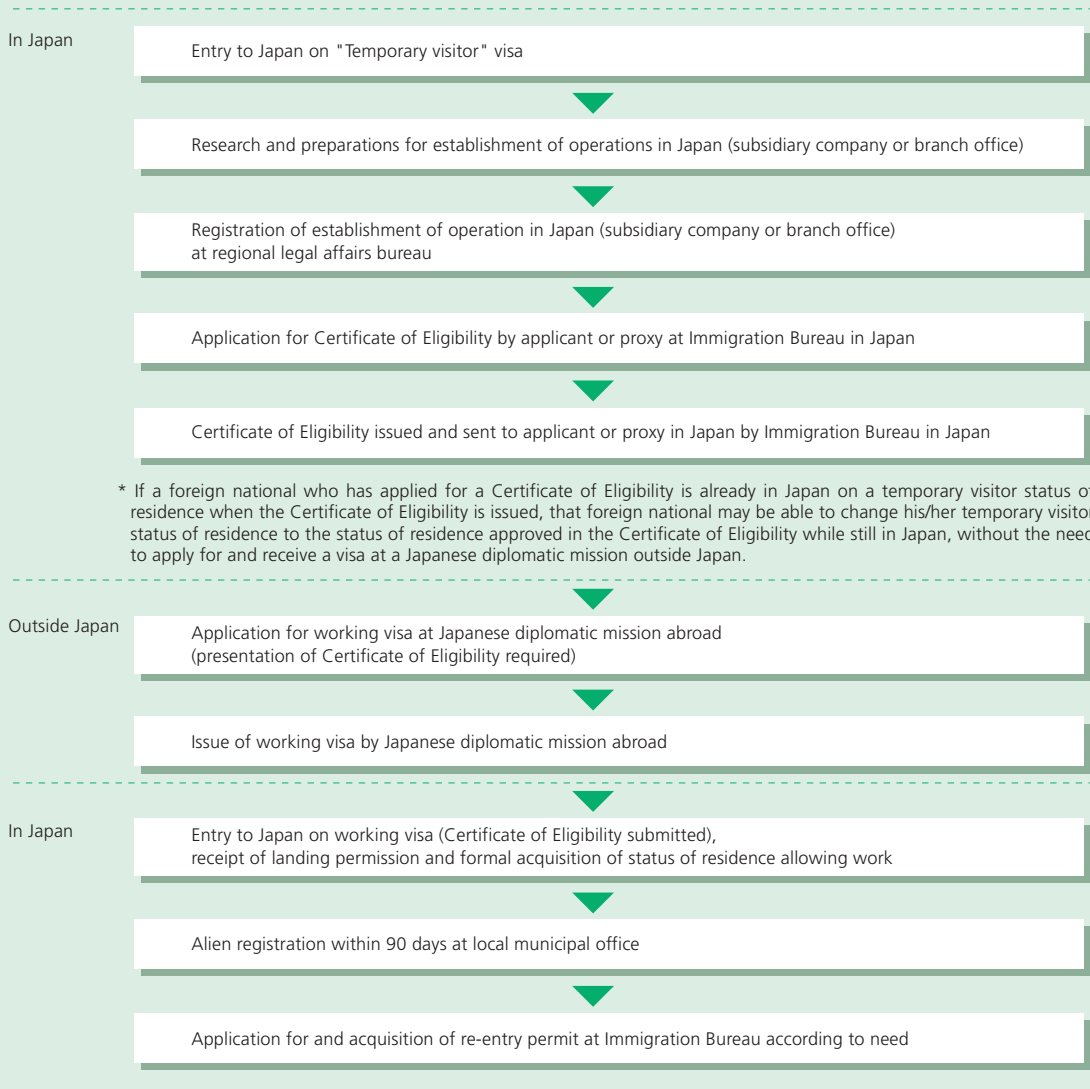
1. Consultation with specialists for procedures

In Japan, administrative scriveners (gyoseishoshi lawyers) are among the specialists who can provide advice on the immigration procedures described above.

Administrative scriveners that have registered with the Immigration Bureau to serve as application agents are knowledgeable on immigration control procedures and can act as agents for the submission of applications to the Immigration Bureau for certificates of eligibility, extensions of period of stay, changes of status of residence, and re-entry permissions, etc. (As individual administrative scriveners work in distinct specialties within their broad-ranging profession, not all administrative scriveners are registered in this way to act as application agents). Administrative scriveners can also offer guidance on documents needed for applications, provide advice on preparing documents and, when necessary, can act as agent in preparing the documents. Use of these services exempts foreign applicants and companies employing foreigners from the need to appear personally at the Immigration Bureau and enable entry procedures to be proceeded accurately and promptly.

2. Flowchart of procedures for establishment of operations in Japan and acquisition of visa/status of residence

The following diagram depicts the sequence of procedures that are typically completed in order to establish and register the establishment of a new operation in Japan (subsidiary company or branch office) represented by a foreign national, along with the procedures for acquisition of a visa and status of residence.



3.1 Overview of Japanese tax system for investment in Japan

3.1.1 Neutrality of tax system with respect to mode of business presence (branch or subsidiary)

Corporations engaged in economic activities in Japan are subject to taxes in Japan on the profits generated by those economic activities. Steps have been taken, however, to ensure that the tax system does not impose unfair burdens on multinational corporations engaged in economic activities in Japan on the basis of the mode of their business presence in Japan. All income of corporations established in Japan is, as a rule, subject to taxation, regardless of where it was generated (i.e., the source country of income), but when that income includes profits earned in foreign countries that are taxed in the source countries of that income, foreign taxation deductions are available whereby taxes paid in a foreign country may within certain bounds be deducted from Japanese taxes owed for the purpose of eliminating double taxation between the source country of income and Japan. Measures have also been implemented to avoid international double taxation in Japan of foreign corporations' Japanese branches, among these being making only certain income generated within Japan subject to taxation in Japan.

3.1.2 Withholding at source and self-assessment/payment

Multinational corporations engaged in activities in Japan that earn income subject to taxation in Japan calculate and pay the taxes owed through withholding procedures or self-assessed income tax procedures according to their form of corporation and type of income.

3.2 Domestic-sourced income

The scope of taxable income for corporate tax differs by the mode of activity of a foreign corporation in Japan, as will be described later. For the purpose of determining the income of non-residents and foreign corporations subject to withholding tax, domestic-sourced income is defined as follows:

- ① Interest on public and corporate bonds, interest on savings and deposits derived from offices in Japan
- ② Interest on loans for business operations in Japan
- ③ Dividends on shares or securities investment trusts of domestic corporations
- ④ Consideration for use of real estate or similar property in Japan; rental of ships or aircraft to residents or domestic corporations
- ⑤ Salaries, wages, bonuses and other compensation for the provision of services in Japan
- ⑥ Retirement allowances and pensions for services rendered by residents
- ⑦ Consideration for the services of freelance professionals in Japan
- ⑧ Consideration for personal services rendered by entertainers, freelance professionals, technicians, etc.
- ⑨ Usage fees or consideration for transfers of patent rights, know-how, copyrights, etc., in connection with services in Japan
- ⑩ Usage fees for machinery and equipment in connection with services in Japan
- ⑪ Prizes offered in Japan for publicity/advertising purposes
- ⑫ Pensions paid on the basis of agreements concluded in Japan
- ⑬ Profit on redemption of discount bonds issued in Japan
- ⑭ Income resembling fixed-interest income
- ⑮ Certain income from the transfer of real estate in Japan
- ⑯ Distribution of profits in accordance with a silent partnership contract (Tokumei Kumiai contract) or other similar contracts concluded in Japan
- ⑰ Certain income other than the above derived from the management, ownership, or transfer of assets in Japan
- ⑱ Business income
- ⑲ Distribution of profits pursuant to a partnership agreement provided for by Civil Law, and other kindred partnership agreements

3.3 Overview of corporate income taxes (corporate tax, corporate inhabitant tax, enterprise tax)

3.3.1 Corporate income taxes and tax rates

The taxes levied in Japan on income generated by the activities of a corporation include corporate tax (national tax), corporate inhabitant tax (local tax), enterprise tax (local tax), and special local corporate tax (local tax) (hereinafter collectively referred to as "corporate taxes"). Except in instances requiring exceptional treatment, the scope of income subject to corporate inhabitant tax and enterprise tax is (including special local corporate tax; the same applies below) determined, and the taxable income calculated, in accordance with the provisions for corporate tax. Corporate inhabitant taxes are levied not only on income but also on a per capita basis using the corporation's capital and the number of its employees as the tax base. Corporations having paid-in capital of more than 100 million yen are subject to enterprise tax on a pro forma basis (see 3.3.11).

The income calculated for each business year is used as the tax base for determining these corporate taxes to be levied on a corporation's income. Other corporate taxes include corporate taxes on liquidation income and corporate taxes on reserves for retirement pensions, etc.

The tax rates for corporate tax, corporate inhabitant tax and enterprise tax on income (tax burden on corporate income) and per capita levy on corporate inhabitant tax for each taxable year are shown below (a small company in Tokyo is used as an example). The rates for local taxes may vary somewhat depending on the scale of the business and the local government under whose jurisdiction it is located.

Table 3-1 Tax burden on corporate income

Brackets of taxable income	Up to 4 million yen	Over 4 million yen to 8 million yen	Over 8 million yen
Corporate tax	18.00%	18.00%	30.00%
Corporate inhabitant taxes			
1. Prefectural	0.90%	0.90%	1.50%
2. Municipal	2.21%	2.21%	3.69%
Enterprise tax	2.70%	4.00%	5.30%
Special local corporate tax	2.30%	3.30%	4.30%
Total tax rate	26.11%	28.41%	44.79%
Effective tax rate	24.87%	26.48%	40.87%

(Note) The applicable period for the 18% corporate income tax rate is for business years ending between April 1, 2009 and March 31, 2011.

The rates for corporate inhabitant tax and enterprise tax are shown using Tokyo as an example.

The following conditions apply:

- The capital of the corporation is 100 million yen or less.
- Corporate tax amount is 10,000,000 yen or less and taxable income is 25,000,000 yen or less.
- Offices or factories located in up to two prefectures.

The following tax rates will apply for business year ending on or after April 1, 2011.

(Apply only to corporations meeting the above conditions.)

Brackets of taxable income	Up to 4 million yen	Over 4 million yen to 8 million yen	Over 8 million yen
Corporate tax	22.00%	22.00%	30.00%
Corporate inhabitant taxes			
1. Prefectural	1.10%	1.10%	1.50%
2. Municipal	2.70%	2.70%	3.69%
Enterprise tax	2.70%	4.00%	5.30%
Special local corporate tax	2.30%	3.30%	4.30%
Total tax rate	30.80%	33.10%	44.79%
Effective tax rate	29.33%	30.85%	40.87%

Table 3-2 Per capita levy on corporate inhabitant tax

Capital amounts		Employee number	Per capita levy
Over 5,000,000,000 yen	–	Over 50	3,800,000 yen
Over 1,000,000,000 yen	Or under 5,000,000,000 yen	Over 50	2,290,000 yen
Over 5,000,000,000 yen	–	Or under 50	1,210,000 yen
Over 1,000,000,000 yen	Or under 5,000,000,000 yen	Or under 50	950,000 yen
Over 100,000,000 yen	Or under 1,000,000,000 yen	Over 50	530,000 yen
Over 100,000,000 yen	Or under 1,000,000,000 yen	Or under 50	290,000 yen
Over 10,000,000 yen	Or under 100,000,000 yen	Over 50	200,000 yen
Over 10,000,000 yen	Or under 100,000,000 yen	Or under 50	180,000 yen
–	Or under 10,000,000 yen	Over 50	140,000 yen
–	Or under 10,000,000 yen	Or under 50	70,000 yen

3.3.2 Establishment of corporations/branches in Japan and tax notification

When a Japanese corporation or a branch office is newly established in Japan in accordance with Japanese law (i.e., where 3.3.4① applies), tax notification pertaining to start-up must be submitted to tax authorities within a prescribed period after establishment. Tax notification must also be submitted when a foreign corporation generates income subject to corporate tax in Japan without establishing a branch office (i.e., where 3.3.4③ applies) or when carrying out business activities through locations or parties meeting the conditions below instead of opening a branch office (i.e., where 3.3.4② applies).

Cases where a foreign corporation carrying out activities without establishing a branch office is required to submit tax notification:

- ① When construction, installation, assembly or other works, or control and supervision of such works extends for a period of more than one year.
- ② When engaging in business through certain agents, as described below:
 - Parties having and frequently exercising the authority to conclude business agreements on behalf of that foreign corporation.
 - Parties storing assets on behalf of that foreign corporation in a volume/quantity corresponding to the ordinary requirements of customers and delivering those assets in response to customers' requests.
 - Parties who regularly carry out an important portion of the work required for order acquisition, consultation and other activities aimed at the conclusion of business agreements solely or primarily on behalf of a foreign corporation.

3.3.3 Representative offices

The income derived from the activities of a "representative office" through which a foreign corporation engages in business in Japan is not considered taxable as long as the representative office is used only for functions that serve an auxiliary role in publicity/advertising, information provision, market surveys, basic research and other business activities of that corporation.

The income derived from the activities of an office or other place of business in Japan used by the foreign corporation only for the purchasing or the storage of assets is also not considered taxable.

3.3.4 Scope of income subject to corporate tax

Corporations established in Japan are subject to taxes in Japan on their worldwide income, whether earned in Japan or other countries. Corporations established in foreign countries are grouped into one of the following three tax classifications, and the aforementioned domestic-sourced income of these corporations is subject to corporate tax, corporate inhabitant tax and enterprise tax in Japan corresponding to their classifications. (Note, however, that corporations under category ③ are not subject to corporate inhabitant tax and enterprise tax.)

Relationship between a foreign corporation's mode of activity in Japan and its taxable income:

- ① Foreign corporations having a certain fixed place of business, such as a branch, sub-branch, business establishment, office, or factory in Japan.
 - All domestic-sourced income.
 - Representative offices described in 3.3.3 above that serve in an auxiliary capacity in corporations' business activities are not included among these locations.
- ② Foreign corporations conducting business through the locations or parties stipulated in 3.3.2. ① or ② above.
 - Business income, the domestic-sourced income described in 3.2. ④, ⑧, ⑮ and ⑰ above and other domestic-sourced income derived from business in Japan.
- ③ Foreign corporations not corresponding to either ① or ② above.
 - The domestic-sourced income described in 3.2. ④, ⑧, ⑮ and ⑰ above.

*Locations, sites, agents, and so on falling under ① and ② above are called "permanent establishments."

3.3.5 Calculation of income subject to corporate tax

The amount of income used as the tax base for corporate taxes on income for each taxable year is determined by making the necessary tax adjustments to corporate profits calculated using accounting standards generally accepted as fair and appropriate. Costs and expenses incurred in earning profits are deductible, except in certain exceptional instances (examples provided below).

Foreign corporations face no restrictions on the locations in which costs and expenses deductible from Japan-sourced taxable income may be incurred. However, detailed statements of costs and expenses incurred overseas and deducted from income in Japan must be prepared, and these costs and expenses allocated fairly in accordance with the arm's-length principle.

Examples of items for which there are limits on deductible costs and expenses:

- Corporate taxes and penalties
- Nondeductible amount for donations
- Nondeductible entertainment expenses
- Amount of allowance reserves transferred
- Amount exceeding depreciable limit of depreciable and deferred assets
- Write-down of assets
- Bonuses or retirement benefits for directors

3.3.6 Remittances to home country

Remittances made by a branch of a foreign corporation to its head office are in principle free from taxation. In other words, the payer branch cannot as a general rule treat such remittances as expenses, and consequently these same remittances may not be treated as income by the recipient head office.

On the other hand, remittances made by subsidiary companies to their parent company are generally regarded as payments of costs/expenses, distributions of profits or loans (or repayments of loans). Certain of these remittances may be deducted as expenses by the payer subsidiary companies, while others may be regarded as income by the recipient parent company. Some of the payments regarded as income by the parent company (e.g., payments of interest, dividends or usage fees) require withholding of income tax at the source at the time of payment (see 3.4.4).

3.3.7 Taxation of retained earnings of family corporations

A Japanese corporation that is a family corporation and meets certain conditions is subject to taxation of retained earnings as well as corporate tax on ordinary income. Taxation of retained earnings is calculating by multiplying the taxable amount of retained earnings (obtained by subtracting the retained earnings deductible from the amount of retained earnings in each business year) by the special tax rate. The special tax rate varies according to the taxable earnings. If annual the taxable earnings does not exceed 30 million yen, it is subject to a tax rate of 10%. However, if the taxable earnings exceeds this amount, a rate of 15% is charged on the amount in excess of 30 million yen and up to 100 million yen, and any amount in excess of 100 million yen is taxed at a rate of 20%.

3.3.8 Treatment of losses

Net losses under income in each business year are carried forward for the next seven years. Losses may only be carried forward in this way if a blue form tax return is filed in the business year in which the loss arose, and a final tax return is then filed every subsequent year. Corporations that file a blue return are also allowed to carry back a loss to the business year commencing not more than one year prior to the date of commencement of the business year in which the loss arose, and receive a full or partial refund of the amount of corporate tax in the business year in which the loss was carried back. However, this system of carrying back had been suspended except under certain conditions, such as for losses of small and medium-sized enterprises arising in the five business years following the year of original establishment, for business years ending on or before January 31, 2009.

SECTION 3 Taxes in Japan

3.3.9 Corporate reorganization tax system

If a corporation transfers assets as a result of a split, merger, or investment in kind ("reorganization"), gain or loss from the transferred assets is as a rule subject to taxation. However, reorganizations meeting certain conditions, such as those within the same business group or those undertaken for the purpose of a joint venture, are treated as "qualified reorganizations," and qualify for deferment of taxation of gain or loss on the transferred assets.

3.3.10 Filing of tax return and payment of corporate taxes

① Final tax return and tax payment

Corporations must file a final tax return for corporate tax, corporate inhabitant tax and enterprise tax on their income within two months from the day following the last day of each taxable year. An extension of the deadline for filing a final tax return may be requested, with approval from the director of the taxation office, when a corporation is unable to file a final tax return because the accounting auditor has not completed the audit or because accounts remain unsettled for other unavoidable reasons. The income and tax amounts to be entered in the final tax return must be calculated in accordance with the statement of accounts approved by the general meeting of stockholders.

The calculated tax must also be paid within this period. The payment deadline will not be extended even if the deadline for filing of a final tax return is extended as described above. Any interim payment made in advance on the amount of tax owed shall be deducted from the total amount to be paid.

② Interim tax return and tax payment

Corporations whose taxable years exceed six months must file an interim return, within two months from the day marking the end of the first six months of the taxable year, an interim tax return for the period starting on the first day of that taxable year and ending on the day six months thence, and must pay the interim amount of tax owed.

③ Blue form returns

Tax return forms for corporations come in two formats: white forms and blue forms. A corporation may file a blue form tax return with approval from the appropriate national tax office. Corporations filing blue form tax returns enjoy a variety of tax benefits. To receive approval from the tax office to file a blue form tax return, a corporation must submit an application for approval prepared in the prescribed format no later than the day prior to the starting day of the taxable year. Newly established subsidiary companies and foreign corporations establishing new branch offices in Japan must submit the application for approval no later than the day prior to either the day marking three months since the establishment of the corporation/branch or the last day of the corporation's/branch's initial taxable year after establishment, whichever comes first.

3.3.11 Imposition of enterprise tax on a pro forma basis

Corporations whose capital or investment exceeds 100 million yen are taxed on a pro forma basis using income, added value, and capital as the taxable base. The standard tax rates for income, added value and capital are as follows.

Table 3-3

Income levy	To September 30, 2008		From October 1, 2008	
	Up to 4 million yen per year	3.8%		1.5%
Over 4 million yen and up to 8 million yen per year	5.5%		2.2%	
Over 8 million yen per year	7.2%		2.9%	
Added value levy	0.48%			
Capital levy	0.20%			
Special local corporate tax	—		148% of income levy	

(Note) Due to the introduction of special local corporate tax, the standard tax rate for income was revised from the taxable year beginning on or after October 1, 2008. In addition a special local corporate tax has been newly levied at a rate of 148% of the income levy.

For companies with offices and factories located in three or more prefectures, a uniform standard income tax rate of 2.9% is applied to calculate the income tax levy. (effective from October 1, 2008)

Tax rates may differ from the standard tax rate depending on the local government concerned.

3.4 Overview of withholding income tax

Income tax takes two forms: self-assessed income tax and withholding income tax. In contrast to self-assessed income tax, which is levied on the income of individuals, withholding income tax is assessed against payments of certain taxable income, whether made by an individual or a corporation. Income subject to withholding income tax is determined in accordance with the tax classification of the recipient of that income.

3.4.1 Withholding at source and payment procedures

Persons who pay income subject to withholding at source must pay the taxation office the amount of tax withheld at source no later than the 10th day of the month following that in which the income was paid. However, when a payer with a domicile or business office in Japan pays income to a non-resident or a foreign corporation in another country, the withholding income tax may be paid by the last day of the month following that in which the income was paid. Regarding withholding tax paid on residents' salaries, certain professional fees, a special exemption is provided for small businesses with fewer than 10 persons on the payroll that allows them to elect to pay withholding income tax in six-month installments twice a year (up to July 10 and up to January 10, or January 20 if a business opts for the special exemption).

3.4.2 Withholding tax on residents

Payments made in Japan of the following income to residents are subject to withholding at source:

- Interest (including profit on redemption on specified discount bonds)
- Dividends
- Salary, wages, bonuses and similar compensation
- Retirement allowances
- Certain compensation, fees, etc., to persons other than employees

3.4.3 Withholding tax on domestic corporations

Payments made in Japan of the following income to domestic corporations are subject to withholding at source:

- Interest (including profit on redemption on specified discount bonds)
- Dividends
- Horse racing prizes received by horse owners
- Distribution of profits in accordance with a Tokumei Kumiai contract

3.4.4 Withholding tax on non-residents and foreign corporations

Payments made in Japan of the income described in 3.2.① - ⑯ and ⑲ above ("Domestic-sourced income") to a non-resident or a foreign corporation, or such payments made overseas by payers with a domicile or business office, etc. in Japan, will be subject to withholding income tax. Of these payments, payments of certain categories of income as prescribed for non-residents and for foreign corporations to a non-resident or a foreign corporation with a permanent establishment within Japan are exempt from withholding taxation, provided that a certificate from the taxation office is presented to the payer attesting that the income will be attributed to that permanent establishment and will be added to and counted as business income subject to self-assessment for tax purposes.

3.5 Tax treaties

Japan has concluded tax treaties with many countries for the purposes of avoiding double taxation of income internationally and preventing tax evasion.

The provisions of tax treaties supersede those of domestic law. In determining the tax liability in Japan of individuals and corporations domiciled in a country with which Japan has a tax treaty, the location of the source of income deemed taxable income under Japanese law (specifically the provisions concerning where the income upon which taxation is based is generated) may at times be amended to accord with these tax treaties. Provisions have also been established in Japan for reducing the tax on, or exempting from tax, various types of income sourced in Japan.

Table 3-4 Japanese Tax Treaties

Armenia	Denmark	Israel	Philippines	Switzerland
Australia	Egypt	Italy	Poland	Tajikistan
Austria	Fiji	Kyrgyz Republic	Republic of Korea	Thailand
Azerbaijan	Finland	Luxembourg	Romania	U.K.
Bangladesh	France	Malaysia	Russian Federation	U.S.
Belarus	Georgia	Mexico	Singapore	Turkey
Belgium	Germany	Moldova	Slovak Republic	Turkmenistan
Brazil	Hungary	Netherlands	South Africa	Ukraine
Bulgaria	India	New Zealand	Spain	Uzbekistan
Canada	Indonesia	Norway	Sri Lanka	Viet Nam
China	Ireland	Pakistan	Sweden	Zambia
Czech Republic				

as of April 2009

3.6 Overview of consumption tax

The following domestic and import transactions, except for certain transactions deemed non-taxable, are subject to consumption tax. The consumption tax rate is 5% (national consumption tax rate of 4% and local consumption tax rate of 1%).

- ① Domestic transactions: the transfer/loan of assets or the provision of services as a business in Japan by a company for consideration.
- ② Import transactions: cargo retrieved from a bonded zone

Financial transactions, capital transactions and certain transactions in the areas of medical care, welfare and education are deemed non-taxable. Export transactions and export-like transactions such as international communications and international transport are exempt from consumption tax.

3.6.1 Self-assessment and payment

Companies engaged in domestic transactions and parties engaged in import transactions must file and pay taxes on their respective set tax bases. To ensure that double taxation does not occur at the production and distribution stages, a scheme has been adopted allowing the deduction of consumption tax on purchasing from consumption tax on sales.

3.6.2 Deduction of purchase tax

Consumption tax on purchasing (receipt of the transfer/loan of assets or the provision of services from another party) may be deducted from consumption tax on the taxable base when calculating the amount of consumption tax to be paid. The amount of this deduction is limited, however, depending on the percentage of taxable sales. If taxable sales¹⁾ during the base period²⁾ amounted to 50 million yen or less, the product of consumption tax on the taxable base multiplied by a given percentage determined by industry may be considered the consumption tax on purchasing for the current taxable year and allowed as a deduction if the prescribed notification is submitted to the director of the tax office.

3.6.3 Tax exempt enterprises

Corporations whose taxable sales¹⁾ are 10 million yen or less for the base period²⁾, can elect to forego tax liability exemption to qualify, as taxpayers, for deduction or refund of the amount paid as consumption tax on their purchases. However, a company that has no base period, such as a newly established company, whose capital at the start of the taxable year is 10 million yen or more cannot be a tax-exempt enterprise in that taxable year.

1) In case where a corporation's base period is not one year, the taxable sales during the base period are the amount obtained by prorating the balance during the above-mentioned base period. The prorating is made by first dividing the above balance by the total number of months in the accounting period included in the base period and multiplying the result by 12.

2) Base period: The base period is the full accounting period two years prior to current accounting year. A corporation may not have a full base period if it was a) newly established or b) changed its accounting period during the two-year prior period. The base period for such corporation is found by combining all accounting periods that commenced during this two-year prior period.

3.7 Overview of personal tax system

All individuals, regardless of nationality, are classified as either residents or non-residents. Individual income tax comprises self-assessed income tax and withholding income tax. Self-assessed income tax will be levied on the individual's income for the calendar year.

3.7.1 Concept of residence and taxable income

① Residents

Persons having a domicile in Japan and persons having a residence in Japan for one year or more are termed residents. The worldwide income of residents, regardless of the location of the source of income, is subject to income tax.

*Non-permanent residents

Residents having no Japanese citizenship and having a domicile or residence in Japan for less than five years within the period of ten years are non-permanent residents.

The scope of taxation for non-permanent residents corresponds to that for residents, but tax will not be assessed in Japan on income sourced outside Japan as long as that income is not paid within Japan or is not remitted to Japan.

② Non-residents

Persons not qualifying as residents are termed non-residents. Japanese income tax for non-residents will be assessed on income sourced within Japan. As described in 3.4.4 above, the scope of taxable income for withholding tax on non-residents is covered under the provisions for domestic-sourced income, so, except in special cases, taxation for non-residents is now more commonly completed through withholding at source procedures.

* "Domicile" as used above refers to the principal base and center of one's life. "Residence" refers to a location in which an individual continually resides for a certain time but which does not qualify as a base and center of his/her life.

3.7.2 Self-assessed income tax

① Self-assessed income tax on residents

Income is calculated using methods established for each of a number of income classifications. The tax is calculated by subtracting the various income deductions from the total amount of income and then multiplying the difference, which is the amount of taxable income, by the progressive tax rates below. Any withholding income tax levied on the income beforehand will be deducted from the calculated tax.

② Self-assessed income tax on non-residents

Non-residents are classified by their circumstances into (a) non-residents having an office, etc., in Japan, (b) non-residents continuously engaged in construction or assembly in Japan for one year or more, or doing business through a designated agent in Japan, or (c) other non-residents.

Taxable income is calculated within the scope of income established for each classification in 3.3.4 above. The amount of self-assessed income tax levied on non-residents is, as a rule, calculated in the same manner as for residents (subject to certain limits such as non-application of applicable income deductions and foreign tax deductions). Non-residents who earn salary income paid for services provided in Japan and not deemed subject to withholding tax in Japan must file a return and pay a 20% tax on the total amount of that salary.

③ The tax rates for self-assessed income tax on individual income (in the case of residents and of aggregate taxation of non-residents) are as shown below.

Table 3-5 Individual income tax rates

Brackets of taxable income		Tax rates
–	Or under 1,950,000 yen	5%
Over 1,950,000 yen	Or under 3,300,000 yen	10%
Over 3,300,000 yen	Or under 6,950,000 yen	20%
Over 6,950,000 yen	Or under 9,000,000 yen	23%
Over 9,000,000 yen	Or under 18,000,000 yen	33%
Over 18,000,000 yen	–	40%

SECTION 3 Taxes in Japan

3.7.3 Withholding income tax

The withholding income tax for residents and non-residents is as described in 3.4.2 and 3.4.4.

3.7.4 Filing and payment

Residents must submit an income tax return for the income earned each year, except when tax payment procedures have been completed through withholding at source, and must pay the tax owed between February 16 and March 15 of the following year. Persons whose total income does not exceed total deductions and persons who receive salary income subject to withholding tax from only one payer not exceeding 20 million yen and who have no other income do not need to file a return.

However, non-residents leaving Japan without designating a tax agent and reporting this fact to the director of the taxation office must submit an income tax return and pay the tax owed prior to leaving Japan.

3.7.5 Individual residential taxes, individual enterprise tax

"Individual residential taxes" is the collective term for prefectural tax and municipal tax on individual income, and persons having a domicile in Japan as of January 1 each year are subject to these taxes. Individual residential taxes are assessed on income for the preceding year and, except in special cases, taxable income for these taxes is calculated in accordance with the provisions for calculating income for income tax purposes. Residential tax returns must be filed by March 15, but persons submitting self-assessed income tax returns do not have to file again for individual residential tax. The standard rates of individual residential taxes are as shown below.

Table 3-6 Individual residential tax rates

Prefectural tax rate	Uniformity	4%
Municipal tax rate	Uniformity	6%

Tax rates may differ from the standard tax rate depending on the local government concerned.

Individuals engaged in certain businesses specified in local tax laws must pay enterprise taxes. Taxable income for enterprise tax purposes is generally calculated in accordance with the provisions for calculating income for income tax purposes, except where special stipulations apply. Returns must be filed by March 15, and taxes must be paid in August and November in accordance with tax notices issued by the prefectural government. Individual enterprise tax rates range from 3% to 5%, depending on the type of business.

3.8 Other principal taxes

There are a variety of other taxes levied on income, the acquisition/ownership of assets, consumption and other transactions in addition to those described above. Taxes levied on the ownership of assets to which many businesses are subject include the fixed asset tax (depreciable property tax) and the city planning tax. Land, structures and depreciable assets for business use are subject to a fixed asset tax (depreciable property tax) of 1.4%, payable by the owners of said property as of January 1 each year. The city planning tax is surtax on the fixed asset tax, and is levied at a rate of 0.3% on land and structures within city planning zones. Companies in major cities such as Tokyo and Osaka having facilities exceeding 1,000 square meters in floor space and/or having more than 100 employees are subject to business office taxes. The tax rates are 600 yen per square meter of floor space and 0.25% of the total amount of employee salaries.

Furthermore, there is a registration and license tax levied for the registration of real estate/companies and the issue of business licenses, as well as a stamp duty payable as a tax on stipulated documents. Gift tax, inheritance tax and other special-purpose taxes must also be borne in mind.

3.9 Other taxation regarding international transactions

3.9.1 Foreign tax credits

In order to avoid double taxation of income internationally, a domestic corporation is allowed to credit foreign taxes imposed on its business against Japanese tax up to the creditable limit, and to credit foreign taxes imposed on a foreign subsidiary against Japanese tax up to the creditable limit.

3.9.2 Transfer pricing taxation

In order to prevent corporations from setting the prices for transactions with a parent company or other overseas affiliate at a different amount from ordinary (i.e. arm's-length) prices so as to transfer profits overseas, a transaction is treated as having occurred at the arm's length price and the amount of tax calculated accordingly if the income derived from the transaction differs from the arm's length price.

3.9.3 Anti-tax haven taxation

In order to prevent domestic corporations from evading taxes by retaining income through a foreign subsidiary established in a so-called tax haven, a domestic corporation is taxed by including in its taxable income an amount corresponding to its interest in the retained earnings of that foreign subsidiary.

3.9.4 Thin-capitalization taxation

If a corporation's borrowing from an overseas controlling shareholder exceeds three times its equity (or an alternative reasonable ratio), interest on borrowing corresponding to the excess cannot be deducted from taxable income.

Reference

Consultation with specialists on accounting and tax support

Certified public accountants and tax accountants are specialists providing accounting and tax support to companies operating in Japan. Both are qualification recognized by law, and only persons with these qualifications may engage in legally stipulated monopoly businesses. Certified public accountants enjoy a monopoly on the performance of audits under the Certified Public Accountant Law, while tax accountants have a monopoly on tax agent services, preparation of tax documentation and tax consultations under the Certified Tax Accountant Law. In addition to their respective monopoly businesses, both provide multi-faceted services such as accounting and business consulting.

SECTION 4 Human Resource Management

4.1 Application of laws

Japan has a number of laws pertaining to labor and the protection of workers. These include: the Labor Standards Law which sets forth the minimum standards on working conditions; the Industrial Safety and Health Law which sets forth the minimum standards on working conditions regarding health and safety; and the Minimum Wage Law. These laws apply in principle to all enterprises in Japan, regardless of whether the employer is Japanese or foreign, or the company is a foreign or Japanese-registered corporation. They also apply to foreign workers in Japan provided that the foreign workers meet the definition of workers under these laws.

4.2 Recruitment

4.2.1 Recruiting methods

Japan has a government-run employment agency known as "Hello Work" with offices throughout Japan. Hello Work offers free support for people looking for work and companies looking for workers; all industries are covered by the agency. Similarly, some regional public organizations and education institutions such as universities also provide employment services for free. There are also many privately-run employment agencies; these come in several types, including executive search-type agencies, as well as those which build up a database of registered potential employees and employers, and where the agency collects fees on a contingency basis (i.e., when someone from their database is successfully employed with a company). Japan also has a wide range of newspapers, magazines (e.g., job-transfer magazines, industry-specific magazines, etc.), and internet websites through which companies can find employees.

4.2.2 Legislation on recruitment

As far as labor contracts are concerned, the principle of freedom of contract applies to the hiring of workers, and allows an employer to decide what kinds of workers and how many to hire. There are, however, some restrictions. For instance, under the Equal Employment Opportunities Law, employers must afford the same opportunity for employment to women as to men when recruiting and hiring workers. For that reason, employers may not specify male or female employees when advertising situations vacant, with the exception of a few specific positions.

4.3 Labor contracts

4.3.1 Working conditions

When hiring workers, companies enter into labor contracts with each worker. At that time, the employer must notify the employees in writing of the following employment conditions.

- The term of the agreement (or where there are no provisions pertaining to term, the fact that there are no provisions pertaining to term).
- The workplace, and the duties that the employee will have to perform.
- Matters pertaining to start and finish times, work in excess of regular working hours, breaks, days off and leaves.
- Methods of determining, calculating and paying wages; the wage calculation period and payment times.
- Matters pertaining to resignation and dismissal (including all grounds for dismissal).

* In the case of part-time workers, the employer must in addition specify in writing whether they will be eligible for pay increases, retirement allowances, and/or bonuses.

Any part of a labor contract that does not meet the standards laid down by law is invalid. For example, a contract containing provisions such as "the company may dismiss the worker at any time for any reason," "the basic wage shall include all overtime pay," and "social insurance fees shall be borne entirely by the worker" (in the case of a business establishment covered by social insurance) is invalid insofar as these provisions are concerned.

It is also illegal to impose a penalty for non-fulfillment of a labor contract. For example, it is illegal to include a clause such as the following: "If a worker retires within two years of joining the company, he/she must pay to the company the sum of 500,000 yen." However, this does not preclude an employer from claiming damages from a worker for losses actually incurred.

4.3.2 Term of labor contracts

Labor contracts generally do not stipulate a term. Where a term is specified, however, it must be no longer than three years except in a few special cases. However, a worker may resign by notifying his/her employer at any time as long as at least one year has elapsed since the date of the start of the contract term.

4.3.3 Probation period

Employers are allowed to set a limited period of probation prior to fully employing somebody, so as to see whether or not the probationary employee is able and suitable for the job. Probation periods generally last for about three months. However, it should be noted that if the employer decides not to fully employ somebody during or after the probation period, this refusal to employ is treated in the same manner as dismissal of an employee; in order for such a refusal to be legally allowed, valid reasons for refusal (which were not evident at the time of probationary employment) must have come to light during the period of probation, and it must be objectively reasonable for the employer to refuse to fully employ that person for the aforementioned valid reasons.

4.3.4 Re-assignment and external assignment

Japanese companies frequently redeploy their workers through internal re-assignment and external assignment, and such redeployments may often require a worker to relocate. Generally, employers have considerable discretion when it comes to changing a worker's duties or temporarily assigning him or her to another company if this is reasonably necessary to business.

4.3.5 Governing law

In the case of international contracts, which country's law to use as the governing law may be determined by agreement between the parties (see Article 7 of the Law on the General Rules on Application of Laws), and labor contracts are no exception. However, legislation that is clearly intended to protect workers as a matter of policy, such as the Labor Standards Law, will be compulsorily enforced in the forum state regardless of any such agreement. Even if a worker agrees to the law of a region other than that in which labor services are provided being used as the governing law for a labor contract, he/she may claim the benefit of specific (general) forcible provisions in the region in which labor services are provided by indicating to the employer that he/she wishes that such provisions should be applied. If a labor contract does not stipulate the governing law, it is assumed to be the law of the region in which labor services are provided.

4.3.6 Written guarantee of good conduct

When hiring a worker, a company may require that a guarantee of good conduct be provided by a relative of the worker or similar guarantor, and such a guarantee is held to be legally valid. The term of this guarantee is deemed to be three years if not specified, and up to a maximum of five years where a term is specified.

4.3.7 Corporate directors and executive officers, etc. ("directors, etc.")

The contractual relationship between a company and directors, etc. is, as a rule, considered to take the form of an engagement agreement as opposed to a labor contract. Accordingly, the relationship is, as a rule, subject to the Companies Act rather than labor law. If a director, etc. does not have the right to represent a company and is employed in a manner very similar to that of a worker, he/she may be simultaneously subject to labor law as a dual worker/director, etc.

4.4 Wages

4.4.1 Principles of wage payment

Employers must pay wages in legal tender, directly to the employee, not less than once per month, and on a specified date. However, employers are allowed to remit wages into a bank account specified by the employee where the employee agrees to that method of payment, and may also deduct social insurance premiums, taxes and similar expenses from wages.

4.4.2 Guarantee of minimum wage

The minimum wage is determined according to region and industry. Where an employee is subject to two different minimums, the employee is entitled to the higher of the two minimum wages. The employer must pay the employee a wage that is not less than the minimum wage. To give an example, following the latest revision in October 2009, the current minimum wage for Tokyo is 791 yen per hour.

4.4.3 Wage system

It is typical for Japanese companies to pay wages on a monthly basis, and to pay employees summer and winter bonuses. One characteristic of Japanese wages is the make-up: monthly wages usually include a basic wage and a range of allowances, which may include accommodation, family and transportation allowances. Another characteristic is that the amount paid in bonuses makes up a relatively high proportion of total wages paid to employees ¹⁾. An effect of the high proportion of wages made up of various allowances and bonuses consequently is to lower the rate of overtime pay paid for work outside normal working hours. The typical wage system in Japan has traditionally been based on seniority, whereby employees' wages increase in accordance with the number of years of service at a company. However, recently, an increasing number of businesses are introducing ability-based and duty-based pay systems, and some are even implementing performance-based pay systems where wages are determined according to each employee's rate of achievement of set targets. As a result, more and more businesses are adopting a yearly wage system ²⁾. Further information is available through the Basic Survey on Wage Structure statistics collated annually and provided by the Ministry of Health, Labor & Welfare in both Japanese and English.

1) In FY2008, the average bonus paid by private-sector companies was 4.51 months' worth of prescribed monthly wages (for clerical and technical occupations). (Source: National Personnel Authority)

2) Whether or not a yearly wage system is introduced or extra wages are paid for overtime work is irrelevant. If a company in Japan introduces a yearly wage system, it almost always only covers management-level employees.

4.4.4 Severance pay system

Almost all enterprises in Japan have some form of severance pay system. Normally when a worker leaves an enterprise, his/her employer will make a one-off payment calculated according to factors including length of service and reason for leaving the enterprise. This is not subject to social insurance contributions and is treated more favorably for tax purposes than ordinary pay. Provided that certain conditions are met, an enterprise that contributes to a severance pay reserve held by a government, financial, or similar institution may recognize these contributions as expenses for accounting purposes.

4.5 Legislation on working hours, breaks and days off

4.5.1 Working hours, breaks, days off

- ① Working hours must, in principle, not exceed 40 hours per week or eight hours per day excluding breaks (this is known as "statutory working hours"). However, some businesses are permitted to have their employees work up to 44 hours per week at a maximum of eight hours per day. These businesses include retail and beauty services, cinemas and theatres, businesses related to health and hygiene, as well as restaurants and entertainment businesses with less than 10 regular employees.
- ② In the event that an employee works six hours, the employer must give that employee not less than a 45 minute break; this increases to a one hour break where working hours exceed eight hours.
- ③ Employers must grant employees at least one day off per week, or four days off in any four-week period (this is known as "statutory days off"). Sundays or public holidays need not necessarily be days off, and other days may be selected as employees' days off instead by agreement between the employer and employees.

4.5.2 Agreements on overtime and work on days off

Any employer that requires workers to work in excess of statutory working hours or on statutory days off must submit a Notification of Agreement on Overtime and Work on Days off to its local Labor Standards Inspection Office.

4.5.3 Employers' "obligation to ascertain and calculate working hours"

The Labor Standards Act contains provisions on working hours, holidays, nighttime overtime work, and other working conditions. Employers are therefore under an obligation to properly ascertain and control working hours.

4.5.4 Overtime payment

Companies must pay an increased rate of wages as set forth in the table below to employees who work in excess of statutory working hours, work on statutory days off or work late at night (between 22:00 and 05:00)

Table 4-1

	Rate of increase
Work in excess of statutory working hours	25%
Work on statutory days off	35%
Work late at night	25%
Work late at night in excess of statutory working hours	50%
Work late at night on statutory days off	60%

*A partial revision of Labor Standards Law, which includes an upward revision of overtime wage rates, will take effect from April 1, 2010.

4.5.5 Exceptions for managers and supervisors

Persons in positions of management or supervision and persons handling confidential administrative work who are closely involved in management are not subject to the regulations on working hours, breaks and days off (with the exception of regulations on night work).

SECTION 4 Human Resource Management

4.5.6 Modified working hour system

Some jobs entail large peaks and troughs in the number of working hours according to the year, month or week. In some of these cases, companies are allowed to adopt a system of calculating working hours whereby the company need not pay increased rates in certain weeks or on certain days even where employees work in excess of statutory working hours, provided that the employees involved work no more than the statutory number of working hours on average within a predetermined period. In this case, however, a labor-management agreement must be entered into or appropriate provisions included in work rules before a flexible system can be adopted.

① System of annual modified working hours

Employees' working hours must not exceed 40 hours on average per week for a specified period of more than one month but not more than one year. If a company adopts this system, even workers whose statutory working hours are 44 hours per week, under the exemptions detailed in 4.5.1.①, are subject to the aforementioned 40-hour average.

② System of monthly modified working hours

Provided that provisions are drawn up prohibiting employees' working hours from exceeding 40 hours¹⁾ on average per week for a specified period of not more than one month, the employer may have employees work in excess of 40 hours in a specified week or in excess of eight hours on a specified day.

③ Flextime system

Another system under which working hours can be adjusted within a monthly period is the flextime system. Under this, the total number of working hours that a worker must work during a fixed period of not more than one month is established, and workers are free within limits to determine what time they start and stop work each day provided that they meet the total number of working hours required.

④ Week-based modified working hours

Under this system, employers may have employees work for more than eight hours but not more than 10 hours per day without having to pay increased rates of wages, provided that employees' working hours do not exceed 40 hours per week. It should be noted, however, that this system is limited to retailers, inns and restaurants with less than 30 regular employees. Furthermore, if a company adopts the system, even workers whose statutory working hours are 44 hours per week, under the exemptions detailed in 4.5.1.①, are subject to the aforementioned 40-hour average.

1) Under this system, the working hours of workers whose statutory working hours are 44 hours per week under the exemptions detailed in 4.5.1.① shall remain 44 hours.

4.5.7 Paid leave

Employers must grant 10 days' paid leave to employees that worked for six consecutive months from the time of hiring and who worked on not less than 80 per cent of all schedule work days. This paid leave may be taken consecutively or separately. Where an employee's application to take paid leave will hinder the normal business operations, the employer may require the employee to take such paid leave at a different time. The number of days of paid leave available to employees increases in proportion to employees' length of service as set forth in the following table.

Table 4-2

Years of service	0.5	1.5	2.5	3.5	4.5	5.5	6.5
Leave days granted	10	11	12	14	16	18	20

The right to annual paid leave expires after two years. In other words, annual paid leave left over from one year may be carried over and taken the next year only. For instance, if an employee is awarded 10 days' paid leave in 2004, but opts not to take paid leave in that year, the employee may carry those days over to 2005 and use them in addition to any leave days which become available in 2005. However, those 10 days awarded to the employee in 2004 cannot be carried over to 2006 or beyond. It should also be noted that employees that have been continuously employed at the same company for not less than seven years and six months can take a maximum of 40 days' paid leave in any one year, including days that became available within that year and those carried over from the previous year.

Employers are not required to grant paid leave days in addition to those described above to cover days on which employees did not work as a result of any non-work-related illness or injury. It should also be noted that most Japanese companies grant a few additional paid leave to employees for marriage, death of close relatives, and childbirth by the employee's spouse, etc.

4.5.8 Maternity, childcare and family care leave

① Maternity leave

If an employee of expectant mother requests permission for leave of absence six weeks prior to the expected date of delivery (14 weeks in the case of multiple pregnancies), the employer must approve the request. Furthermore, employers are, in principle, prohibited to cause any female employee to work for a period of eight weeks commencing from the day following that on which the employee gave birth.

② Childcare leave

If an employee with a child aged less than one-year-old requests permission for a leave of absence (by the child's first birthday in principle, or up to the age of 18 months if certain conditions are met), the employer must approve the request. Employers may deem employees who have worked at the company for less than one year and employees with a spouse who is able to take full-time care of the child to be ineligible for childcare leave, provided, however, that the employer does so by stipulating to that effect in a labor-management agreement.

③ Family care leave

If an employee with a family member who has been judged to require a certain level of nursing care requests permission for a leave of absence to provide such nursing care (up to a maximum of 93 days in total per that family member), the employer must approve such a request once only for each occasion that a family member falls into a condition requiring full-time nursing care. Employers may deem employees who have worked at the company for less than one year and those whose employment will terminate within three months ineligible for family care leave, provided, however, that the employer does so by stipulating to that effect in a labor-management agreement.

④ Leave of absence to nurse a child

A worker with a child of preschool age may take a leave of absence of up to five days per year to nurse a sick or injured child.

The above periods of leave may be unpaid.

4.5.9 Investigations by labor standards inspectors

Labor standards inspectors are public employees given the role under Japanese labor standards legislation of entering any kind of business establishment to ensure legal compliance and assist the improvement of working conditions.

A recent focus of investigations has been on the nonpayment of overtime pay, and investigations by labor standards inspectors in FY2007 found that outstanding overtime pay of at least 1 million yen had been paid by 1,728 companies (adding up to 27.2 billion in total).

4.6 Work rules

Work rules are specific rules for the workplace containing working conditions such as working hours and wages, as well as rules that employees must comply with when working for business reasons. Employers with 10 or more regular employees must draw up the work rules and submit these to the local Labor Standards Inspection Office. Establishments with fewer than 10 workers are also encouraged to draw up work rules. Where work rules are established, they have the same legal force as labor contracts insofar as they are reasonable in content.

4.6.1 Items to be included in work rules

Work rules must at a minimum contain the following items.

- ① Start and finish times, breaks, days off, leave of absence (including childcare and family care leave), and work shift arrangements where work is to be performed by two or more teams of workers.
- ② Methods of determining, calculating and paying wages (excluding special bonuses and other pay), wage calculation periods and dates of payment, as well as matters pertaining to wage raise.
- ③ Matters pertaining to resignation or dismissal (including grounds for dismissal).

If the employer makes any rules pertaining to a predetermined set of matters including retirement allowances, bonuses, safety or hygiene, these must also be included in the work rules.

4.6.2 Obligation to inform

Employers are required to inform workers of the work rules or any labor-management agreements as provided for in the Labor Standards Law.

4.7 Safety and hygiene

Employers are obliged to pay due consideration to safety and hygiene matters so as to avoid illness or injury to workers in the course of work.

4.7.1 Health check-up upon hiring

When hiring a regular employee, employers must have the new employee undergo a predetermined health check-up before hiring him/her.

4.7.2 Periodic health check-up

Employers must have all regular employees undergo a health check-up by a doctor once per year (or at least once every six months in the case of employees engaged in specific kinds of work which may damage the employees' health including late night work and work involving X-rays).

4.8 Resignation and dismissal

If an employee on a labor contract with no set term of agreement wishes to resign (i.e., the employee wishes to terminate the labor contract by notifying the employer of his/her intention to do so), the employee can do so by providing two weeks' notice. Furthermore, although there is no firm legal precedent, the prevalent doctrine is that even if a company work rules stipulates that employees must give more than two weeks' notice, it is without effect in cases where the rule sets an unreasonable period. On the other hand, employers can only dismiss an employee (i.e., the employer terminates the labor contract by notifying the employee of its intention to do so) after satisfying several criteria.

4.8.1 Approved grounds for dismissal

An employer is only allowed to dismiss an employee if there are objectively reasonable grounds for dismissal, and dismissal is deemed to be appropriate in light of socially accepted ideas. Furthermore, all possible grounds for dismissal must be clearly stated in the work rules if the dismissal of an employee is to be valid. As it is exceedingly difficult to judge the validity of dismissal in concrete cases, it is recommended that employers first obtain the advice of a specialist in labor law (such as an attorney or certified social insurance labor consultant).

There is considerable precedent in case law to the effect that it is necessary to meet the following four criteria when making employees redundant as part of company restructuring (i.e., dismissal of employees in order to reduce staff numbers as a result of deteriorating business performance) in order for the redundancies to be deemed reasonable.

① Necessity

The company must prove that its business circumstances are such that redundancies are unavoidable and necessary.

② Effort to avoid redundancy

The company must prove that it has made serious managerial efforts to avoid redundancies such as by re-assigning staff and advertising for voluntary redundancies.

③ Reasonable selection

The company must prove that the standards by which it selected those to be made redundant are reasonable, and that redundancies were carried out fairly.

④ Reasonable process

The company must prove that it conducted sufficient consultations with workers and labor unions.

4.8.2 Restrictions on dismissal

Employers cannot dismiss employees in the following situations, and are subject to penalties for infringement.

① While an employee is on leave from work as a result of illness or injury incurred in the course of work, or for 30 days following the completion of such leave.

② While an employee is on maternity leave of six weeks prior to (14 weeks in the case of multiple pregnancy) and eight weeks after the childbirth, or for 30 days following the completion of such leave.

4.8.3 Cases where dismissal is invalid

The following cases of dismissal do not have legal effect:

① Dismissal of a female worker during pregnancy or within one year of giving birth.

② Dismissal due to a worker's having reported an illegal act committed by his/her employer to the relevant authorities.

4.8.4 Dismissal procedures

If an employer wishes to dismiss an employee, the employer must give the employee at least 30 days' notice. If the employer wishes to dismiss the employee summarily and without notice, the employer must pay the employee 30 days' wages at the time of dismissal (this payment of wages in rule of notice is known as a "notice allowance"). However, in the situations described below, employers may dismiss employees without notice and without paying a notice allowance so long as the employer obtains the approval of the head of the local Labor Standards Inspection Office.

- ① The company is unable to continue its business as a result of natural disaster or other such unavoidable circumstances.
- ② The dismissal of the employee is unavoidable and the result of causes attributable to the employee.
 - An employee commits an act in the workplace that constitutes a crime under the Penal Code, including theft, embezzlement or causing injury.
 - An employee breaches the rules or expected standards of behavior of the workplace, or exerts a negative influence on any other worker.
 - An employee makes a false statement in his/her resume that is likely to be a factor in the decision to hire him/her.
 - An employee is absent without leave and without due cause for a period of (generally) two weeks or more, and fails to respond to orders to report for work.
 - An employee is repeatedly late for work, leaves work early or is absent without leave, and fails to improve his/her punctuality despite repeated warnings.

4.8.5 Dismissal in practice

In Japan, it is not so usual for legal steps to be taken when an employer wishes to dismiss a worker for some reason. In practice, the employer will explain to the worker the business or job situation in order to persuade him or her to resign, and ultimately the worker will usually be persuaded to resign voluntarily. It is also often common for various conditions to be discussed (such as the topping up of a worker's severance pay) to encourage a worker to agree to resign.

4.8.6 Covenant not to compete

In Japan, freedom of choice of occupation is guaranteed by the Constitution. Accordingly, an agreement that prohibits working for a competitor for a certain period after leaving his/her former employer is only valid if the term, geographical scope, professional field concerned, and similar restrictions are reasonable and commensurate compensation is provided. Regarding trade secrets, both the disclosure of former employers' trade secrets by workers and questioning by enterprises of workers about such trade secrets are prohibited by law under the Unfair Competition Prevention Act.

4.9 Japan's social security system

Japan has a universal insurance system whereby everybody residing in Japan must, in principle, take part in the public health (medical) insurance and pension insurance system.

4.9.1 Labor and social insurance systems

Japan has four different kinds of insurance system which companies are legally obliged to take part in; all workers that meet certain criteria are covered by the insurance.

① Workers' Accident Compensation Insurance

This covers any illness or accident incurred by workers as a result of work or while commuting to or from work.

② Employment Insurance

This provides for workers that become unemployed and helps to maintain stable employment such as by providing financial aid and subsidies.

③ Health Insurance and Nursing Care Insurance

These cover medical and nursing care expenses incurred by workers.

④ Employees' Pension Insurance

This provides for benefits to workers in their old age, or in the case of death or disability.

Generally, Workers' Accident Compensation Insurance and Employment Insurance are known collectively as "labor insurance," while Health, Nursing Care and Employees' Pension Insurances are referred to collectively as "social insurance."

A company must enter these insurance systems when first incorporating or hiring staff by submitting labor and social insurance notification forms to the relevant authorities¹⁾. The company usually pays insurance premiums by deducting the portion of the premiums payable by employees from their wages, and paying these together with the portion of the premiums payable by the company to the relevant authorities.

1) Since August 2005, it has been possible to establish a limited liability partnership (LLP). In this case, the above forms of insurance are applied treating partners as sole proprietors (or employer), and persons employed by partners as workers or employees.

SECTION 4 Human Resource Management

4.9.2 Workers' Accident Compensation Insurance

Table 4-3

Application	As a rule, this is compulsorily applicable to all workers. Principals of small and medium businesses may be specially approved for coverage if they apply.
Benefit	Benefits are paid for any illness, injury, disability or death incurred as a result of an accident caused by a work or while commuting to or from work.
Premium	Premiums are generally calculated as a certain percentage of each worker's total wage. The rate of premium depends on the kind of business carried out at the workplace; under the latest revision in April 2009, the maximum premium rate is 10.3% (for work involving the construction of hydro-electric power generation plants or tunnels, etc.) and the minimum is 0.3% (for finance and telecommunications industries, etc.). The employer bears the burden of paying premiums. 0.005% is added to the above premium to fund benefits for asbestos-induced diseases.
Notification	Notifications must be submitted to the local Labor Standards Inspection Office within a period of 10 days starting on the day following that on which participation in the insurance program was established.

4.9.3 Employment Insurance

Table 4-4

Application	In principle, this applies to all general workers. However, to qualify for Employment Insurance, part-time workers' prescribed working hours must not be less than 20 hours per week, and they must expect to be employed for not less than one year. Employees dispatched to Japan from an overseas company head office are exempt from this insurance.
Benefit	Benefits are paid for a predetermined period when the insured worker leaves his/her job; the amount of benefits are determined according to the reason for leaving the job, the length of time for which the insured was covered, the insured party's age, etc. There are also a number of benefits available for the purpose of maintaining stability of employment.
Premium	Premiums are calculated as a certain percentage of each worker's total wage. Under the latest revision in April 2009, the insurance premium rate is 1.1% (the employer paying 0.7% and the worker paying 0.4%) with the exception of a few kinds of job.
Notification	Notifications must be submitted to the local Public Employment Security Office within a period of 10 days starting on the day following that on which participation in the insurance program was established.

4.9.4 Health Insurance and Nursing Care Insurance

Table 4-5

Application	Applicable businesses	All incorporated companies and sole proprietorships with five or more regular employees are generally obliged to take part in the insurance. Branches and sales offices of overseas companies are treated as incorporated businesses, and representative offices are treated as sole proprietorships.
	Insured parties	Generally, all employees of the aforementioned applicable businesses are covered. Part-time employees are covered where their prescribed working hours are not less than 75% of those of full-time employees. Employees dispatched from overseas company head offices are covered, as are presidents and representative directors of incorporated companies. However, persons dispatched from the United States, Belgium, France, the Netherlands or the Czech Republic to Japan who are enrolled in medical insurance in these countries are exempt from enrolling in Japan.
	Dependents	Insured parties' lineal ascendants, spouses, children, grandchildren and siblings whose livelihood is maintained mainly by the insured party are eligible to receive insurance benefits.
	Nursing care insurance	This applies only to those of 40 years or over.
Benefit	Medical expenses	70% of expenses incurred for medical treatment at designated Insurance Medical Institutions (this refers to medical institutions which have been designated as acceptable for medical insurance purposes; almost all medical institutions in Japan are designated) are covered by insurance, while the insured party must pay the remaining 30%. This also applies to dental expenses.
	Overseas expenses	If an insured party incurs medical treatment expenses at a medical institution while staying or traveling overseas, he/she can apply to be reimbursed after returning to Japan. The amount of medical expenses incurred overseas is converted into a comparable amount of Japanese medical expenses, and 70% of that amount is reimbursed. It should be noted that this also applies to foreign nationals insured under this system who receive medical treatment in their own countries or other countries outside of Japan.
	Excessive medical expenses	If the amount of medical expenses (e.g., the portion of medical expenses payable by the insured party) an insured party pays to a single medical institution within a single calendar month exceeds a predetermined amount, the amount of expenses excess of that predetermined level shall be reimbursed to the insured party as "Excessive medical expenses."
Premium	General insurance premiums for the Japan Health Insurance Association Run Health Insurance ¹⁾ are 8.18% (in Tokyo ²⁾) of each insured party's standard monthly remuneration ³⁾ (maximum: 1,210,000 yen) and standard bonus ⁴⁾ (maximum: 5.4 million yen per year). For Nursing Care Insurance, premiums are 1.19%. In either case, the insured party and the employer share the premiums equally. In the case of Union Run Health Insurance ⁵⁾ , a certain amount of leeway in deciding insurance premiums is granted to the managing union. (as of September 2009)	
Notification	Notifications must be submitted to the local Social Insurance Office or Health Insurance Union Office within a period of five days starting on the day following that on which participation in the insurance program was established.	

Ineligibility for Health Insurance (National Health Insurance)

Application	People who are not eligible for Health Insurance coverage as described above must enter into the National Health Insurance scheme run by their local city, ward, town or village government.
Benefit	With a few exceptions, National Health Insurance benefits are virtually the same as those under the above-described Health Insurance.
Premium	Premiums are determined by each operating local government within certain limitations

(Note) In Japan, everybody has an obligation to take out one of the above forms of public health (medical) insurance. Because you will therefore inevitably have Health Insurance in Japan, if you choose to take out private insurance with an overseas company, it is better to ensure that the coverage of that private insurance does not overlap with your Japanese public insurance coverage.

- 1) Japan Health Insurance Association Run Health Insurance refers to the insurance scheme operated by the government through Social Insurance Offices.
- 2) Effective from September 2009, premium rates for health insurance administered by the Japan Health Insurance Association have changed from a uniform rate of 8.2% to one that varies depending on prefecture.
- 3) Standard monthly remuneration refers to the division of the total amount of wages and other such payments into predetermined brackets.
- 4) Standard bonus refers to the amount of the bonus rounded down to the nearest unit of 1,000 yen.
- 5) Union Run Health Insurance refers to an insurance scheme provided by a union run by a company or a group of companies.

SECTION 4 Human Resource Management

4.9.5 Employees' Pension Insurance

Table 4-6

Application	Applicable businesses	All incorporated companies and sole proprietorships those (with five or more regular employees) are generally obliged to take part in the insurance. Branches and sales offices of overseas companies are treated as incorporated businesses, and representative offices are treated as sole proprietorships.
	Insured parties	Generally, all employees of the aforementioned applicable businesses are covered (with the exception of those over 70 years old). Part-time employees are covered where their prescribed working hours are approximately 75% of those of full-time employees. Employees dispatched from overseas company head offices are covered, as are presidents and representative directors of incorporated companies.
Benefit	Old-age Pension	This is generally paid to people not less than 65 years old who have paid Employee's Pension Insurance premiums (or been officially exempted from paying premiums) for not less than 25 years in total (this need not be consecutive). The amount of benefit is calculated according to the amount of insurance premiums paid and the length of the period over which they were paid.
	Disability Pension	Where the illness or injury that causes disability occurs during the period when the disabled party is insured under the Employees' Pension Insurance system, the regular pension or lump sum shall be paid to the disabled party. The amount of benefit is calculated according to the degree of disability, the amount of insurance premiums paid and the length of the period over which they were paid.
	Survivor's Pension	If an insured party, a person who is eligible to receive an old-age pension or a highly disabled person receiving a disability pension dies, a survivor's pension shall be paid to that person's surviving family.
Premium	Rate	Under the latest revision in September 2009, insurance premiums are 15.704% of the insured party's standard monthly remuneration (maximum: 620,000 yen) and standard bonus (maximum: 1.5 million yen); the insured party and the employer share the premiums equally.
	Pension agreement	Japan currently has social security agreements with Germany, the United Kingdom, South Korea, United States, Belgium, France, Canada, Australia, the Netherlands and the Czech Republic. Any person insured in the pension system of one of these countries who is sent to Japan is exempted from enrolling in the Japanese pension system upon submitting the appropriate notification at a Social Security Office or other appropriate agency. Preparations are also being made for the entry into effect of agreements with Spain and Italy.
	Payment upon leaving	When a foreign national returns to his/her country without having received a pension, a portion of the premiums he/she paid shall be refunded. The amount of a refund is calculated according to the length of time that person was covered under Employees' Pension Insurance and the amount of premiums paid.
Notification	Notifications must be submitted to the local Social Insurance Office within a period of five days starting on the day following that on which participation in the insurance program was established.	

Ineligibility for Employees' Pension Insurance (National Pension Insurance)

Application	Every person aged between 20 and 59 (inclusive) residing in Japan and without Employees' Pension Insurance must be a part of the national pension system. Premiums are a fixed amount per month (14,660 yen from April 2009 to March 2010), and participants in the system are eligible for Old-age Pension, Disability Pension and Survivor's Pension as well as a payment upon leaving similar to that of the above-mentioned Employees' Pension Insurance system.
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4.9.6 Review of labor and social insurance systems

Table 4-7

Insurance	Benefit	Coverage	Premium rate (% of total annual wage)		Remarks
			Employer pays	Worker pays	
Workers' Accident Compensation Insurance	Benefits are paid as compensation for medical expenses, work missed, disability or death incurred as a result of work or while commuting to or from work.	All businesses that employ workers must have this insurance.	0.3% (businesses involving mainly clerical work)	—	· Special coverage available for employers · Premium rates differ according to industry
Employment Insurance	Benefits are paid to unemployed workers, workers on child care leave and the elderly.	All workers whose prescribed working hours are not less than 20 hours per week must have this insurance.	0.7%	0.4%	Employees dispatched to Japan from overseas company head offices are exempt.
Health Insurance and Nursing Care Insurance	Benefits are paid for illness or injury not arising as a result of work or while commuting, and for childbirth, etc.	All full-time workers employed at incorporated companies, as well as part-time workers whose prescribed working hours were not less than 75% of full-time workers.	4.09% (4.685% if aged 40 or over)	4.09% (4.685% if aged 40 or over)	This premium rate applies only to Japan Health Insurance Association Run Health Insurance (in Tokyo).
Employees' Pension Insurance	Benefits are paid for old age, disability and death.		7.852%	7.852%	A system exists under which premiums are partially returned to foreign nationals upon withdrawal from the insurance program.
Child Benefits Contribution	Contribution to a social welfare system for child benefit, and differs in nature from the welfare benefits offered to workers through their employers.		0.13%	—	
Total			13.072% (13.667% if aged 40 or over)	12.342% (12.937% if aged 40 or over)	

As of September, 2009

*0.005% will be added to the premium rate for Workers' Accident Compensation Insurance for the time being in order to fund benefits for asbestos-induced diseases.

Reference

1. Corporate benefit costs

The expenses that a company spends on the welfare benefits of its employees can generally be divided into two groups: statutory welfare expenses, which include labor and social insurance premiums, as well as other legally required costs; and voluntary welfare expenses. According to a study ¹⁾ carried out in FY2007 (April 2007 through March 2008), the portion of wages comprised of welfare benefits was 17.7%. Specifically, the aforementioned statutory welfare expenses took up 12.9%, while voluntary welfare benefits amounted to 4.8% of the total.

Voluntary welfare benefits include providing accommodation, health check-ups and other health-related benefits, general life assistance such as subsidized meals at in-house cafeterias, and the provision of recreational facilities. By far the most common of these is accommodation.

1) Performed by the Japan Federation of Economic Organizations.

2. Labor unions

In Japan, the right of its labor unions to carry out their activities is guaranteed by law. Employers cannot employ a person on the condition that he/she does not join a union, and cannot cause any disadvantage to an employee because he/she is a union member. Furthermore, no company may refuse its labor union's request for collective negotiations without due cause.

For their part, membership of Japan's unions is decreasing year by year; membership was estimated to be 18.1% in June 2008. Examining labor unions by scale, we can see that workers at 45.3% of companies with 1,000 or more employees are unionized, while the same can be said of only 13.9% of companies with employees of between 100 and 1,000. In the case of companies with less than 100 employees, employees at only 1.1% of businesses are unionized.

3. Temporary workers

The term "Temporary worker" refers to a worker that enters into an employment contract with a temporary staffing agency (the company that temporarily places the worker), and who, under the orders of the agency, reports for work at a client company of that agency (i.e., a company that enters into a temporary worker placement contract with the agency, and then accepts temporary placement of the worker), and who performs duties under the orders of the client company.

① Restriction of length and type of temporary work

As a rule, temporary workers can be placed at companies to perform any duties other than port transport, construction and security, as well as some medical work. With the exception of some jobs, which require expert knowledge, skill and experience, and which are not subject to limitations on the term of temporary placement (known as the "26 specialized jobs"), temporary workers' placement terms are limited to a maximum of three years, provided that the term can be recognized as being temporary. If a placement exceeds three years, the business with which the worker is placed must apply to hire that worker.

② Coverage of temporary workers by labor law

Labor laws such as the Labor Standards Law, the Industrial Safety and Health Law, and the Equal Employment Opportunity Law apply to temporary workers. Companies that accept placement of temporary workers bear the responsibility of complying with the provisions of the Labor Standards Law pertaining to working hours, breaks and days off; those companies may have temporary workers work overtime within the scope allowed by the Labor Standards Law provided they enter into a labor agreement regarding workers' overtime with the agency that places the temporary worker. In this case, the temporary staffing agency bears the responsibility to pay increased rate of wages.

It is the temporary staffing agency's responsibility to ensure temporary workers' annual paid leave, and to supply the client company with a replacement worker if necessary while the original temporary worker is on annual paid leave. Furthermore, it is the temporary staffing agency rather than the client company that must take out labor insurance (Workers' Accident Compensation Insurance and Employment Insurance) and social insurance (Employees' Pension Insurance and Health Insurance) for the temporary worker and pay the appropriate premiums.

4. Subsidies

The Government provides various assistance for enterprises that create jobs, two examples of which are as follows:

① Subsidy for employment of human resources contributing to the development of Small and Medium-size Enterprises' business base

A subsidy of 1.4 million yen per person (up to a maximum of five) is provided for startups (or the establishment of Japanese corporations in the case of foreign enterprises) that employ human resources that help strengthen the business base.

② Career development subsidies

If vocational training for clear goals is provided to workers, one half of the wages of workers is subsidized during training.

5. Consultation with specialists on human resource management

Social insurance and labor consultants are human resource management experts with special nationally administered qualifications. As well as payroll accounting, they perform a range of services at companies' request, including:

① Carrying out labor and social insurance-related procedures and other administrative work as a proxy for companies when hiring staff.

② Consulting services in relation to safety and hygiene, as well as labor management (including drawing up work rules, planning and redesigning wage structures, as well as settling employment problems).

③ Mediation in individual employment disputes.

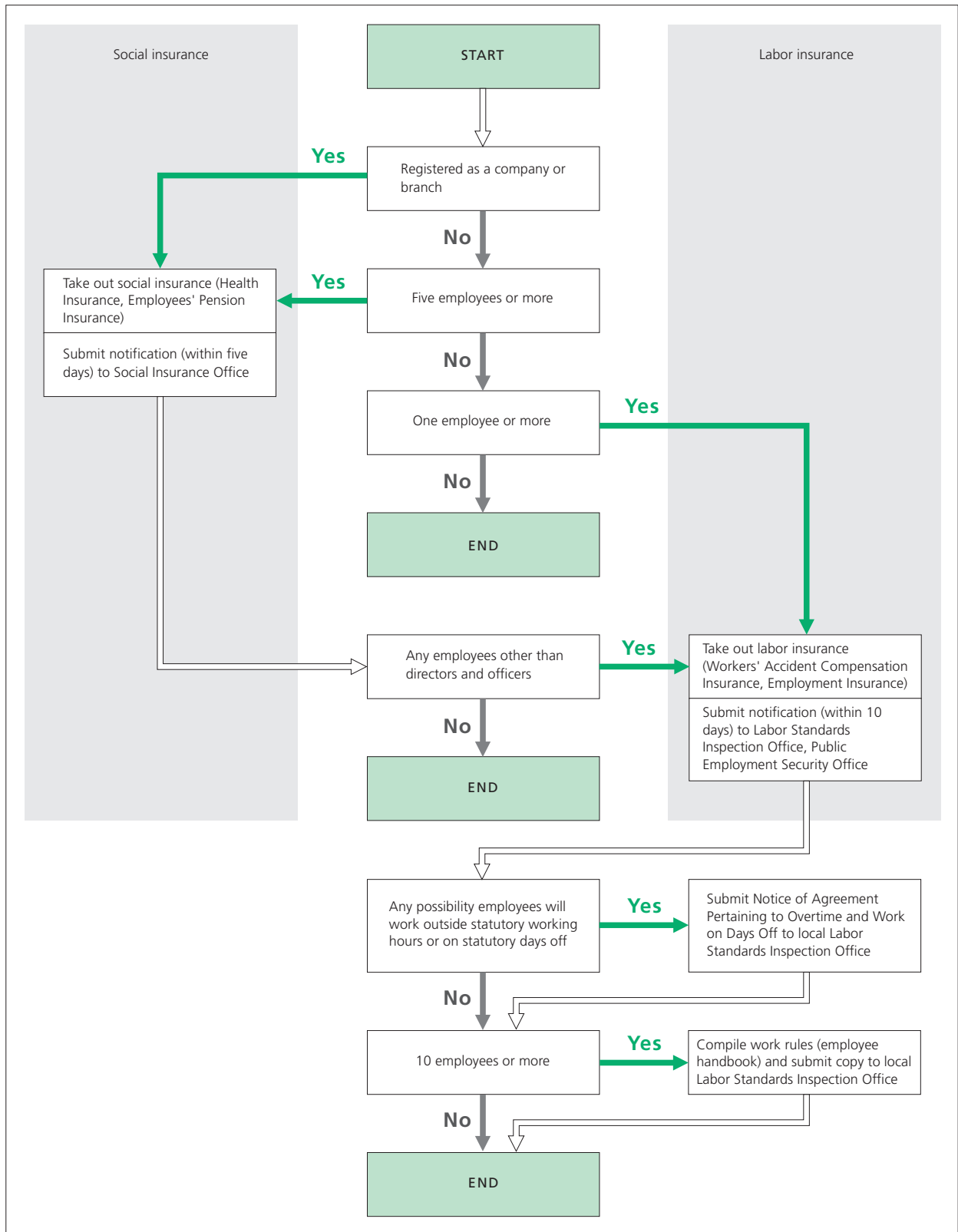
④ Consulting and handling of claims regarding pensions.

⑤ Other employment-related tasks.

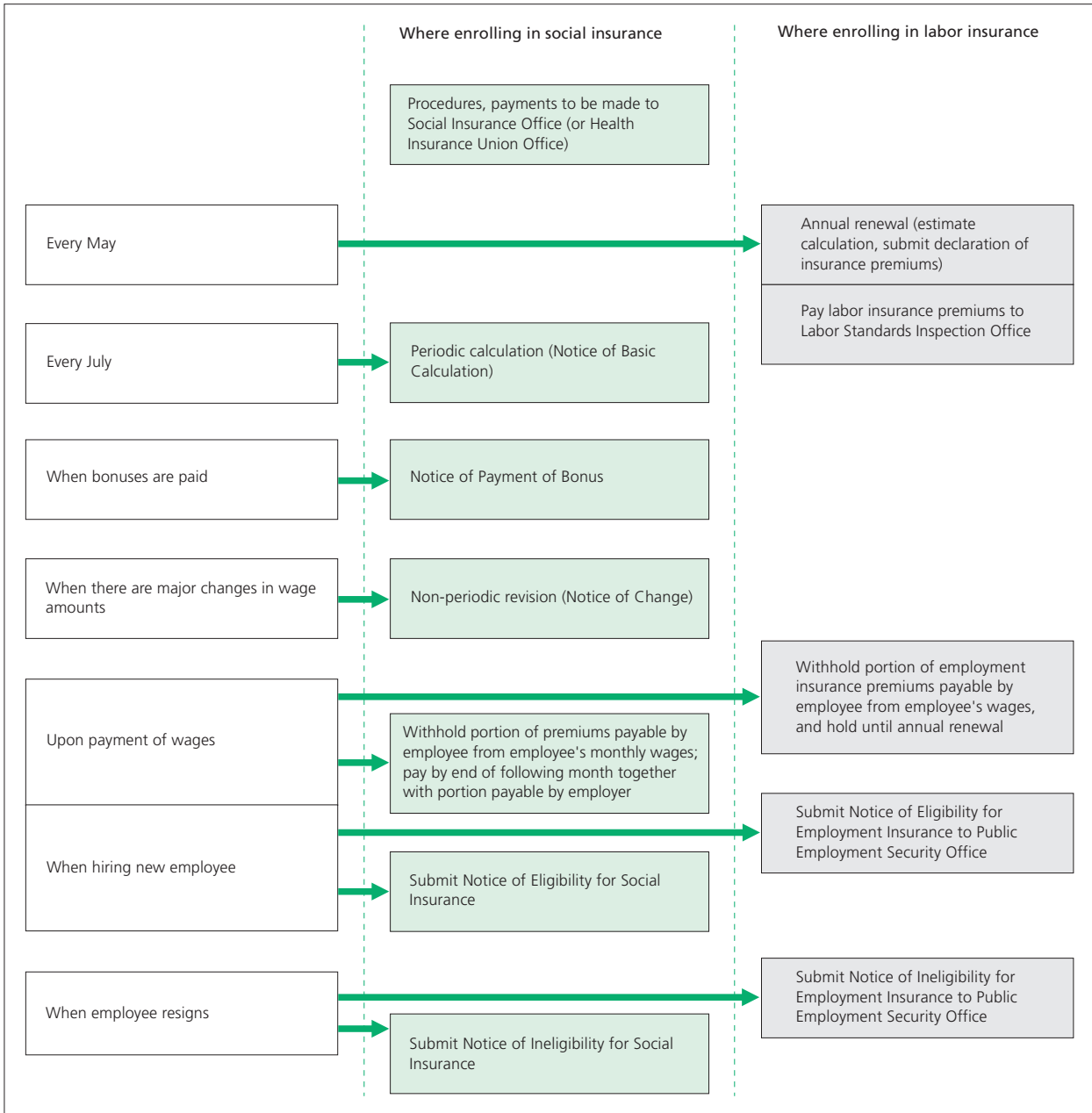
(Performance of services covered by ① and ③ by persons other than certified social insurance labor consultants in private practice, certified social insurance labor consultant corporations, and attorneys is prohibited by law.)

SECTION 4 Human Resource Management

Social and labor insurances procedures when setting up a company and hiring staff



Annual procedures



SECTION 5 Trademark and Design Protection Systems

5.1 Legislation on trademark and design

Japan's trademark system provides for the protection of the marks and logos that are used in commerce on goods or services. By enabling trademarks to identify the source of goods or services, and to identify their qualities and publicize them, the trademark system protects the commercial reputation of persons using trademarks, thereby contributing to the development of Japan's industries and protecting the interests of consumers. Japan's trademark system is regulated by the Trademark Law.

Meanwhile, Japan's design system is regulated by the Design Law, which protects the attractive and comfortably functional shape, pattern, color and other design characteristics of items relating to their external appearances. Japan's Design Law protects new designs as the property of the designer, and also encourages the use of designs, thereby promoting the creation of new designs and contributing to the development of Japan's industry.

5.2 Japan's trademark system

5.2.1 Equality for both Japanese and foreign nationals




Japan's Trademark Law offers equal protection for Japanese and foreign nationals; the same trademark registration process and conditions apply to those resident in Japan and overseas. Therefore, by offering proper trademark protection to people who do not currently live in Japan and companies presently without head offices or branches in the country, Japan's trademark system encourages future expansion into the Japanese market by overseas businesses.

5.2.2 First-to-file rule

Trademarks do not have to be currently in use (either in Japan or overseas) in order to be registered in Japan; if the trademark owner has the intention of using the trademark in the future, it can be registered in Japan as long as certain criteria are met. Thus, it is very important for any foreign business that thinks it might expand into Japan at some time in the future to consider applying for registration of trademarks in Japan before entering the Japanese market. Note, however, that trademarks must be used within three years after registration, or they may be nullified. Using your trademark just once within those three years is enough to prevent your trademark rights from being cancelled.

5.2.3 Scope of protection

Under Japan's Trademark Law, trademarks are categorized as follows.

<p>① Trademark consisting of characters including Japanese characters, alphabetical characters and other foreign characters.</p> <p style="text-align: center;">SONY</p>	<p>④ Three-dimensional trademarks (this is a new addition to the law included in a revision in 1996; at present, dolls, spheres and three-dimensional signs are protected).</p> 
<p>② Trademarks consisting of devices or symbols.</p> 	
<p>③ Trademarks consisting of characters and devices/symbols.</p> 	

There is also a system known as Collective Trademark Registration, which was included in the law in the 1996 revision. While this differs from the types of trademark protection described above, it provides for the registration of trademarks by any group comprised of businesses (with the exception of groups that are not official bodies corporate) for the purpose of allowing all members of the group to use the trademarks. Specifically, the system aims to protect the unique brands and names used by groups formed to revitalize regional economies and specific industries.

A system called the Regional Collective Trademark system was also introduced by a legal amendment in 2005 in order to protect and strengthen regional brands. This allows the registration of marks consisting of a regional name and generic name for a commodity or service, such as *Matsuzaka-Gyu* (beef produced in the Matsuzaka region in Japan) and *Aomori-Ringo* (apples produced in the Aomori region in Japan), provided that certain requirements, such as being sufficiently well-known in a certain area, are met.

Formerly, a collective trademark application by the Chamber of Commerce and Industry was not accepted. However, according to a revision of the Trademark Law in 2006 (Enforcement on April 1, 2007), the Chambers of Commerce and Industry is now entitled to file collective trademark applications.

5.2.4 Protection of trademarks about retailers, etc.

According to a revision of the Trademark Law in 2006 (Enforcement on April 1, 2007), "Retail services, etc." may now be accepted as designated services for the purpose of protection for the names of retail and wholesale stores and the names of mail-order businesses (including online sales).

Therefore, it is now possible to register the names of stores, such as retail outlets, as well as the names of individual products.

5.2.5 Similarity of trademarks

Trademarks must be unique in order to be registered; the sound, the appearance and the meaning of every trademark must not be similar to any other trademark, either individually or collectively.

① Sound

This refers to the sound of the trademark as well as the pronunciation of any characters used therein. Going by the standard of English language education in Japan, it can reasonably be assumed that most Japanese people will be able to understand the pronunciation of English words or Japanese words written in alphabetical characters correctly. However, the same cannot be said for words of other languages. Therefore, in order to avoid confusion, it is preferable to add Japanese kana characters showing how to pronounce the trademarks consisting of words in foreign languages other than English to ensure that the proper pronunciation is protected.

② Meaning

This refers to the meaning inferred from the characters that comprise the trademark. In the case of a trademark in a foreign script, the words "Black Cat", for example, would conjure up the image of a black cat in the minds of Japanese people, however the German words "Schwarze Katze" or the Spanish words "Gato Negro" would not immediately spark the appropriate feline image in people's minds, and it is possible that they are recognized as coined words which do not have a specific meaning. Therefore it is possible that such trademarks could not exclude other trademarks which do cause people to imagine a black cat if registered as trademarks. In this situation, it may be better to obtain separate protection for a trademark which consists of a Japanese translation of the original foreign-language phrase.

③ Appearance

Trademarks consisting of characters that Japanese people are unable to recognize as written characters, such as Mongolian or Hindi, are treated as trademarks consisting of devices. This means that the trademark owner is unable to reap any benefits that a trademark consisting of written characters may have, so one idea is to apply for a separate registration of trademarks consisting of a Japanese translation or Japanese characters denoting the pronunciation of the foreign-language phrase.

Note also the following two major differences between Japanese trademarks and those of some other countries.

① Smells and tastes, etc., are not subject to protection as trademarks.

② Dynamic trademarks, such as moving animals or other objects, are also not subject to protection.

5.3 Validity and term of trademark registration

5.3.1 Validity of registration

When a trademark is registered, that trademark is protected against unauthorized use of identical or similar trademarks by any other person; such use may constitute a breach of civil or criminal law. Trademark owners are disadvantaged by the illegal selling of fake brand-name goods. The trading of such bogus items is severely punishable under Japanese law, and in many cases, illicit sellers of fake brand-name goods are charged with criminal (as opposed to civil) offences.

5.3.2 Renewal

Once registered, a trademark is protected for 10 years starting from the registration date, assuming that the trademark is not subsequently invalidated or cancelled. Protection can be renewed for further 10-year periods.

5.3.3 Protection of world famous trademarks

Because Japan's trademark system is generally operated on a first-to-file rule basis, therefore, if the owner of the trademark wishes to protect his trademark legally, it has to be filed an application for registration to Japan Patent Office and to be registered in principle. However, famous or known trademarks without taking any procedures for filing are protected exceptionally assuming that they are only famous or known in Japan but also in foreign countries.

5.4 Cancellation of trademarks

5.4.1 Non-use of trademarks

Under Japan's Trademark Law, trademarks can be registered even if they are not in use at the time under the first-to-file rule. However, you should be fully aware that, if a trademark is not used at all within a period of three years following registration, a petition for the cancellation of that trademark may be filed by an interested third party. Incidentally, "use" of a trademark is not limited to the displaying of the trademark directly on a product; the printing of a trademark in a pamphlet together with an image of the product, the use of the trademark in an advertisement for the goods such as in a newspaper, or the displaying of goods featuring the trademark on an Internet website all constitute "use."

<Problematic point>

By the rapid spread of the Internet of these days, everyone can easily access many kinds of website in the world. In such circumstances, when the trademark is used only on the website, there are arguments whether it could be the use of the trademark under Japan's Trademark Law. If the trademark is used on the website obviously for the purpose of the sales in Japan, it could be authorized that it is the use of the trademark. However, if the trademark is used on the website for the purpose of the sales in foreign countries, there is a doubt whether it is the use of the trademark under Japan's Trademark Law or not.

5.4.2 Cancellation of proxy registration

Japan's trademark system protects the right of duly authorized trademark owners. For instance, where overseas-based goods or services are provided in Japan, and where the overseas company involved has entered into an agency agreement with a Japanese company, if that local agent applies for registration of the overseas company's trademark without due cause or permission, the duly authorized trademark owner may file a petition for the cancellation of the Japanese registration, and can thereby regain their trademark rights.

5.5 The registration process

5.5.1 Application and registration fees

Following a revision of the Trademark Law in 1992, Japan's trademark system has been operated under the same international classification system as other countries; there are 45 classes of goods and services, as well as those for goods and services unique to Japan. Applications can be made for individual classes or in several classes at once (known as "multiple-class" applications). Since April 1, 2008, however, a notification of reasons for refusal pursuant to the body of Article 3, Paragraph 1 of the Trademark Act is now issued if goods and services in eight or more similar groups are designated per class due to operational requirements at the Japan Patent Office.

It is always best to consult a professional advisor such as a patent attorney—known in Japan as a *benrishi*—when applying for trademark registration. Naturally, applying for and being granted registration of a trademark incurs fees. The fees for this process in Japan are as follows.

① Application fees

a. One trademark in one class: 12,000 yen.

b. One trademark in multiple classes: 12,000 yen for the first class, and an extra 8,600 yen for each additional class.

c. Note that the above amounts are official fees only, and do not include patent attorney's fees, etc.

② Registration fees

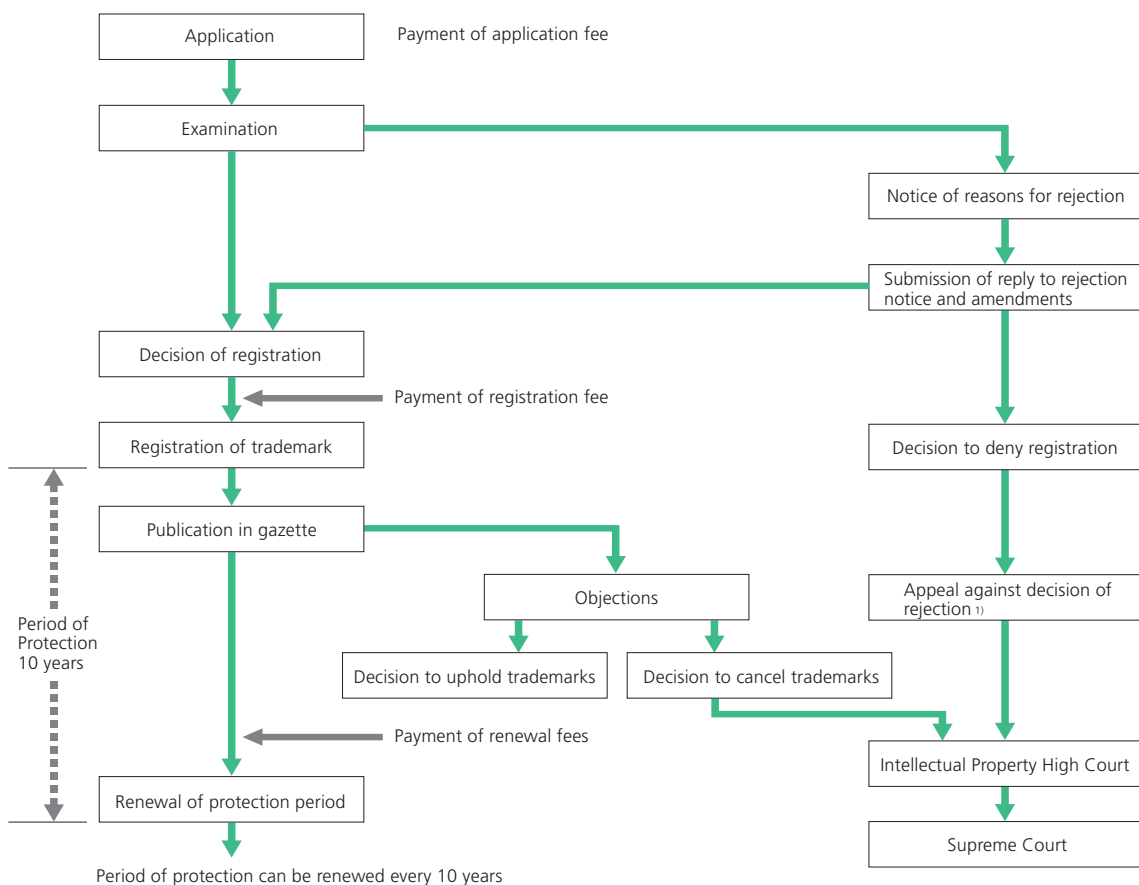
When filing an application, fees differ according to whether the application is for a single class or multiple classes. Registration fees, on the other hand, are 37,600 yen per trademark per class regardless of the type of application. Remember that, if you engaged a patent attorney, you will be charged fees in addition to the above registration fees; these may include fees for the work involved in paying the official fees.

③ Renewal expenses

48,500 yen per class must be paid as a renewal registration fee at the time of renewal. As in the case of applications and registrations, you will also be charged other fees, such as a fee for the work involved in paying renewal registration fees, if you engaged a patent attorney.

5.5.2 From application to registration

If the examination process goes smoothly, a trademark can be registered in as little as three months from the time of filing the application. Generally, however, the examination takes approximately six months, and the registration takes another one or two months. Allow about eight months after application to complete the process.



1) Under revisions to the law in FY2008, the deadline for demanding an appeal was changed from 30 days to 3 months from the transmittal of the examiner's decision of refusal.

5.6 International registration of trademarks

In principle, to obtain trademark rights in Japan from within a foreign country, an application for registration must be filed with the Japan Patent Office. However, the following two schemes may be preferable alternatives.

5.6.1 Application under the Paris Convention

If you intend to apply for registration of a trademark in Japan only, or in a small number of countries, it may be a good idea to file your application under the Paris Convention.

5.6.2 Application under the Madrid Agreement

Japan is also a signatory to the Madrid Agreement, so this is another alternative when making an international trademark application that includes Japan. Under this system, it is possible to file an international application and register trademarks in specified countries based on the application you initially filed in your own country. This is a particularly handy system for conglomerate companies with interests in many countries around the world.

5.7 Protection of designs

5.7.1 Scope of protection

Under Japan's Design Law, protection is available for the form, pattern or color of an object or a combination of these, which appeals visually to the viewer's sense of aesthetics. Put simply, Japan's system protects the shape, form and external appearance of an object.

① Criteria

a. Visual appeal to aesthetic sense

Objects whose form cannot be recognized by the human eye, such as a single grain of powder, do not meet this criterion.

b. Industrial usability

The design must be able to be recreated using an industrial (mechanical or hand-based) process and must be able to be mass-produced.

② Examination criteria

a. Novelty

No identical or similar design must have been in existence before the application was made; in other words, the design must be completely new.

b. Ease of creation

No design that is adjudged to be lacking creativity will be registered, regardless of whether or not it is new.

c. Uniqueness

Designs that are either identical or similar to other designs for which applications have been filed or which have been registered are not deemed to be newly-created designs, and will therefore not be registered (except for the application filed by the same person).

d. Eligibility

From a standpoint of public interest, the following designs will not be registered.

- Designs that may breach public order and morals.
- Designs that may cause confusion with any item pertaining to the business of any other person.
- Designs consisting of only the minimum form necessary to ensure the functions of the object.

e. One design per application

Discrete applications must be made for each design. In some cases, however, several objects may be deemed to comprise a "design of a set of objects" as long as certain criteria are met.

f. Priority

If more than one application is filed for the registration of two identical or similar designs, the application filed first will be eligible for registration. If the same person files two identical or similar design applications within a certain period, one of which is deemed as the original design and the other is deemed as a related design, both designs will be eligible for registration under the related design system.

5.7.2 Term of protection

Protection of design rights begins once a design is registered, and continues for 20 years. However, it is important to note that, contrary to trademarks, it is necessary to pay an annuity each year in order to maintain protection. Furthermore, while design rights generally lapse upon the passing of 20 years, if the form of the registered object becomes famous, it is possible to receive protection under the Unfair Competition Prevention Law even after design rights lapse.

5.7.3 A protection system unique to Japan

Japan's Design Law provides a system of protection that is very unique to this country. Below are some major examples of this.

① Related design system

Under Japan's Design Law, not only are designs originally registered in relation to a certain object protected, but similar designs related to that object and filed in a certain period are also protected. However, if you feel that official advance confirmation is required regarding the extent to which your design is similar to the one registered, you may register your design as a "similar design."

② Design of a set of objects

Under the provisions of Japan's Design Law, design applications and registration usually follow a one-design-per-object principle, however there is an exception to that rule. This exception allows for discrete objects that common sense dictates are usually sold as a set—a knife, fork, and spoon, for example—to be registered as a single design of a set of objects. Intelligent use of this system has the advantage of helping keep costs to a minimum.

③ Secret designs

When a design is registered, it is generally published in the Design Gazette, however Japan offers a system that allows a registered design to be kept a secret for a certain period upon application. This is known as the "Secret Design" system. Because designs are influenced so strongly by fads and fashions, and because some products' periods of popularity tend to end sooner than others', this system aims to protect the rights of the design-owners for a certain period of time. It should be noted, however, that this system tends to limit litigators' options when suing for infringement of rights, and so the system is used infrequently at best.

④ Partial designs

Because traditionally design rights have protected an entire object, protection could not be guaranteed against infringement by people who copied only parts of a design. However, under a revision to the law in 1998, the partial design system was introduced allowing registration of parts of shapes or forms with distinct characteristics. Thus, while it used to be that if somebody copied only part of a design they would escape prosecution as long as the overall design was not similar, the new system allows registration of partial designs, meaning that infringements can be prosecuted. Indeed, this is one of the most important aspects of Japan's Design Protection system.

⑤ Protection of screen designs

According to a revision of the Design Law in 2006, screen designs (such as the designs of operation screens for programming DVD recorders, operation screens for selecting a person to call on a cellular phone, and photo printer setup screens) under the certain conditions are now protected within the scope of designs which forms a part of goods.

5.8 The registration process

5.8.1 Application and registration fees

Naturally, applying for and being granted registration of a design incurs fees. The fees for this process in Japan are as follows.

- ① Application fees
 - a. 16,000 yen per design
 - b. Note that the above amount is the official fee only, and does not include patent attorney's fees, fees for design drawings, etc.

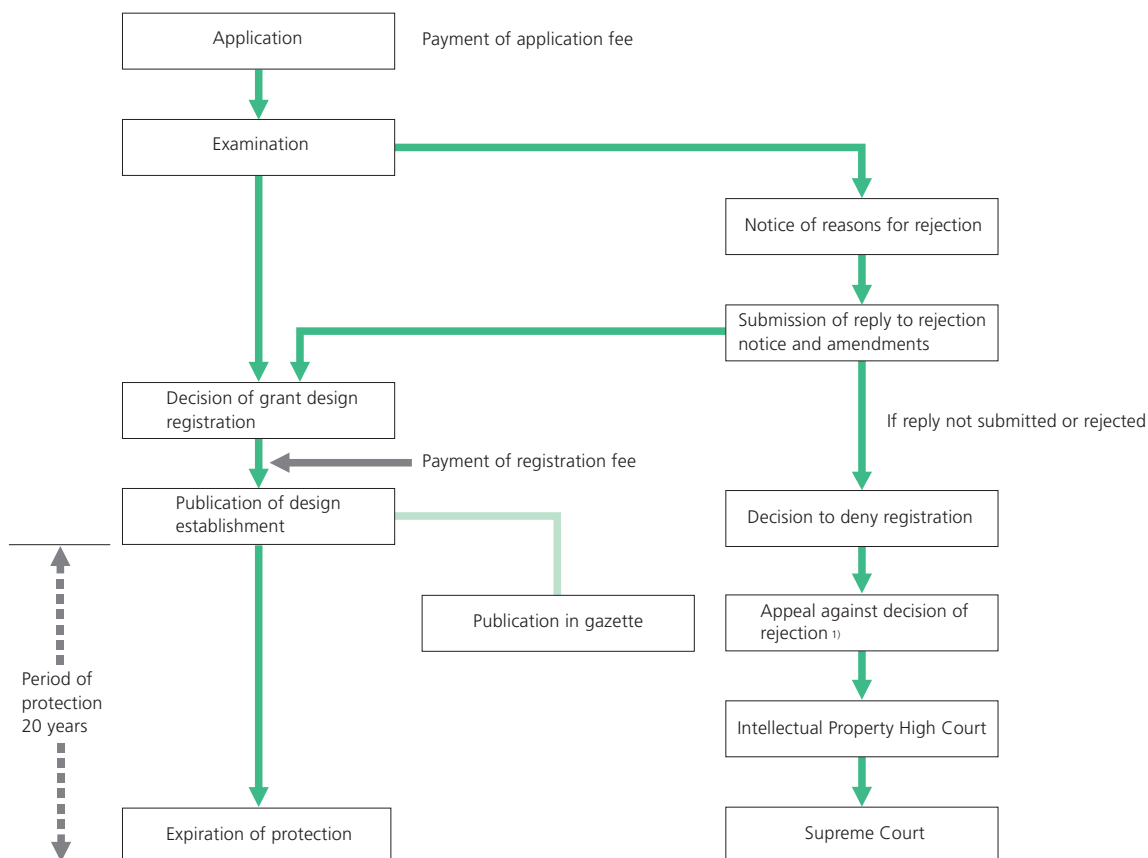
② Registration fees

A registration fee is required when registering a design, however these fees differ from those of trademarks. The design registration fee for the first year is 8,500 yen and an annuity must be paid each year in order to maintain the validity of the design rights. The annuities are as follows.

- Years 1 through 3: 8,500 yen per year
- Years 4 through 10: 16,900 yen per year
- Years 11 through 20: 33,800 yen per year

5.8.2 From application to registration

If the examination process goes smoothly, a design can be registered in as little as three months from the time of application. Generally, however, the examination takes approximately six months, and the registration takes another one or two months. Allow about eight months after application to complete the process.



1) Under revisions to the law in FY2008, the deadline for demanding an appeal was changed from 30 days to 3 months from the transmittal of the examiner's decision of refusal.

Reference

1. Unregistered trademarks and designs

Under Japanese law, unregistered trademarks and designs may be protected from unauthorized use by other people under the Unfair Competition Prevention Law. If a trademark or design is not registered but becomes generally known or famous in Japan after use, the trademark or design, as well as the form of the object that becomes generally known, is protected. Furthermore, forms of new goods are protected for up to three years from the date on which they were first sold in Japan, even if no patent, utility model right or design has been registered. This means that if any other person copies the form of that new product, protection is available under criminal or civil law.

2. Consultation with specialists for intellectual property rights

The experts publicly authorized to act as agents in carrying out application procedures for intellectual property rights such as patents, designs and trademarks, are, of course, patent attorneys; in Japan they are known as benrishi. Regular lawyers (bengoshi) may also perform this work, however, because a very high level of expert knowledge regarding intellectual property rights is required, it is most common for those who wish to acquire rights, or whose patent or trademark rights have been infringed, to hire a patent attorney. Furthermore, under Japanese law, legal action pertaining to infringement of rights is currently the sole domain of lawyers (bengoshi), but starting in 2004, patent attorneys (benrishi) may also represent a client in court along with a lawyer (bengoshi) as long as they pass certain national examinations.

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