Japanese Godo Kaisha “GK” Company Incorporation Formation Overview

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1. Japanese Godo Kaisha “GK” Company

A Japanese godo kaisha, generally abbreviated to “GK”, company is a limited liability company with one or more members. One or more foreign members can own 100% of a Japanese godo kaisha GK company, except for GK companies in certain regulated industries such as banking, defence, utilities and transportation. Foreign members must file notifications to the Bank of Japan of their investment in a Japanese godo kaisha GK company.

A Japanese godo kaisha GK company must have a managing member or, if such managing member is a corporation, one or more representative managers (each of whom must be a person) to represent the managing member. The managing member and representative manager can be non-residents.

All members of a Japanese godo kaisha GK company must vote unanimously to approve any change to its business purpose or other registered details; so a GK member’s voting influence is disproportional to its ownership percentage.

A Japanese godo kaisha GK company must have a registered office in Japan.

A GK company must file annual financial statements and an income tax-return within 30 days of its financial yearend (60 days if it applied for and received “Blue Form” status from the tax office before the previous financial yearend).

If a GK company has JPY10,000,000 or more paid-in capital, it must also file a consumption tax (sales tax or VAT) return within 30 days of its financial yearend (60 days if it received “Blue Form” status before the previous financial yearend).

If a Japanese godo kaisha GK company has JPY10,000,000 or more income in any financial year, then starting in the second financial year after that in which it achieved such level of income, it must also file a consumption tax return within 30 days of its financial yearend (60 days if it received “Blue Form” status before its previous financial yearend).

1.1. Corporate Veil

A Japanese godo kaisha GK company is a separate legal entity from its members and litigation against a GK company is usually locally limited to it. To ensure a Japanese godo kaisha GK company provides an effective legal buffer against litigation, a corporate member’s officers and managers must refrain from actively managing the GK company’s day to day affairs. For example, if not, the National Tax Agency might decide the GK company is in effect acting as a branch-office of such member. Such independence may be difficult to achieve for a GK company’s corporate managing member because such member, or the representative manager on behalf of such member, is the GK company’s legal working manager.

1.2. Income Tax Treatment

A Japanese godo kaisha GK company must file notifications of incorporation with the National Tax Agency, the prefectural (or metropolitan if in Tokyo), and city (ward if in central Tokyo) tax offices within 60 days of formation. If the GK company does not file such notifications, it will not have “Blue Form” status and will not be able to carry-forward losses from its first financial year to offset against future profits. A GK company can apply for Blue Form status at any time, but such status will not become effective until the following financial year. A Japanese godo kaisha GK company with Blue Form status can carry-forward losses to offset against future taxable income for up to 10 years.

A GK company can set its financial yearend to be any date within 12 months of its incorporation.

A GK company must file annual financial statements (monthly profit and loss statement, and balance-sheet) and income tax-returns (national, prefectural or metropolitan, and city or ward), and pay income taxes, within 30 days of the financial yearend (60 days if it received "Blue Form" status before its previous financial yearend).

If a Japanese godo kaisha GK company pays income tax on profits at the end of a financial year, the tax office will automatically demand an interim income tax payment of 50% of such paid amount at the end of its next financial half-year.

1.3. Japanese Consumption Tax (VAT, GST, Sales Tax) Treatment

If a Japanese godo kaisha GK company has JPY10,000,000 or more paid-in capital, it must file a yearend consumption tax-return (elsewhere known as sales tax, GST, VAT etc.), and pay the consumption tax due, within 30 days of its financial yearend (60 days if it received "Blue Form" status before its previous financial yearend).

If a GK company has JPY10,000,000 or more income in any financial year, then starting in the second financial year after that in which it achieved such level of income, it must file a consumption tax-return.

If a GK company pays consumption tax at the end of a financial year then the Japanese tax office will automatically demand an interim consumption tax payment of 50% of such paid amount at the end of its next financial half-year.

If a GK company registered as a consumption taxpayer pays more consumption tax in its expenses than it collects in its sales invoices, it can claim a refund of the difference.

1.4. Permanent Establishment "PE"

The National Tax Agency might rule that a sole-member subsidiary Japanese godo kaisha GK company, creates a permanent establishment in Japan of its member. This is because a sole member GK company is managed by its member, or by one or more representative managers representing the member, and thus in effect is equivalent to a branch-office in Japan of the member. This might also apply in the case of a GK company owned by multiple members but managed by a corporate member.

A foreign company holding a subsidiary GK company, which also sells direct to customers in Japan without involving such GK company, must not involve the GK company in any sales, marketing, sales invoicing, order fulfilment or invoice collection activities for such sales. If not, the National Tax Agency may decide the GK company is the foreign company's permanent establishment in Japan. In such cases, the National Tax Agency will tax the GK company based on the foreign company's entire Japanese income, unless the GK company can prove on a sale by sale basis that it was not involved.

1.5. Customer or Distributor Liaison Office

The National Tax Agency considers a customer liaison subsidiary GK company to be a cost-center and will likely demand it pays income tax calculated on a notional income (cost plus) equal to a percentage of its total expenses. It must be clear to the National Tax Agency that the GK company has no part in generating income and its foreign owning or majority controlling shareholder's managers must not involve the GK company in any sales, marketing, sales invoicing, order fulfilment or invoice collection activities.

Before deciding to designate a subsidiary GK company as a customer liaison office, a foreign company should consider the implications of the National Tax Agency's July 2009 decision (later rescinded) to levy a $119,000,000 tax charge against Amazon.com in relation to its Japanese subsidiaries Amazon Japan Logistics KK and Amazon Japan KK, despite Amazon's claim the subsidiaries were simply support and liaison offices.

1.6. Intercompany Management Fees

A foreign company can charge intercompany management fees to its subsidiary Japanese godo kaisha GK company. The amount of intercompany management fees must pass an arms-length test to prove the cost is no more expensive than if purchased from an independent third-party supplier. All intercompany management fees must be fully documented, and copies of such documents attached to the GK company's tax-return when filed.

A foreign company with sales direct to Japanese customers that do not involve its wholly owned or majority controlled subsidiary GK company, should use caution when charging intercompany management fees to it, as the National Tax Agency might consider such fees as evidence that the overseas company executives directly manage the GK company. If the Japanese tax office then decides the Japanese godo kaisha GK company is the overseas company's permanent establishment in Japan, it will tax the GK company based on the overseas company's entire Japanese income, unless the GK company can prove on a sale by sale basis that it was not involved.

1.7. Intercompany Loans

A foreign company can make loans to its subsidiary Japanese godo kaisha GK company and can receive interest payments on such loans. The amount of interest charged on an intercompany loan must be documented and approved by the GK company's members before it is made. The interest must also pass an arms-length test to prove it is no more expensive than if from an independent third-party lender. Interest payments to overseas lenders are subject to withholding tax, which might be mitigated by country-dependent tax-treaty.

Japan has a thin-capitalization rule which limits tax-deductibility of interest on intercompany loans. Interest on aggregated intercompany loans to a GK company is disallowed if such aggregated amount exceeds 3x the GK company's paid-in capital.

1.8. Corporate Governance

Members decide a GK company's major business matters at members meetings convened in accordance with Japan's Company Law and the GK company's Articles of Incorporation. At members meetings, the members decide matters affecting the GK company's registered details, and other matters as described in its Articles of Incorporation, on a unanimous basis. Thus, a member with a minority interest can prevent the GK company from completing acts such as the dismissal, election, or reelection of the managing member, agreeing the representative manager's compensation, relocating its registered address, dissolution, or disposing its assets.

A Japanese godo kaisha GK company is managed by all members or by one or more managing members. If a managing member is a corporation, it must be represented by one or more representative managers (who do not need to be residents of Japan). A representative manager can irrevocably bind the GK company to loans and other commitments.

There is no simple way (unless by using a law-office or independent third-party service provider to manage access to the registered representative seal, seal ID card, and bank-accounts) to limit the authority of a GK company's managing member or representative managers. For this reason, it may be best not to elect a recently hired employee as the representative manager until such employee's character is fully known.

Members must also note that any employee with access to a GK company's registered representative seal and ID card can irrevocably bind the company to a commitment. For this reason, it is essential to securely store the registered representative seal and seal ID card and implement an approval system for applying it to documents.

1.9. Inventory

Any inventory a Japanese godo kaisha GK company buys must appear on its balance-sheet. If the GK company buys inventory from its parent company, or from an affiliated company, it must be able to prove the inventory purchase was on arms-length terms. Such "transfer pricing" can be preapproved by the National Tax Agency to prevent disputes at future tax audits.

1.10. Visa Sponsorship

To sponsor a Business Manager or other visa, a Japanese godo kaisha GK company in its first financial year must have at least JPY5,000,000 paid-in capital, a physical office space commensurate with its business, a viable 3 – 5 year business-plan, and the ability to hire at least two Japanese nationals or permanent residents.

2. Japanese Godo Kaisha GK Company Formation Incorporation Services

This section describes the process to incorporate a simple privately held Japanese godo kaisha GK company with a single non-resident corporate member having a duly authorized officer to notarize incorporation documents, up to JPY10,000,000 Yen of paid-in capital, and a single representative manager. A GK company does not need a resident managing member or resident representative manager, although without one it is very unlikely a Japanese high-street bank will accept an application to open a bank-account, difficult to lease office space except at serviced office providers, and impossible to receive business licenses in certain industries.

2.1. Member's Affidavit

We create the Member's Affidavit in English and Japanese. The member must have the English version of the affidavit notarized either at its home-country's embassy in Japan or at a public notary in its home-country. Although we file the bilingual version, only the Japanese text has official meaning. To create this document, we need the information described below.

a. Member's Name

   We need the member's name as it appears on its Articles of Incorporation.

b. Member's Registered Office Address

   We need the member's registered address as it appears on its Articles of Incorporation.

c. Member's Governing Law

   We need details of the law under which the member was incorporated.

d. Member's Date of Incorporation

   We need the member's date of incorporation as it appears on its Articles of Incorporation.

e. Member's Method of Publishing Official Notices

   We need the member's official method (if any) of publishing official notices.

f. Member's Scope of Business

   We need the member's formal business purpose as it appears on its Articles of Incorporation.

g. Member's Paid-in Capital

   We need the member's exact amount of paid-in capital as of the date of the Member's Affidavit.

h. Member’s Manager

We need the name and registered address of the member’s representative authorized to incorporate the GK company (for an LLC or similar entity managed by all members, each member must notarize an individual affidavit approving the representative’s authorization and we will also need a copy of each member’s passport to confirm such details).

i. Representative Manager

We need the name and address of the Japanese godo kaisha GK company’s representative manager (or managers if there are two or more). We also need a copy of the representative managers’ passports to confirm such details. The names and addresses of the representative managers are public record. We strongly recommend the representative managers seek legal advice about the liabilities of the representative managers of a GK company. If the representative manager incorporating the GK company is a resident of Japan, he or she must have a bank-account in Japan into which to receive the GK company’s paid-in capital.

2.2. Articles of Incorporation

We create the Articles of Incorporation in English and Japanese. Although we file the bilingual version, only the Japanese text has official meaning. To create this document, we need the information described below.

a. Company Name

A Japanese godo kaisha GK company’s name can be in English (for example “ABC 合同会社”) or in Japanese phonetic equivalent (for example “エービーシー合同会社”). The words “godo kaisha” must be registered in the Japanese kanji characters “合同会社”.

b. Member’s Interest (Paid-In Capital)

We need details of the amount of paid-in capital the member will invest at incorporation.

c. Registered Office Address

We need the address of the GK company’s registered office in Japan where it can receive official documents.

d. Scope of Business

We need details of the GK company’s proposed business purpose. A Japanese godo kaisha GK company can only do the specific businesses described in its Articles of Incorporation but can subsequently amend and reregister its Articles of Incorporation to change or expand its business purpose.

e. Financial Year

We need to know the start and end dates of the GK company’s fiscal year.

f. Disposition of Member’s Interest

We need to know how the member’s interest will be managed in the event of the member’s acquisition or liquidation.

2.3. Deposit of Paid-In Capital

For practical reasons, such as satisfying concerns of landlords when leasing office space, we recommend minimum paid-in capital of Japanese Yen 2,000,000. To sponsor a work visa, paid-in capital must be at least JPY5,000,000. The GK company can use the paid-in capital immediately it is registered.

The member must deposit the paid-in capital in the incorporating representative manager’s bank-account. If the representative manager is a resident of Japan, he or she must then scan the page of the bank-account passbook showing the deposit, which must be a single transaction, and we attach it to the Certificate of Receipt of Paid-In Capital. If the representative manager is not a resident of Japan, he or she must sign an attestation of receipt of the paid-in capital (although specific evidence, such as a scan of a bank-account passbook, of the deposit is not needed).

2.4. Letter of Acceptance of Inauguration

The representative manager (or each if there are two or more) must sign a Letter of Acceptance of Inauguration. We will prepare the letter in Japanese and English and send it to him or her. The representative manager must have his or her signature notarized unless he or she has a personal seal registered in Japan.

2.5. Representative Seal

We order and register an 18mm wood seal for the GK company. The representative seal is registered in the representative manager's name and only he or she can legally apply the seal to documents. If there are two or more representative managers, only the one whose name the seal is registered in can legitimately use it.

2.6. Filing

After the representative manager signs the Japanese godo kaisha GK company's Articles of Incorporation, we file it, together with the Certificate of Receipt of Paid-In Capital, Letter of Acceptance of Inauguration, and Registration of Representative Seal documents, at the Bureau of Legal Affairs in the area where the GK company has its registered office.

At this point the GK company legally exists, but its name will not appear on the official Company Register for 7 – 10 days.

2.7. Receipt of Certificate of Incorporation and Representative Seal ID Card

7 – 10 days after filing, we collect an official copy of the GK company's Certificate of Incorporation, and the Representative Seal ID Card, from the Bureau of Legal Affairs in the area where the GK company has its registered office, and hand them to the representative manager.

