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Japanese Kabushiki Kaisha "KK" Company Formation Incorporation Overview

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1. Japanese Kabushiki Kaisha "KK" Company Formation

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

A Japanese kabushiki kaisha KK company must have either a sole representative director, two or more directors of whom at least one must be a representative director, or a Board of Directors (three or more directors including at least one representative director and one or more auditors), to manage it. All directors and the auditor can be non-residents.

A shareholder of a Japanese kabushiki kaisha KK company votes in proportion to the number of voting shares such shareholder holds.

A Japanese kabushiki kaisha KK company must have a registered office in Japan.

A Japanese kabushiki kaisha KK 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). It must also convene an annual general meeting of shareholders, in accordance with its Articles of Incorporation, to approve its yearend financial statements.

If a KK 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 KK 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 kabushiki kaisha KK company is a separate legal entity from its shareholders and litigation against a KK company is usually locally limited to it. To ensure a KK company provides an effective legal buffer against litigation, a sole or majority controlling corporate shareholder's officers and managers must refrain from actively managing the KK company's day to day affairs. If not, a court or the National Tax Agency might decide the KK company is in effect acting as a branch-office in Japan of such shareholder.

1.2. Income Tax Treatment

A Japanese kabushiki kaisha KK 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 notifications are not filed, the KK company will not receive "Blue Form" status and will not be able to carry-forward losses from its first financial year to offset against future profits. A Japanese KK company can apply for Blue Form status at any time, but such status will not become effective until the following financial year. A KK company with Blue Form status can carry-forward losses to offset against future taxable income for up to 10 years.

A Japanese KK company can set its financial yearend to be any date within 12 months of its formation.

A KK company must file annual financial statements (monthly profit and loss statement, and balance-sheet) and income tax-returns (national and local), 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 kabushiki kaisha KK 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 the KK company's next financial half-year.

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

If a Japanese kabushiki kaisha KK 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 KK 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 KK 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 KK 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

A subsidiary Japanese kabushiki kaisha KK company does not usually create a permanent establishment in Japan of its owning or majority controlling foreign corporate shareholder. To ensure this, such a shareholder's officers and staff must not be involved in the subsidiary KK company's day to day management or business.

A foreign company with sales direct to Japanese customers that do not involve its owned or majority controlled subsidiary KK company, must not involve the KK 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 KK company is the foreign company's permanent establishment in Japan. In such cases, the National Tax Agency will tax the Japanese KK company based on the foreign company's entire Japanese income, unless the KK 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 KK 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 KK company has no part in generating income and its foreign owning or majority controlling shareholder's managers must not involve the KK company in any sales, marketing, sales invoicing, order fulfilment or invoice collection activities.

Before deciding to designate a subsidiary Japanese kabushiki kaisha KK company as a customer liaison office, a foreign owner should consider the implications of the National Tax

Agency's uly 2009 decision 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 kabushiki kaisha KK company. The amount of such 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, with copies of such documents attached to the KK 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 KK 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 KK company. If the Japanese tax office then decides the Japanese kabushiki kaisha KK company is the overseas company's permanent establishment in Japan, it will tax the KK company based on the overseas company's entire Japanese income, unless the KK 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 kabushiki kaisha KK 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 KK company's directors 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 KK company is disallowed if such aggregated amount exceeds 3x the KK company's paid-in capital.

1.8. Corporate Governance

Shareholders decide a Japanese kabushiki kaisha KK company's major business matters at shareholder meetings convened in accordance with Japan's Company Law and the KK company's Articles of Incorporation. At shareholder meetings, the shareholders decide matters affecting the KK company's registered details, and other matters as described in its Articles of Incorporation, on a "1 share 1 vote" (assuming there is only one class of shares) simple majority or super majority basis.

A Japanese kabushiki kaisha KK company can have a Board of Directors, but a single representative director can irrevocably bind the KK company to loans and other commitments and all directors will suffer joint and several liability.

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 the representative director of a Japanese kabushiki kaisha KK company. For this reason, it may be best not to elect a recently hired employee to become the representative director of a KK company until such employee's character is fully known.

Shareholders must also note that any employee with access to a KK company's registered representative seal and seal 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 kabushiki kaisha KK company buys will appear on its balance-sheet. If the KK 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 kabushiki kaisha KK 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 Kabushiki Kaisha KK Company Formation Incorporation Services

This section describes the process to incorporate a basic privately held Japanese kabushiki kaisha KK company with a single shareholder, Common Stock only, up to JPY10,000,000 Yen of paid-in capital, and a three-person Board of Directors plus auditor. A KK company does not need a resident director, although without one Japanese banks will likely decline an application to open a bank-account, it will be difficult to lease office space (except from serviced office providers), and impossible to receive business licenses in certain industries.

<u>Note</u>: It is also possible to incorporate a Japanese kabushiki kaisha KK company with a sole representative director, or with multiple representative directors of equal authority, but without a Board (in which case there is no auditor).

2.1. 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 KK company can use the paid-in capital immediately it is registered.

The shareholder must deposit the paid-in capital in our incorporator's account before we start the incorporation. We will not incorporate a KK company with paid-in capital less than our incorporation fees.

After receipt, we scan the page of the bank-account passbook showing the deposit, which must be a single transaction, and attach it to the Certificate of Receipt of Paid-In Capital.

2.2. Incorporator's Resolution and Articles of Incorporation

We create the Incorporator's Resolution and the Articles of Incorporation in English and Japanese. We file the bilingual versions but only the Japanese text has official meaning. To create these documents, we need the information described below.

a. Company Name

A Japanese kabushiki kaisha KK company's name can be in English (for example "ABC 株式会社") or in Japanese phonetic equivalent (for example "エービーシー株式会社"). The words "kabushiki kaisha" must be registered in the Japanese kanji characters "株式会社". It is legitimate (although old-fashioned) to write the characters "株式会社" at the beginning (for example "株式会社 ABC").

b. Authorized Shares and Issued Shares

We will need details of the number of shares authorized, the number of shares issued at incorporation, and the issue price. The shareholder must pay for all issued shares at the issue price at incorporation, so the paid-in capital equals the number of issued shares multiplied by the issue price of each share.

c. Shareholder's Details

We will need the name and address of the shareholder. Shareholder details of a private Japanese kabushiki kaisha KK company are not public record.

At the time of incorporation, the incorporator will act as the sole shareholder. The entire shareholding will be transferred to the beneficial shareholder immediately after incorporation.

d. Registered Office Address

We will need the address of the KK company's registered office in Japan where it can receive official documents. If needed, we can provide an "address only" in a prestigious central Tokyo area for a monthly fee.

e. Scope of Business

We will need details of the KK company's proposed business purpose. A Japanese kabushiki kaisha KK 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.

f. Directors and Auditor

We will need the name and address of the KK company's directors and auditor. If needed we can provide "name only" nominee representative director, regular director, and proxy auditor services for monthly fees. The names and addresses of the directors and auditor are public record. Each director and the auditor should take legal advice about the joint and several liabilities of directors and auditors of Japanese companies. Directors do not need to be residents of Japan.

g. Financial Year

We will need to know the start and end dates of the KK company's fiscal year.

2.3. Letters of Acceptance of Inauguration

Each director, and the auditor, must sign a Letter of Acceptance of Inauguration. We will prepare these letters in Japanese and English and send them to each individual. Each representative director must have his or her signature notarized unless he or she has a personal seal registered in Japan.

2.4. Representative Seal

We will order and register a wood seal for the KK company. The representative seal is registered in a specific representative director's name and only that person can legally apply the seal to documents.

2.5. Notarization and Filing

After the public notary checks the Japanese kabushiki kaisha KK company's Incorporator's Resolution, Articles of Incorporation, Certificate of Receipt of Paid-In Capital, Letters of Acceptance of Inauguration, and Registration of Representative Seal documents, we will file them with the Bureau of Legal Affairs in the area where the company has its registered office.

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

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

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

2.7. Organizational Meeting of the Board of Directors

We will convene a first meeting of the Board of Directors to approve the transfer of the incorporation shares from the incorporator to the beneficial shareholder.