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M e m o r a n d u m

OUTLINE OF LEGAL FRAMEWORK FOR ESTABLISHMENT OF A JAPAN-BASED OFFICE BY A FOREIGN CORPORATION

The purpose of this Memorandum is to outline the legal framework for the establishment of an office in Japan by a corporation incorporated outside the jurisdiction of Japan ("Foreign Corporation"). There are three alternatives for holding an office in Japan; (1) liaison office, (2) branch office and (3) corporation.

I. Liaison Office in Japan ("JLO")

There is no expressed or implied definition of the JLO under the laws of Japan. In practice, the JLO is often referred to as a "representative office in Japan" established to engage in liaison activities with its headquarters outside Japan. The JLO shall be a certain place established for a purpose of doing non-commercial activities, i.e. advertisement, publicity, gathering of information, market research, other fundamental study and research, etc. to supplement and promote the business activities of its headquarters outside Japan.

A. Company Law

There are no specific regulations, requirements, restrictions, et al. in the Company Law with regard to the establishment and maintenance of the JLO. Furthermore, there are no official records nor certificates supported by the statute available to promulgate the existence of the JLO. Thus, the existence of the JLO cannot be asserted against third parties, and accordingly, a representative of the JLO ("JLO Representative") would have difficulties with a third party with respect to such matters as leasing office space, opening bank accounts, etc. in the name of the JLO.

B. Foreign Exchange Control Law ("Forex Law")

1. There are no reporting or licensing requirements under the Forex Law in respect of the establishment, maintenance, etc. of the JLO.

2. The JLO Representative is allowed to receive the remittance of funds from the headquarters free from license or notification requirements, insofar as the funds are received to cover only the current expenses necessary for the maintenance of the JLO.

II. Branch Office in Japan ("JBO")

A. Company Law

1. The Company Law stipulates that the Foreign Corporation, who intends to carry out commercial transactions "on a continuing basis in Japan", should appoint a representative of the corporation in Japan ("JBO Representative") and may establish a place of business. The place of business so established is called the JBO, which

must be registered with the competent Legal Affairs Bureau ("LAB") of the Ministry of Justice ("JBO Registration"). If no JBO is established, the registration shall be made at the place of residence of the JBO Representative.

2. The Company Law prohibits the Foreign Corporation from conducting commercial transactions "on a continuing basis in Japan" before completion of the JBO Registration.

3. Under the Company Law, the Foreign Corporation must have at least one JBO Representative residing in Japan.

4. The JBO Registration must be effected at the LAB within three (3) weeks of the date of appointment of the JBO Representative. The Commercial Registration Law ("Registration Law") requires several documents to be appended to the application for the JBO Registration. However, in the practice of the LAB, the following documents will suffice for the relevant JBO Registration:

(a) Statutory Declaration - This document should contain all the particulars required for the JBO Registration including, inter alia, corporate name, location of the head office, corporate objectives, amount of capital, and members of the Board of Directors. The statutory declaration, which should be executed by the JBO Representative or any authorized officer, must be notarized by either a consular official in Japan or a competent government officer (including notary public) of the country where the Foreign Corporation was incorporated. (See Attachment A to this memorandum.)

(b) Power of Attorney - This document must be executed by the JBO Representative authorizing an attorney-in-fact to effect the JBO Registration.

(c) Signature Certificate of the JBO Representative - In the case where the JBO Representative, who executed the power of attorney discussed in (b), supra, is not a Japanese national, he is required under the practice of the LAB to submit his signature certificate attested by a consular official or a competent government officer of his nationality.

(d) Submission of Seal Impression - The JBO Representative, who is a Japanese national and who has executed the power of attorney discussed in (b), supra, must register a seal in his name as the JBO Representative, for which he is required to submit a certificate of impression of his registered personal seal (Jitsuin) issued by the head of his ward.

5. Any subsequent changes in the registered matters are subject to the requirements for amendments to the relevant registration.

B. Forex Law

1. Under the Forex Law, the Foreign Corporation falls under the category of "foreign investor" and the establishment of the JBO by a foreign investor constitutes an inward direct investment. When the JBO is established, the foreign investor must file an ex post facto report, unless otherwise a prior notification is required (See 2. infra), with the competent Ministers. This report must be filed through The Bank of Japan within fifteen (15) days of the date of establishment of the JBO.

2. Contrary to the above, however, if the JBO will be established to engage in activities relating to agriculture, forestry, fishery or mining, manufacturing of nuclear fuel, aircraft, weapons, munitions, etc., the nuclear power

industry, and the space development industry, etc., the foreign investor must submit a prior notification to such competent Ministers. In the said notification, the foreign investor must provide information including, inter alia, the proposed business activities of the JBO, and the business plans such as facilities, sales and financial plans.

3. Following submission of the notification, there is a thirty day "waiting period" during which the Japanese government conducts investigations on the basis of the notification. This waiting period can be shortened to less than thirty days or extended to a maximum of four months from the acceptance date of the notification if the government considers it necessary to make a special investigation under "peacetime controls" (i.e. including, investments that may damage the safety of Japan, threaten existing industries or the economy of Japan, or investments that are in an area where there is a lack of reciprocity between Japan and the home country). If the government concludes that the notification be modified, then it issues a recommendation which must be replied to within ten days. If the foreign investor fails to respond or refuses such recommendation, the government may issue the order to modify or suspend the transactions covered by such notification.

4. Expansion in the business activities specified in the above-mentioned report or notification, which also constitutes an "inward direct investment", should be reported or notified in advance to the competent Ministers.

5. With regard to the inward remittance by the headquarters to the JBO, no license or notification requirements are imposed, insofar as the said remittance is made for the current expenses for the JBO, as in the case of the JLO discussed above. As to other remittances from

the headquarters to the JBO, which constitute "capital transactions" under the Forex Law, there may be a case where either prior notification or other clearance from the government of Japan will be required.

III. Corporation

A. Company Law

1. There are four types of corporations capable of being established under the Japanese law. They are namely: (1) a joint stock corporation (Kabushiki Kaisha); (2) an incorporated general partnership (Gomei Kaisha), members of which bear unlimited liability; (3) an incorporated limited partnership (Goshi Kaisha), which consists of members with limited liability and members with unlimited liability; and a limited liability company (Goudo Kaisha), members of which bear limited liability.

The corporations enumerated in (2), (3) and (4), supra, are not widely used in Japan. Therefore hereinbelow the legal framework shall be directed only to a joint stock company (Kabushiki Kaisha) ("KK").

2. Before we discuss the procedural requirements for the incorporation of a KK, we will describe briefly the salient features thereof.

(a) Shareholders - A shareholder of a KK may be a corporation or an individual. No citizenship or residency requirements are imposed, and there is no limitation on the number of shareholders. Thus, a KK with a single shareholder is allowed.

(b) Capital Infusion - Capital infusion at the time of incorporation of a KK must be made either in cash or in

kind if authorized by the initial articles of incorporation.

At least half of capital infusion must be credited in the capital account ("Capital") and the balance thereof in the capital reserve account. The minimum amount of the Capital was abolished.

(c) Shares of Stock - A KK may issue a variety of shares, such as voting or non-voting preferred shares. All shares must be issued in non-bearer form. The KK may issue only non par value shares.

(d) Share Transfer - A KK is not allowed to proscribe share transfers. Share transfer can be made only by way of delivery of share certificates. No further action is needed between a transferor and a transferee under the Company Law. However, the articles of incorporation may provide a provision to read that "any transfer of shares shall be subject to the approval of the Board of Directors (or the General Meeting of Shareholders)". In this connection, it should be noted that a transferee who acquired shares without obtaining a prior approval of the Board of Directors, etc. is also entitled statutorily to request that the Board of Directors, etc. should approve his ex post facto acquisition of shares. In other words, notwithstanding said provision in the articles of incorporation, share transfer can be made validly between the parties concerned. This may allow for the undesirable situation to arise in which a KK would become connected with an unfamiliar third party. In order to obviate such a problem with a third party, we are of the view that unless otherwise provided for in the articles of incorporation, a KK, with the consent of shareholders, should not issue share certificates to the shareholders until such time as they will absolutely

need the share certificates.

In case of a joint venture KK, control over share transfers could be made by agreement among the shareholders. However, such control sourced in the agreement only works to bind the parties involved but cannot be asserted against third parties.

(e) Directors - There must be at least one director in a KK. Initial director(s) shall be elected at the constituent general meeting in the case of the "Boshu-setsuritsu" or by the promoter(s) in the case of the "Hokki-setsuritsu". (Definitions of "Boshu-setsuritsu" and "Hokki-setsuritsu" will be discussed hereinafter.) Directors must be individuals, but there are no citizenship or residency requirements therefor, unless otherwise stipulated in the articles of incorporation.

Under the old Commercial Code, a KK was required to have a board of directors consisting of at least three directors. Under the Company Law, a KK is not required to have a board of directors, and only one director is sufficient. The Company Law allows flexible organization plans, and in the case of a small and medium size KK, as many as 17 organization plans are available. Since the space is limited to discuss all of such plans, we will hereafter focus our discussion on a KK with a board of directors and statutory auditor(s), which used to be the typical organization plan under the Commercial Code.

From among the directors composing a board of directors, one or more representative directors must be elected, and at least one of the representative directors must be a resident in Japan. Under the Company

Law, a representative director has the overall power to represent a KK. He has the full power to bind the company in both judicial and extra-judicial procedures. No limitation on his powers can be asserted against a bona fide third party. Therefore, considerable caution should be exercised when appointing a representative director.

(f) Statutory auditor - In a KK having a board of directors, there must be at least one statutory auditor. Statutory auditors are not necessarily certified public accountants, but may not serve concurrently as a director or an employee of the same KK or of its subsidiary. Thus, a statutory auditor recruited from among directors or employees must simultaneously resign from such position.

Statutory auditors generally have a power to audit business activity of a company including accounting matters. If the articles of incorporation of the company, however, should state that the statutory auditor will audit matters relating to accounting only, the statutory auditors will not be entitled to audit business activity of the company. The statutory auditors having the power to audit business activity may check the performance of duties by the directors, and have the obligation to report to the board of directors any indication of illegality involved in such performance. Such statutory auditors are also obligated to attend meetings of the board of directors, and check the proposals submitted to the shareholders meeting.

(g) Meeting of shareholders - A general meeting of shareholders of a KK must be convened regularly at least once a year to approve the annual financial statements

in advance of filing the final tax return with respect to the fiscal year then ended. General meeting of shareholders may act only upon such matters as stipulated in the Company Law or the articles of incorporation.

(h) Meetings of the Board of Directors - A meeting of the Board of Directors of a KK must be convened at least once every three months.

3. Procedures for incorporation of a KK under the Company Law are rather complicated and time-consuming. Incorporation of a KK can be effected, as a matter of law, either by promoter(s) and non-promoter share subscriber(s) or by promoter(s) alone. The former is called "Boshu-setsuritsu", and the latter "Hokki-setsuritsu". We will hereinbelow discuss the steps to be taken under the Company Law for incorporation of a KK by way of Boshu-setsuritsu. Additionally, we will discuss briefly the matters relating to Hokki-setsuritsu, as we go along, in comparison with the corresponding matters in Boshu-setsuritsu.

(a) Promoter(s) - A corporation as well as an individual, whether Japanese or non-Japanese, is permitted to act as a promoter. However, when we take into consideration the number of formalities required to be fulfilled by the promoters as well as the necessity to proceed with the projected incorporation efficiently, promoters should be residents of Japan and be limited to as few as possible, i.e., one or two.

A person designated as a promoter must subscribe to at least one Initial Share. (In case of the Hokki-setsuritsu, promoter(s) must subscribe to the entire number of the Initial Shares.)

(b) Authentication of the Articles of Incorporation - The promoter(s) must prepare and execute the articles of incorporation, which must be authenticated by a notary attached to the LAB having jurisdiction over the location of the head office of a KK as set forth in the articles of incorporation. Attached hereto as Attachment B is a form of the articles of incorporation for your reference.

Of the provisions to be incorporated in the articles of incorporation, lack of the following items make the articles of incorporation invalid in their entirety:

- i) Corporate name;
- ii) Corporate objectives;
- iii) Location of head office;
- iv) Value of the asset to be invested upon incorporation or its minimum amount, and
- v) Name(s) and address(es) of promoter(s)

(c) Designation of Recipient Bank of Share Subscription Money - When the articles of incorporation are authenticated by a notary, the promoter(s) must designate bank(s) to receive payment of share subscription money ("Recipient Bank").

(d) Share Subscription - The Initial Shares must be subscribed to by the promoter(s) and non-promoter share subscriber(s) in case of the Boshu-setsuritsu (or only by the promoter(s) in case of the Hokki-setsuritsu). Non-promoter share subscriber(s) are required to make their application for subscription thereto in the form prescribed by the promoter(s). As for the promoters, share subscription should be made in accordance with

those particulars as agreed to by the promoter(s).

(e) Share Subscription Payment - After a lapse of the waiting period for clearance of the prior notification under the Forex Law as will be discussed in III.B., infra, non-promoter share subscriber(s) and/or promoter(s) should proceed to effect the share subscription payment to the Recipient Bank. Payment should be made in the full amount of the share subscription price.

Upon completion of the share subscription payment, the Recipient Bank issues a certificate concerning custody of the share subscription money, which must be filed at a later date with the LAB for the registration of incorporation of a KK.

The share subscription money so paid in is held in suspense by the Recipient Bank until a certified copy of the company registration etc. is submitted after incorporation of a KK.

(f) Election of Directors and Statutory Auditor(s) in Case of Hokki-setsuritsu - Promoter(s) must elect directors and statutory auditor(s), immediately after the share subscription payment.

(g) Investigation Report in Case of Hokki-setsuritsu - Directors and statutory auditor(s) so elected by the promoter(s) must investigate whether or not the entire number of the Initial Shares has been subscribed, the share subscription payment has been fully made, etc., and report to the promoter(s) the results of their investigation.

(h) Constituent General Meeting for the Boshu-setsurittsu - Immediately after the date (or period) of

the share subscription payment, the constituent general meeting of share-subscribers, namely, promoter(s) and non-promoter share subscriber(s), must be convened for the following matters on the agenda:

- i) Receipt of Promoter(s)' Report on Steps Taken in the Course of Incorporation of a KK;
- ii) Election of Directors and Statutory Auditor(s); and
- iii) Receipt of Report on Investigation by Directors and Statutory Auditor(s).

In addition to these statutorily required matters, the constituent general meeting may, in compliance with the Company Law or the articles of incorporation of a KK, pass resolutions on matters including, inter alia, the amount of ceiling of director's and/or statutory auditors' remuneration.

(i) First Meeting of the Board of Directors for Boshu-setsuritsu and Hokki-setsuritsu - Immediately after assumption of office by the directors, the first meeting of the Board of Directors must be physically convened for the following matters and others:

- i) Election of Representative Director(s)
 - ii) Determination of Head Office - The Board of Directors must by its resolution decide the location of the head office within the district provided for in the articles of incorporation.
- (j) Registration of Incorporation - Within two weeks

after the date of the investigation report in the case of the Hokki-setsuritsu or the date of conclusion of the constituent general meeting in case of the Boshu-setsuritsu, a representative director must file an application for registration of incorporation of a KK and pay the registration tax of 0.7% of the Capital (but not less than ¥150,000).

In the ordinary course of business of the LAB, it will take about two weeks to consummate the relevant registration at the said authorities. Regardless of the time required for the registration, a KK comes into existence effective as of the date of filing of said application for registration.

Upon completion of the registration, a certified copy of said registration becomes available.

(k) Transfer of Share Subscription Money to a KK's Account - The Recipient Bank, once it has confirmed the incorporation of a KK by a certified copy of the company registration, will release to a KK the Share Subscription Money held by it in suspense.

(l) Issuance of Share Certificates - The issuance of share certificates is not mandatory under the Company Law, unless otherwise provided for in the articles of incorporation. If the share certificates are not issued, shareholders may request at any later date the issuance of share certificates. Under the Company Law, the shareholders listed in the shareholders' register are entitled to assert their status against a KK and to exercise their shareholders' rights based on the shareholders' register. No share certificates are required for exercise of the shareholders' rights.

B. Forex Law

1. Acquisition of shares of stock in a KK by a "foreign investor" constitutes an inward direct investment, which requires the filing by the foreign investor of an ex post facto report with the competent government authority under the Forex Law, unless otherwise a prior notification is required. The term "foreign investor" includes, inter alia, individuals who are non-resident of Japan and corporations incorporated outside the jurisdiction of Japan.

2. With respect to the filing of an ex post facto report and a prior notification for acquisition by a foreign investor of shares of stock in a KK, please refer to the discussion in II.B. 1. and 3., supra, regarding the establishment of the JBO which is also applied to the share acquisition by a foreign investor in a KK.