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 contractor)**
  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**

<table>
<thead>
<tr>
<th></th>
<th>Flexibility</th>
<th>Control</th>
<th>Independency</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Employee</strong></td>
<td>• Difficult to terminate</td>
<td>• Can instruct and control his/her work</td>
<td>• No Independency requirement</td>
</tr>
<tr>
<td></td>
<td>• Administrative burden (social insurance, pension and tax for employees)</td>
<td></td>
<td></td>
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<tr>
<td><strong>Independent Contractor</strong></td>
<td>• Flexible</td>
<td>• Limited Control</td>
<td>• Risks of &quot;disguised independent contractor&quot; issue</td>
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</tbody>
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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

<table>
<thead>
<tr>
<th></th>
<th>KK</th>
<th>GK</th>
<th>Branch Office</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Capital</strong></td>
<td>• Must be JPY 1 or more</td>
<td>• Must be JPY 1 or more</td>
<td>• No capital requirement for a registered branch office</td>
</tr>
<tr>
<td></td>
<td>• At least half of KK’s capital must be recorded as &quot;stated capital&quot;, which is subject to the registration tax at 0.7% of the stated capital amount</td>
<td>• No rules for allocation of the &quot;stated capital&quot; and &quot;capital reserve&quot;</td>
<td></td>
</tr>
<tr>
<td><strong>Registration</strong></td>
<td>• Must be registered with the Legal Affairs Bureau</td>
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</tr>
<tr>
<td></td>
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<td>• Also must file a notice with the Ministry of Finance through the Bank of Japan</td>
</tr>
<tr>
<td><strong>Liability</strong></td>
<td>• Limited to the amount of equity participation</td>
<td>• Limited to the amount of equity participation</td>
<td>• Unlimited (subject to the governing law of the foreign company)</td>
</tr>
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</table>
## Various Ways to Start Business in Japan

<table>
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<th>Governance Structure</th>
<th>KK</th>
<th>GK</th>
<th>Branch Office</th>
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</table>
| Governance Structure | • Annual general meeting of shareholders is required.  
• In most cases, KK can choose to have or not to have a board of directors. | • No annual general meeting of shareholders is required  
• No board system is required | • No meeting requirements for branch office |
| Management | If KK is with a board of directors  
• At least 3 directors must be appointed.  
• Statutory Auditor must be appointed.  
• Certain important business decisions must be approved by the board.  
• Holding quarterly board meetings is required. | • Certain fundamental matters (e.g. amendment of the articles of incorporation, conversion, mergers) must be determined by unanimous consent | • No management requirements for branch office |
| US Tax | • Treated as an independent corporation. | • Can be treated as a branch of the US corporation under the check-the-box regulations. | • Treated as a branch of the US corporation. |
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

<table>
<thead>
<tr>
<th>Type</th>
<th>Information</th>
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</table>
| (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

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CREDENTIALS
Education
New York University, LL.M Taxation, 2008
Waseda University Graduate School of Law, LL.M Public Law, 2003
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Professional Qualifications
Bengoshi registered with the Daiichi Tokyo Bar Association
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Thank you!