
Setting Up Business in Japan - Comparison of Organisational Forms -

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1. Introduction

According to statistics from the Japan External Trade Organisation, Inward Foreign Direct Investment to Japan in 2022 was \$49.3 billion¹. This figure shows a steady recovery trend from 2020, which saw a significant decline due to COVID-19. Japan is one of the largest markets in the world and can also be a base for your business operations in East Asia.

When expanding abroad, it is necessary to analyse various aspects such as market conditions, regulations, taxation, immigration practices and real estate. In particular, the type of organisation chosen when setting up is an important issue that will affect the overall conduct of your business in Japan.

This report focuses on the three main organisational forms adopted by foreign businesses when setting up in Japan and compares the characteristics of each in terms of Japanese corporate law.

2. What organisational forms are available in Japan?

If you wish to continue doing business in Japan, you must either: (i) register in Japan as a **Foreign Company**² or (ii) incorporate a company or create other formation in Japan and conduct your business through that entity. Most investors who choose option (ii) will establish a private **Stock Company** or a **Limited Liability Company**. "Private" means that all issued shares cannot be transferred without the company's approval³, which is the case with almost all Stock Companies.

Other forms of companies include the General Partnership Company and the Limited Partnership Company. In addition, a system for the establishment of a Limited Liability Partnership has been introduced in 2005⁴. However, not many foreign businesses adopt these forms.

As such, the following forms are commonly used when setting up a business in Japan:

- (1) Foreign Company
- (2) (Private) Stock Company
- (3) Limited Liability Company

3. Are these separate legal entities from investors?

Even if you establish a branch in Japan and register as a Foreign Company, this does not create

¹ <https://www.jetro.go.jp/en/reports/statistics.html>

² Companies Act (No. 86 of July 26, 2005), Art 818(1)

³ Ibid. See Art 2(v).

⁴ Limited Liability Partnership Act (No. 40 of May 6, 2005)

a separate legal personality. Consequently, all transactions by the Foreign Company, such as sales, leases, and employment, will inevitably involve elements of cross-border transactions. This may lead Japanese businesses to hesitate to enter into transactions with the Foreign Company.

On the other hand, Stock Companies and Limited Liability Companies are legal entities established under Japanese law and have a separate legal personality from their shareholders or members. Therefore, their transactions with Japanese businesses are purely domestic and do not give rise to the concerns mentioned in the paragraph on Foreign Companies.

4. What are the organisational requirements?

It is not possible to cover all the points, but the following should be noted for each form.

(1) Foreign Company

A Foreign Company must appoint one or more representatives, at least one of whom must have a domicile in Japan⁵. They have the authority to perform any and all judicial and extra-judicial acts on behalf of the Foreign Company in connection with its business⁶.

(2) (Private) Stock Company

A Stock Company is a company that operates with funds raised by issuing shares. As such, it is owned by the shareholders, but management is carried out by the directors. A Stock Company is the most common form of company in Japan, and most of them are private.

There is no minimum capital requirement (it can be incorporated with a capital of 1 Japanese Yen). A Stock Company must appoint at least one director. Also, an annual shareholders meeting must be called after the end of each fiscal year⁷. A legal person can be a shareholder, but the directors must be natural persons⁸.

(3) Limited Liability Company

A Limited Liability Company is a relatively new type of company, introduced in Japan in 2006 with reference to the system of limited liability companies in the US. Some of the Japanese subsidiaries of major US companies have adopted this form, such as Google and Amazon.

Unlike a Stock Company, the management of a Limited Liability Company is carried out by the owner (referred to as a "partner" in Japanese Companies Act). Members can be natural or legal persons, but if a legal person is in a position to manage the Limited Liability Company, that member must appoint a natural person representing the member⁹. There is no minimum capital requirement.

A Limited Liability Company is said to have a more flexible organisational structure than a Stock Company. For example, it does not have the same detailed rules on the operation of the general meeting and management board as a Stock Company. However, if there are two or more members, decisions must, in principle, be taken by a majority of the members¹⁰.

⁵ Companies Act, Art 817(1)

⁶ Ibid Art 817(2)

⁷ Ibid Art 296(1)

⁸ Ibid Art 331(1)(i)

⁹ Ibid Art 598(1)

¹⁰ Ibid Art 590(2)

5. Is the owner's liability limited?

As mentioned above, both Stock Companies and Limited Liability Companies have a legal personality separate from their owners, and they are not liable for the company's obligations. Namely, the liability of the owners is limited to the amount of their equity investment.

Meanwhile, the liability of the owner of a Foreign Company is essentially subject to the law of the jurisdiction in which it was incorporated. However, it may also give rise to complex issues relating to conflict of laws.

6. Are there any requirements relating to nationality or domicile?

The owner of a Foreign Company, Stock Company or Limited Liability Company does not need to be Japanese (either a natural person with Japanese nationality or a legal person incorporated under Japanese law), nor does the management need to be Japanese.

The management of a Stock Company and Limited Liability Company is not required to reside in Japan. However, at least one representative of a Foreign Company must have a domicile in Japan.

7. Are there any restrictions on setting up a business by foreign capital?

The Foreign Exchange and Foreign Trade Act ("FEFTA")¹¹ requires notification of certain inward direct investments to the regulatory authority for security and other reasons, which may result in the modification or discontinuation of the investment following examination.

If the nationality or country of residence of the investor is not included in the list of exemptions provided by the FEFTA, or if the business operated by the investee is included in the FEFTA's list, prior notification must be submitted, which effectively means that permission must be obtained.

Additionally, even if these conditions are not met, if a foreigner becomes the owner of a Stock Company or Limited Liability Company, notice must be given to the regulator within 45 days of the incorporation.

8. Other legal issues

Please note that the discussion has primarily focused on Japanese corporate law. Other laws and regulations, including taxation, immigration and specific industry regulations, may raise legal issues not mentioned in this report and may impose additional restrictions or requirements.

9. Summary

The table below summarises what has been discussed.

	Foreign Company	(Private) Stock Company	Limited Liability Company
Is it a legal entity?	Not a separate legal entity	Separate legal entity under Japanese law	Separate legal entity under Japanese law
Owner	n/a	Shareholder(s)	Member(s)
Can a legal entity be an owner?	n/a	Yes	Yes

¹¹ No. 228 of December 1, 1949

	Foreign Company	(Private) Stock Company	Limited Liability Company
Minimum Capital	n/a	1 JPY	1 JPY
Organisational requirements	n/a	Must have at least one individual director and must hold annual shareholders meetings	Not as detailed as for Stock Companies (but shall be decided by a majority of members)
Business conducted by	Representative(s)	Director(s)	Member(s)
Is the owner's liability limited?	Depending on the law in which the company was incorporated	Yes	Yes
Do owners need to be Japanese?	No	No	No
Do owners need to live in Japan?	No	No	No
Does management need to be Japanese?	No	No	No
Does management need to live in Japan?	At least one representative must have a domicile in Japan	No	No
Requirements under FEFTA	May be required to obtain prior authorisation by the regulator	Notification within 45 days of incorporation; or obtain prior authorisation by the regulator	Notification within 45 days of incorporation; or obtain prior authorisation by the regulator

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