

A photograph of Mount Fuji, a large snow-capped mountain, rising above a layer of white clouds. The sky is filled with soft, grey clouds. The foreground shows dark, silhouetted mountain ridges.

Building your business in Japan

Business law essentials for Australians

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The 1st of 3 webinars discussing the foundations for business law in Japan

- **Business Law Essentials**
- Employment Law Basics
- Business Visa Requirements



Agenda

1. Introduction
2. Plan your business
3. Types of entities
4. Details of each type
5. Tips for startup companies





1. Introduction

Sell your organic products in Japan?

Start your own brand in Tokyo?

Provide your online services to Japanese people?

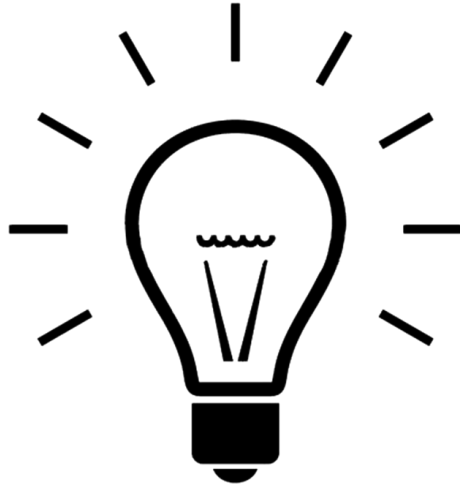
Invest in holiday properties in Hokkaido?

What type of business would you like to start in Japan?

Start an adventure tour company in Okinawa?

Acquire part, or a whole of a Japanese company?

Endless possibilities...



We would like to attract more
businesses to Japan
by removing obstacles

Lack of legal information

Limited access to good legal advisors

2. Plan your business

- What do you want to do?
- What does your company look like in 5yrs?
- Where should your business be located?
- Does your business require a licence?
- Are you moving to Japan?
- Do you need a corporate bank account?
- Are you raising capital for your company?

**Important to have a plan to
select the best business structure for you**

Two main scenarios:



*Buying or investing
in Japanese companies*

*Establishing your
own business entity
in Japan*

A wide-angle, high-angle photograph of the Tokyo skyline at dusk. The Tokyo Tower is the central focus, illuminated with warm orange and yellow lights. The surrounding city is filled with numerous skyscrapers and buildings, many of which are also lit up, creating a dense urban landscape. The sky is a deep blue with some light clouds.

3. Types of entities

Four main types of entities

Representative Office of your Australian company

- Simply an arm of your Australian company (not an independent entity)
- No registration required
- But you cannot carry on business

Branch of your Australian company

- More substantial presence than the representative office
- Still an arm of your Australian company
- Allowed to carry on business

Company Kabushiki Kaisha (KK Company)

- An independent entity
- Conventional structure
- Similar to company limited by share in Australia (eg., Pty Ltd, Ltd)

Compnay Godo Kaisha (GK Company)

- An independent entity
- Flexible structure - newly introduced in 2006
- Easier and cheaper to incorporate than KK



4. Details of each type of entity

Representative Office

Advantage

- the simplest structure
- the easiest to establish
- no registration required

Disadvantage

- carrying on business not allowed
- difficulties in opening a corporate bank account or renting an office

Other points

- your Australian company is responsible for debts and credits

Branch

Advantage

- carrying on business allowed

Disadvantage

- registration required
- there may be difficulties in opening a corporate bank account or renting an office

Other points

- your Aussie company is responsible for debits and credits

Kabushiki Kaisha KK Company

Advantage

- carrying on business allowed
- generally accepted as socially credible
- capital raising possible by issuing shares
- class shares available
- generally no issue in opening a corporate bank account or renting an office

Disadvantage

- registration required
- more regulations than GK Company
- less flexibility
- more expensive to incorporate

Other points

- responsible for its own debts and credits
- the conventional structure of a company

Godo Kaisha GK Company

Advantage

- carrying on business allowed
- less regulations than KK Company
- flexibility in structure and management
- cheaper to incorporate
- generally no issue in opening a corporate bank account or renting an office

Disadvantage

- registration required
- no shares issued meaning the company cannot be listed in the market (no chance of IPO)

Other points

- responsible for its own debts and credits
- newly introduced in 2000s



How should you select?

How much are you ready to commit?

I am not sure yet. I just want to send or have someone to explore the market. I will decide whether to actually start my business there later.

Representative office

may be suitable for you

I am pretty ready to commit. I would like to have my business' presence in Japan and start the business ASAP!

Branch, KK Company or GK Company

will be suitable for you

Do you want to establish a separate local entity?

Not really. I would prefer to keep it as a part of my Australian company. I don't want to have a separate management system including having another constitution.

Branch

may be suitable for you

Yes. I would like to establish a local entity so that our business in Japan looks more credible and committed to the Japanese market. It is also appealing to me that my Australian company's liability will be limited to the amount of equity paid in.

KK Company or GK Company

will be suitable for you

Is flexibility in your company's structure and management important to you?

Yes, it is very important because it is my family company and I would like to pay the dividends as I wish (timing, amount, payee).

GK Company

will be suitable for you

Not so much. I am happy to comply with the rules under the Companies Act and regulations.

KK Company

may be suitable for you

Are you planning to raise capital from investors?

Yes, this is our startup company. Our business is growing and will need to raise capital from the investors to expand. Ultimately, we are planning to go public and listed in the market.


KK Company

will be suitable for you

No. This is my family business (or a wholly-owned subsidiary of my Australian company). I am not planning to raise capital or IPO. Flexibilities are more important to me.

GK Company

will be suitable for you



5. Tips for startup companies

Three scenarios

Grow and keep your business

If you are simply growing your business with no plan for selling or raising capital from investors, GK Company may be the best for you. It will give you the maximum flexibility.

- no restrictions on dividends
- no financial statement publishment
- no AGM
- you can focus on your business

Selling your business at some point

If you are considering selling your business in Japan at some point, KK or GK Company will be the best option. You can transfer the interest in your company.

- You should not select Branch. Branch is not an independent entity which means more steps required to sell your business in Japan (split company / business etc)

Considering capital raisings from venture capitals and eventually an IPO

If you are considering raising capital from investors such as venture capital and eventually going public and listed, KK Company is the best option. KK can issue class shares to investors before an IPO and its shares can be publicly listed in the market.

- carefully select the class of shares
- carefully draft the shareholders agreement

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