



# DOING BUSINESS IN JAPAN

For Israeli Multinationals

DLA Piper Tokyo Partnership  
Makiko Kawamura  
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# Various Ways to Start Business in Japan

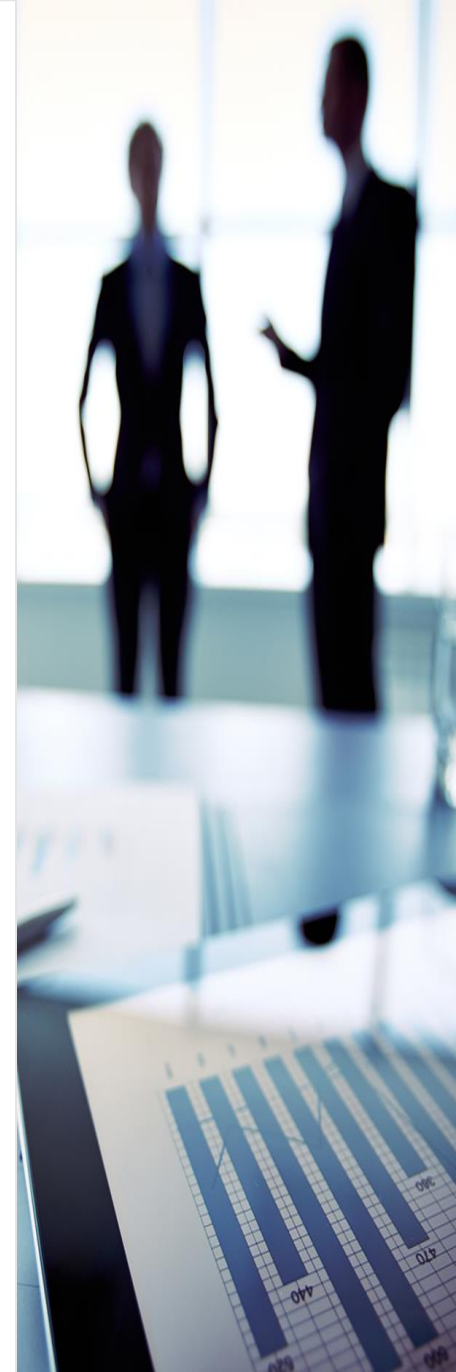
## Option 1: Doing business without setting up an entity in Japan

- **Contract with local agent (hiring independent contactor)**  
Key issue: PE risk, potential application of employment law, difficulty in terminating long-term agreement
- **Partner with Japanese entities through distribution agreement/ partner agreement**  
Key issue: profit sharing, how to control the business, difficulty in terminating long-term agreement
- **Joint venture with local partner**  
Key issue: how to control joint business, cultural difference, deadlock and exit

# Various Ways to Start Business in Japan

## Contract with local agent - Agent PE (Permanent Establishment) risk

- If a foreign company has a PE, it is subject to Japanese corporate income tax
- Treaty between Japan and Israel:  
"a person (other than an agent of an independent status such as broker or general commission agent) acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise" (same as OECD Model Tax Convention)



# Various Ways to Start Business in Japan

## Employees vs. Independent Contractor

	Flexibility	Control	Independency
<b>Employee</b>	<ul style="list-style-type: none"> <li>• Difficult to terminate</li> <li>• Administrative burden (social insurance, pension and tax for employees)</li> </ul>	<ul style="list-style-type: none"> <li>• Can instruct and control his/her work</li> </ul>	<ul style="list-style-type: none"> <li>• No Independency requirement</li> </ul>
<b>Independent Contractor</b>	<ul style="list-style-type: none"> <li>• Flexible</li> </ul>	<ul style="list-style-type: none"> <li>• Limited Control</li> </ul>	<ul style="list-style-type: none"> <li>• Risks of "disguised independent contractor" issue</li> </ul>

# Various Ways to Start Business in Japan

## Option 2: Set up an entity/office in Japan

- **Kabushiki Kaisha (called "KK"; similar to US C-corporation)**
  - The most conventional and creditworthy entity type in Japan
  - Well-established structure
  - Fairly strict corporate formalities
  
- **Godo Kaisha (called "GK"; similar to US LLC)**
  - Simple structure and useful for 100% foreign sub of MNEs
  - Flexible in corporate governance and management
  - Some businesses may be hesitant in dealing with GKs.
  
- **Registered Branch Office**
  - Not an independent corporate entity
  - Treated similar to KK or GK for tax purposes

# Various Ways to Start Business in Japan

	KK	GK	Branch Office
Capital	<ul style="list-style-type: none"> <li>• Must be JPY 1 or more</li> <li>• At least half of KK's capital must be recorded as "stated capital", which is subject to the registration tax at 0.7% of the stated capital amount</li> </ul>	<ul style="list-style-type: none"> <li>• Must be JPY 1 or more</li> <li>• No rules for allocation of the "stated capital" and "capital reserve"</li> </ul>	<ul style="list-style-type: none"> <li>• No capital requirement for a registered branch office</li> </ul>
Registration	<ul style="list-style-type: none"> <li>• Must be registered with the Legal Affairs Bureau</li> </ul>	<ul style="list-style-type: none"> <li>• Must be registered with the Legal Affairs Bureau</li> </ul>	<ul style="list-style-type: none"> <li>• Must be registered with the Legal Affairs Bureau</li> <li>• Also must file a notice with the Ministry of Finance through the Bank of Japan</li> </ul>
Liability	<ul style="list-style-type: none"> <li>• Limited to the amount of equity participation</li> </ul>	<ul style="list-style-type: none"> <li>• Limited to the amount of equity participation</li> </ul>	<ul style="list-style-type: none"> <li>• Unlimited (subject to the governing law of the foreign company)</li> </ul>

# Various Ways to Start Business in Japan

	KK	GK	Branch Office
Governance Structure	<ul style="list-style-type: none"> <li>Annual general meeting of shareholders is required.</li> <li>In most cases, KK can choose to have or not to have a board of directors.</li> </ul>	<ul style="list-style-type: none"> <li>No annual general meeting of shareholders is required</li> <li>No board system is required</li> </ul>	<ul style="list-style-type: none"> <li>No meeting requirements for branch office</li> </ul>
Management	<p>If KK is with a board of directors</p> <ul style="list-style-type: none"> <li>At least 3 directors must be appointed.</li> <li>Statutory Auditor must be appointed.</li> <li>Certain important business decisions must be approved by the board.</li> <li>Holding quarterly board meetings is required.</li> </ul>	<ul style="list-style-type: none"> <li>Certain fundamental matters (e.g. amendment of the articles of incorporation, conversion, mergers) must be determined by unanimous consent</li> </ul>	<ul style="list-style-type: none"> <li>No management requirements for branch office</li> </ul>
US Tax	<ul style="list-style-type: none"> <li>Treated as an independent corporation.</li> </ul>	<ul style="list-style-type: none"> <li>Can be treated as a branch of the US corporation under the check-the-box regulations.</li> </ul>	<ul style="list-style-type: none"> <li>Treated as a branch of the US corporation.</li> </ul>

# Hiring Locals -Employment Law in Japan

## Key Features of Employment Law in Japan:

- Employee-friendly law
- Difficulty in terminating employment contract
- Work Rules
- Overtime payment





# Hiring Locals

## -Employment Law in Japan

### Things to be considered when hiring locals:

- **Fixed-term contract**
  - Period should be 3 years or less
  - Criteria for renewal of contract
  - Employee's right to convert to indefinite term after 5 years with 1 or more renewal(s)
- **Probation period**
  - Non-fixed term employment
  - 3 – 6 months (should not exceed 1 year)
  - Termination during/at the end of the period is allowed only if the termination is objectively reasonable and socially acceptable

# Types of Office Lease

## (Regular) Lease Agreement

- Most common type in Japan
- Tenants are protected under the land/building lease law.

## Fixed-Term Lease Agreement

- No renewal is guaranteed.
- No early termination by tenant is permitted.

## Rental Office Agreement

- Not a lease agreement
- Less legal protection for tenant

# Key Points for Office Lease

- **Timing**
  - Should be after incorporation of the local entity because corporate register and certificate of company seal are usually required by landlord
- **Lease Period**
  - Typically for 2 or 3 years
- **Renewal of Lease Period**
  - Generally guaranteed except for "Fixed-Term Lease"
- **Early Termination by Lessee**
  - Generally permitted with advanced notice except for "Fixed-Term Lease"
- **Security Deposit**
  - Mostly 6-12 times of the monthly rent

# Japanese Visa

## ■ Visa Waiver Program for 90-days Visit from Israel

Following activities are permitted under the Visa Waiver Program.

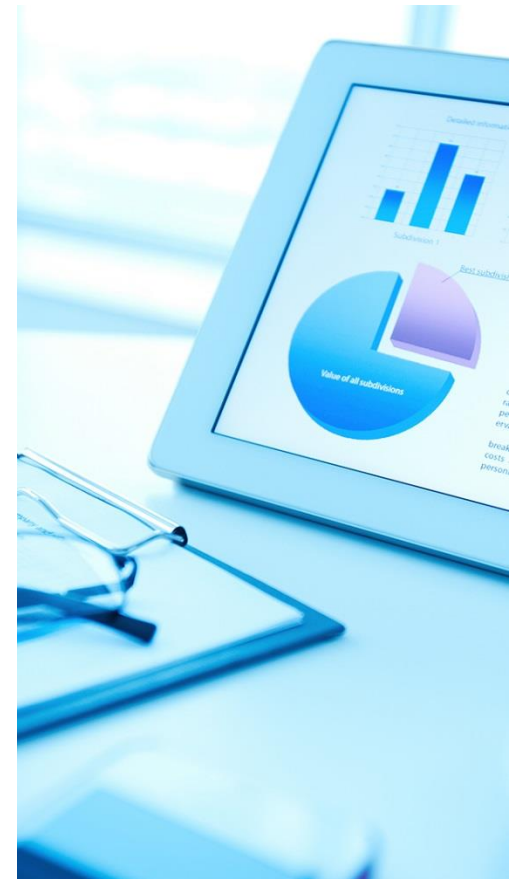
- Attending seminars, briefings and meetings
- Participation in plant tours and trade fairs
- Business liaison
- Business negotiations
- Contract Signing
- After-sales service
- Advertising or publicity
- Market research



# Japanese Visa

## ■ Types of Typical Working Visa

- Investor/Business Manager
- Engineer
- Specialist in Humanities/International Services
- Intra-company Transferee
- Legal/Accounting Services
- Skilled Labor



# Japanese Visa

## Application for CoE

- The applicant or agent (e.g. DLA Piper Tokyo) submits the application for Certificate of Eligibility ("CoE") to the Immigration Bureau in Japan

## Issue of CoE

- CoE is issued by the Immigration Bureau in Japan and sent to the applicant or agent in Japan (e.g. DLA Piper Tokyo)

## Visa Application

- The applicant submits the application for Visa at the Japanese embassy in Israel with CoE.
- The Japanese embassy issues Visa.

## Entry

- Present a passport and visa and submit CoE at the airport.
- Receive seal of landing verification in the passport.
- Receive the resident card (for mid-long term visas).

# Contact

Makiko Kawamura  
**Partner**

Email:  
makiko.kawamura@dlapiper.com

Address:  
Meiji Seimei Kan 7F , 2-1-1 Marunouchi,  
Chiyoda-ku, Tokyo, 100-0005, Japan

Tel: +81 3 4550 2815 Fax: +81 3 4550 2801



## **CREDENTIALS**

### **Education**

New York University, LL.M Taxation, 2008  
Waseda University Graduate School of Law,  
LL.M Public Law, 2003  
Aoyama Gakuin University, B.A., 1996

### **Professional Qualifications**

Bengoshi registered with the Daiichi Tokyo  
Bar Association  
Zeirishi registered with Japan Federation of  
Certified Public Tax Accountants'  
Associations

### **Languages**

English  
Japanese

Thank you!



