

Company Representative No Longer Required to be a Japanese Resident

In order to facilitate further inbound investment into Japan, the Abe administration has decided to abolish the requirement that each company should have at least one Japanese resident as a representative director. This change of policy is good news for international companies which have or wish to establish a subsidiary in Japan and also for international sponsors investing in Japan.

On 16 March 2015, the Ministry of Justice (MOJ) announced that it had done away with its previous policy and would accept applications for the registration of companies without Japanese resident representative directors from that date. The MOJ had previously insisted that at least one representative director should be a resident of Japan.

The previous policy sometimes proved problematic for many international companies which wished to establish subsidiaries in Japan but did not have local personnel suitable for the representative role. Now that this policy has been set aside, international companies can appoint a non-resident representative and establish a subsidiary relatively quickly without having to find a local representative.

The previous policy gave rise to additional costs for sponsors investing in Japanese projects such as real estate and solar power projects through special purpose vehicles (SPVs). Such sponsors usually appointed third party service providers to supply accounting services to their SPVs and also asked such service providers to dispatch a director in order to satisfy the Japanese resident representative requirement. Since the policy change, sponsors no longer need to ask service providers for directors, which may reduce SPV management costs. However, it must be noted that for limited recourse financing transactions in Japan, lenders tend to require an independent director for each SPV in any event. In such case, international sponsors still have to appoint an independent director who is not their own employee or officer. Nonetheless, if lenders agree, sponsors may now be able to appoint an independent director who is based outside of Japan.

The MOJ announcement is a welcome development for international investors. The announcement covers only *kabushiki kaisha* (KK), the most commonly used type of company in Japan. In practice, the MOJ would also accept applications for the registration of other types of company such as *godo kaisha* (GK) and *tokutei mokuteki kaisha* (TMK), which are commonly used for SPVs, without a Japanese resident representative director/member. International investors, however, must keep in mind that the Japanese resident representative requirement is still applicable to the branches of foreign companies and limited liability partnerships (*yugen jigyou sekinin kumiai*) (LLP). Under the relevant statute, at least one representative of a branch of a foreign company and one partner of an LLP still needs to be a Japanese resident.

Where Japanese legal concepts have been expressed in the English language, the concepts concerned may not be identical to the concepts described by the equivalent English terminology as they may be interpreted under the laws of other jurisdictions.

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