

JAPAN

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EDITION



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SUCCESSFUL STRATEGIES FOR DOING BUSINESS IN ASIA





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SUCCESSFUL STRATEGIES FOR DOING BUSINESS IN ASIA

PREPARED BY MERITAS LAWYERS IN ASIA

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SUCCESSFUL STRATEGIES FOR DOING BUSINESS IN ASIA

This is the fourth revised edition of Successful Strategies for Doing Business in Asia, which was first published in 2006. Prepared by lawyers from 13 leading Meritas member law firms in the Asia region, this book targets foreign investors and business people looking to pursue investment opportunities throughout Asia. Each chapter contains general information and guidelines and offers practical insights as opposed to specific legal advice.

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The following currency notations are used throughout this book.

RMB	Chinese Renminbi	PHP	Philippine Peso
HKD	Hong Kong Dollar	SGD	Singapore Dollar
INR	Indian Rupee	TWD	New Taiwan Dollar
IDR	Indonesian Rupiah	THB	Thai Baht
JPY	Japanese Yen	USD	United States Dollar
KRW	Korean Won	VND	Vietnamese Đông
MYR	Malaysian Ringgit		

Please be aware that the information on legal, tax and other matters contained in this book is merely descriptive and therefore not exhaustive. As a result of frequent changes in legislation and regulations from country to country, the situations as described throughout this book do not remain the same. Meritas cannot and does not guarantee the accuracy or the completeness of information provided, nor the application and execution of laws as stated. Please do not rely solely on these materials without consulting with qualified legal advisors who are familiar with your particular areas of interest and geographic locations.

In 2008, the world experienced its worst financial crisis in 70 years. Today, while many countries and economic regions are still suffering, Asia continues to be a bright spot. Home to 3.8 billion people, Asia is playing a major role in driving the global economy back to healthier times. At first, China rebounded quickly, though this momentum has slowed somewhat recently. India exhibits signs of long-term growth potential, as do Singapore, Malaysia and others in Asia, but serious challenges remain.

For over 30 years I have worked on behalf of multinational companies in their pursuit of investment and business opportunities throughout Asia. What I have learned is that countries in the Asian region can appear similar and at the same time be remarkably different. While local legal systems and government regulations will vary, every country has universal opportunities and challenges that foreign investors will face. This book is designed to provide both practical and timely insights into the 12 most frequently-asked questions that potential investors in Asia should consider:

1. What role will the government play in approving and regulating opportunities for foreign direct investment?
 2. Is it possible for foreign investors to conduct business without involving a local partner? What corporate structure is most commonly used and best for foreign investors?
 3. How does the government regulate commercial joint ventures composed of foreign investors and local companies or individuals?
 4. What specific laws will influence the commercial relationship between local agents/distributors and foreign companies?
 5. In what manner does the government regulate merger and acquisition activities by foreign investors? Are there any specific areas or industries that are heavily restricted or completely prohibited to foreign investors?
 6. How do local labor statutes regulate the treatment of employees and expatriate workers?
 7. What role do local banks and government agencies play in regulating the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?
 8. What types of taxes, duties and levies should a foreign investor expect to encounter in negotiating an inbound investment?
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9. Do comprehensive intellectual property laws exist, and do they provide the same levels of protection for foreign investors as local companies? Will local courts and tribunals enforce IP laws uniformly, regardless of the nationality of the parties?
10. If a commercial dispute arises, given the choice between local courts or an international arbitration venue, which would offer a more beneficial forum for fair dispute resolution for foreign investors?
11. What recommendations can you offer for how best to negotiate and conduct business in your country?
12. What practical advice can you share with investors who decide to do business in your country?

Thirteen Asian law firms within the Meritas alliance have generously contributed to this book. These firms are comprised of leading local lawyers who possess broad practical experience in advising international clients on how best to conduct business in their respective countries. Each law firm was presented with these “Twelve Questions” and invited to write a chapter providing an overview of the laws in their jurisdiction along with timely insights and advice. In a concise manner, this book hopes to provide readers with a clear understanding of the similarities and differences, strengths and weaknesses of countries in the Asian region.

One final thought: For those who are waiting for Asia to become more predictable or financially stable before pursuing business or investment opportunities, do not wait too long. Most successful multinationals are already actively conducting business throughout Asia. Those who delay will find themselves missing out on one of the greatest economic expansions in history. There are risks, certainly, but also great rewards for the savvy – and educated – investor.

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I. WHAT ROLE WILL THE GOVERNMENT OF JAPAN PLAY IN APPROVING AND REGULATING FOREIGN DIRECT INVESTMENT?

Generally speaking, foreigners can conduct business in Japan on an equal legal footing with Japanese citizens. The government of Japan is keenly interested in promoting and expediting foreign direct investment in Japan. To enhance the process, relevant Japanese laws and regulations as well as other related information have been translated into English and are available online at http://www.invest-japan.go.jp/en_index.html and www.japaneselawtranslation.go.jp/?re=02.

The government offers various incentives and subsidies to promote investment in Japan. Among these are incentives provided under the Act for Promotion of Japan as an Asian Business Center which reduce corporate taxes and patent fees for certain government-certified global enterprises. In addition, companies planning to do business in areas affected by the Great East Japan Earthquake can benefit from less stringent regulations and a reduced tax burden.

See http://www.jetro.go.jp/en/invest/incentive_programs/.

The Foreign Exchange and Foreign Trade Act (FEFTA) sets forth the treatment of “Foreign Investors” and “Foreign Direct Investment,” as those terms are defined in the Act. When a foreign investor sets up a corporation in Japan, the corporation is required to be registered at the appropriate legal affairs bureau, the same as a corporation set up by a Japanese citizen. In addition, when foreign investors engage in any foreign direct investment, they are required to subsequently report that investment to the Minister of Finance via the Bank of Japan.

Despite the general rule that foreign direct investments may be reported after the fact, FEFTA lists 30 countries (including North Korea and Iraq) for which foreign direct investments, as well as investments in certain industries, require prior notice to the relevant government authorities.

Listed below are industries/investments for which foreign investors need to file prior notice with the government under the FEFTA:

- Industries related to national security, public policy or public safety, such as weapons, aircraft, satellites, nuclear energy, electric power, gas, the supply of heat, telecommunications,

broadcasting, water supply, railway service, transportation, medical products, and security services.

- Industries that the government reserves the authority to restrict, such as agriculture, forestry, fishery, oil, leatherwear, air transport, and marine transport.

The government will review the proposed investment and may order the foreign investor to modify or cancel the investment if they find it necessary.

2. IS IT POSSIBLE FOR FOREIGN INVESTORS TO CONDUCT BUSINESS IN JAPAN WITHOUT A LOCAL PARTNER? WHAT CORPORATE STRUCTURE IS MOST COMMONLY USED AND BEST FOR FOREIGN INVESTORS?

Foreign investors may own a 100% interest in any domestic corporate entity in Japan, except in the industries listed in Question 5. Foreign investors may conduct business in Japan without a local partner.

CORPORATE STRUCTURE

Types of Legal Entities in Japan

The Companies Act provides for four types of corporate vehicles: *kabushiki-kaisha* (KK); *goudou-kaisha* (GK); *goumei-kaisha*; and *goushi-kaisha*. A KK is similar to a limited liability for-profit stock corporation in the United States and is generally the most commonly used option by Japanese companies. The minimum capitalization requirement is only JPY1.

In addition to the above, there are also non-incorporate options such as a branch (*shiten*) or a representative office (*chuzai-in-jimusho*) under the direct control of a foreign company.

Management Structure of a KK

A KK must have at least one director. Until recently, at least one representative director was required to be a resident of Japan. However, the Japanese government dropped this requirement effective 16 March 2015, a move that is expected to encourage increased foreign investment into Japan. As a result of this change, all of a KK's directors can now reside outside of Japan.

A KK may have additional management bodies, including a board of directors consisting of at least three directors, statutory auditors, a board of statutory auditors, an accounting advisor, an accounting auditor,

committees and executive officers, depending on the size of the company and its particular needs. In addition to the above, from 1 May 2015, a supervisory committee system (*kansa-tou-iinkai*) will be introduced to strengthen corporate governance. Companies established by foreign investors typically start off with a representative director, a board of directors, and a statutory auditor.

3. HOW DOES THE JAPANESE GOVERNMENT REGULATE COMMERCIAL JOINT VENTURES COMPOSED OF FOREIGN INVESTORS AND LOCAL COMPANIES OR INDIVIDUALS?

A foreign investor's establishment of or participation in a commercial joint venture with a local firm, whether through subscription or through an acquisition of shares or equity in certain domestic companies, is subject to the same requirements under the FEFTA discussed in Question 1.

4. WHAT SPECIFIC LAWS WILL INFLUENCE THE COMMERCIAL RELATIONSHIP BETWEEN LOCAL AGENTS/DISTRIBUTORS AND FOREIGN COMPANIES?

APPLICABLE LAW

The laws applicable to the relationships between a foreign company and their local distributors or agents can be agreed to in the contract governing such relationships. Japanese courts will enforce the choice of applicable laws and will adjudicate any dispute based on such laws to the extent they are not against Japanese public policy and any compulsory laws.

A typical Japanese compulsory law is the Anti-Monopoly Act. Resale price restrictions and other unreasonable restrictions of a business partner's activities, etc., are considered "unfair trade practices" and are prohibited under this Act.

UNFAIR TERMINATION OF AGREEMENTS

Distribution and agency agreements mostly set a term of one to five years or set an indefinite term that can be terminated without cause after proper notice. Japanese courts basically honor the terms and conditions concerning termination contained in distribution and agency agreements. However, in the case of "long-term agreements," there are court precedents prohibiting such an agreement from expiring at the end of a term or from being terminated with immediate effect. Courts have

determined certain relationships to be long-term agreements and have held that a justifiable reason for refusal of renewal or termination is required. In other instances, courts have required an “adequate” prior notice period or compensation for lost profits that the terminated party might have earned during such prior notice period. Based on court precedents, an agreement that has continued at least five years may possibly be considered a long-term agreement and its termination may be subject to the imposition of an “adequate” prior notice requirement (or compensation).

5. IN WHAT MANNER DOES THE JAPANESE GOVERNMENT REGULATE PROPOSED MERGER AND ACQUISITION ACTIVITIES BY FOREIGN INVESTORS? ARE THERE ANY SPECIFIC AREAS OR INDUSTRIES THAT ARE HEAVILY RESTRICTED OR COMPLETELY PROHIBITED TO FOREIGN INVESTORS?

Listed below are industries that may not be entirely foreign-owned.

Common Telecommunication Carriers

There are no restrictions on foreign ownership of common telecommunication carriers in Japan. The one exception is that foreign ownership of Nippon Telegraph and Telephone Corporation (NTT) is limited to one-third.

Airline Companies

The ownership interest in airline companies (e.g., Japan Airlines, All Nippon Airways, etc.) directly held by non-Japanese citizens, foreign investors or foreign governments is limited to one-third.

Transportation Companies

The ownership interest in transportation companies directly held by non-Japanese citizens, foreign investors or foreign governments is limited to one-third.

Broadcasting Companies

The foreign ownership interest in broadcasting companies is limited to one-fifth. This is true whether the foreign ownership is direct or indirect.

Mining Business

Only Japanese nationals and Japanese legal entities can have mining rights in Japan.

For certain companies, including those listed below, the applicable laws provide that a certain ownership share must be held by the Japanese government.

Post Office

Japan Post Holding Co., Ltd. must be at least one-third owned by the Japanese government.

Airport Operating Companies

The company that manages the Kansai International Airport is required to be entirely state-owned.

Tobacco Business

Japan Tobacco Inc. must be at least one-third owned by the Japanese government.

Expressway Business

At least one-third of the ownership of certain companies involved in the establishment and/or operations of expressways in Japan must be held by the Japanese government.

ANTIMONOPOLY REGULATION

The Anti-Monopoly Act prohibits mergers, acquisitions, and certain other activities, where the effect of those activities would result in a substantial restraint on competition. Further, mergers, acquisitions and certain other activities involving companies over a certain value require the Fair Trade Commission to be given prior notice.

6. HOW DO LOCAL LABOR STATUTES REGULATE THE TREATMENT OF EMPLOYEES AND EXPATRIATE WORKERS?

LOCAL EMPLOYEES AND EXPATRIATE WORKERS

There are no limitations on the employment of foreign expatriate workers except that the appropriate visas permitting work in the relevant field (such as engineer, intra-company transferee, skilled labor, etc.) are required and the local job-placement office needs to be notified.

The Labor Standards Act (the LSA) prohibits discriminatory treatment of employees on the basis of nationality, and the legal protections available to employed workers apply equally to both local employees and expatriate workers as long as the labor is provided in Japan. Regardless of the

governing law of the employment contract, Japanese courts will still apply the minimum labor standards under the LSA and other statutes.

BASIC EMPLOYMENT CONDITIONS

Relevant Labor Statutes, Work Rules and Labor Contracts

The LSA provides the minimum standards for basic employment conditions. The Minimum Wage Act, the Industrial Safety and Health Act, the Labor Union Act, the Child Care and Family Care Leave Act, among others, also deal with workers' rights and working conditions. Employers with ten or more employees are required to establish work rules to address basic conditions of employment such as the payment of wages, work schedules, termination, etc. Individual labor contracts cannot be less favorable to employees than the relevant provisions of the laws or the work rules. The execution and termination of labor contracts, as well as other issues regarding employment agreements, are governed by the Labor Contract Act.

Term and Termination of Employment

Japanese labor law does not recognize the concept of "at-will" employment. Consequently, employment without a fixed term continues indefinitely except for the mandatory retirement age adopted by many Japanese companies.

Termination of employment is often difficult in Japan. The Labor Contract Act provides that an employer cannot dismiss an employee unless there are objectively reasonable grounds on which to do so and the dismissal is considered to be appropriate under prevailing societal norms.

In the case of employment with a fixed term, dismissal during the term is more restricted. Upon expiration of the stipulated term, the employment terminates unless, for example, the term of employment has been repeatedly extended. In this case, the employer may need to show reasonable grounds to justify a refusal to renew the employee's term of employment.

Social Securities

Both local employees and expatriate workers may be covered under workers' accident compensation insurance, employment insurance, health insurance, and pension, with certain exceptions depending on the status of employment. Employers bear 50% to 100% of the premiums for these types of insurance. The specific premium and the amount that the employer is required to contribute depend on each type of insurance, the amount of wages, and the type of industry.

LABOR DISPUTES

Typical Labor Disputes

Typical labor disputes in Japan include unlawful termination, nonpayment of overtime wages, compensation for mental illness caused by workplace harassment or overwork, violation of confidentiality obligations, and prohibition of competitive activities.

Dispute Resolution Venues

In most cases, Japanese courts will take jurisdiction over a labor dispute if the labor was provided in Japan. It takes approximately 12 to 18 months for the typical labor case to be heard and decided in a Japanese court. As an alternative to or prior to filing a lawsuit, a party may choose to institute a claim with the court-affiliated labor tribunal. The labor tribunal is settlement-oriented, but if the parties cannot reach an agreement, the panel renders a judgment by the end of the third session. If either party raises an objection to the decision of the tribunal, the case moves to the district court.

In addition to the above, many disputes are resolved through consultation with the local Labor Standards Inspection Offices and mediation services offered by the National Prefectural Labor Commissions.

7. WHAT ROLE DO LOCAL BANKS AND GOVERNMENT AGENCIES PLAY IN REGULATING THE TREATMENT AND CONVERSION OF LOCAL CURRENCY, REPATRIATION OF FUNDS OVERSEAS, LETTERS OF CREDIT, AND OTHER BASIC FINANCIAL TRANSACTIONS?

Japan has been relaxing restrictions under the Foreign Exchange and Foreign Trade Act on financial transactions between Japanese residents and nonresidents, as well as on financial transactions involving foreign currencies. At present, most financial transactions require no filing or only post-transaction and/or post-payment filings with the relevant ministries via the Bank of Japan for monitoring purposes. Certain limited types of transactions require either prior approval or prior notification.

In general, transactions that require prior approval are limited to those involving certain individuals or organizations that are subject to international sanctions. Financial transactions related to the fisheries, leather, weapons, or narcotics industries require prior notification. Transactions that require post-transaction filings include certain inbound

and outbound investments, securities transactions over a certain amount and real estate transactions, among others. Conversion of local currency and letter of credit transfers do not require any post-transaction filing, but post-payment filings may be applicable. Repatriation of funds overseas may be subject to prior approval, prior notification, or post-transaction filings, or none of them, depending on the nature, purpose, amount and parties involved in the particular transaction.

Payment and acceptance of payment between Japanese residents and nonresidents over JPY30 million (except for payment for imports to or exports from Japan) is subject to post-payment filing with the relevant ministries via the Bank of Japan or the bank handling the remittance. This requirement for post-payment filing (at the time of actual payment) is applicable regardless of whether the above post-transaction filing (at the time of transaction) is made.

8. WHAT TYPES OF TAXES, DUTIES, AND LEVIES SHOULD A FOREIGN INVESTOR EXPECT TO ENCOUNTER IN NEGOTIATING AN INBOUND INVESTMENT IN JAPAN?

A Japanese subsidiary of a foreign company is a domestic company and is taxed the same as any Japanese company.

CORPORATION TAX

Companies are required to pay corporation tax based on net taxable income depending on the amount of capital. The highest rate of corporation tax is 25.5%.

INCOME TAX WITHHOLDING

Recipients of income are required to pay income tax based on the particular payment from Japan. A payer must withhold estimated income tax from the payment. If a tax treaty applies to a payment, the obligation to withhold income tax may be exempted or reduced to a lower tax rate.

CORPORATE INHABITANT TAX

Corporate inhabitant tax is levied on a company with an office in Japan, and is calculated on its capital amount and the number of employees and/or the amount of corporation tax that it paid.

CORPORATE ENTERPRISE TAX

Corporate enterprise tax is levied on company's income, not its net profits. For a company with capital of JPY100 million or more, corporate enterprise

tax is levied based on the size of the business which is calculated based on taxable income range, the sum of wages, net interest expense, net rental expense, paid-in capital and capital surplus.

CONSUMPTION TAX

Consumption tax is a value-added tax presently at 8% of any transaction such as sale of goods, provision of services carried out within Japan, and on imported goods delivered from the import point. The rate of consumption tax is scheduled to increase to 10% from 1 April 2017.

TRANSFER PRICING

Transactions with related foreign companies which do not meet the arm's-length standard are subject to transfer pricing regulations under the Special Taxation Measures Act.

With regard to a foreign company having a Japanese branch office (treated as having a permanent establishment [PE] in Japan), as a result of a 2014 tax reform, any and all income deemed attributable to the Japanese branch office shall be subject to taxation in Japan, and income deemed not attributable to the branch office shall be subject to taxation in a jurisdiction where the foreign company is subject to tax. The tax reform is effective for a business year starting on or after 1 April 2016.

9. DO COMPREHENSIVE INTELLECTUAL PROPERTY LAWS EXIST IN JAPAN AND DO THEY PROVIDE THE SAME LEVELS OF PROTECTION FOR FOREIGN INVESTORS AS LOCAL COMPANIES? WILL LOCAL COURTS AND TRIBUNALS ENFORCE IP LAWS UNIFORMLY, REGARDLESS OF THE NATIONALITY OF THE PARTIES?

Japan is a signatory to all major IP-related treaties including the Paris Convention for the Protection of Industrial Property, the Berne Convention for the Protection of Literary and Artistic Works, and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), etc. Intellectual property rights are very well protected in Japan, and the enforcement mechanisms are functioning.

PATENT

Patentable inventions include a product, a process, or a process of producing a product. The term "product" includes computer programs, living organisms (e.g., bacteria) and business methods, usually in the form of the invention of a computer program.

UTILITY MODEL PATENT

An industrially applicable idea with regard to shape, structure or combination of articles, which is not highly advanced enough to be patentable, may be covered by a utility model patent.

DESIGN

Designs which can be utilized industrially and meet other statutory requirements may be granted a design right coverage. (If the design has sufficient artistic elements, it can also receive copyright protection.)

TRADEMARK (INCLUDING SERVICE MARK)

In order to be protected under the Trademark Act, the mark must be registered with the Japanese Patent Office. The Trademark Act does not require the mark to be actually used in order for such mark to be registered. However, if the registered trademark is not used for three consecutive years or longer in Japan, anyone may file a request for rescission of such trademark registration.

An unregistered mark may be protected under the Unfair Competition Prevention Act if such mark is famous or well known among the users.

COPYRIGHT

Original works which fall within the literary, scientific, artistic or musical domain are copyrightable. Computer programs are copyrightable.

Author's moral rights (right to make the work public, right to determine the indication of the author's name, right to maintain integrity) are protected. These moral rights are not assignable.

TRADE SECRETS

Certain information can be protected as "trade secrets" under the Unfair Competition Prevention Act.

OTHER IP RIGHTS

Layout of integrated semiconductor circuits is protected under the Act Concerning Layout of Integrated Semiconductor Circuits. New plant varieties are protected under the Seeds and Seedlings Act.

ENFORCEMENT

The courts enforce laws objectively regardless of the nationality of the parties. Japanese courts do not have juries; judges decide both the law and facts. Punitive damages are not allowed under Japanese law.

10. IF A COMMERCIAL DISPUTE ARISES, GIVEN THE CHOICE BETWEEN LOCAL COURTS OR AN INTERNATIONAL ARBITRATION VENUE, WHICH WOULD OFFER A MORE BENEFICIAL FORUM FOR FAIR DISPUTE RESOLUTION FOR FOREIGN INVESTORS?

Japanese courts treat Japanese and foreign investors equally. Nonetheless, certain procedural inconveniences may make court a less attractive option for foreign investors. The Japanese Arbitration Act is modeled on the UNCITRAL Model Law on International Commercial Arbitration and has eased access to arbitration by foreign investors.

LANGUAGE

Only Japanese may be used in Japanese courts. Any foreign-language evidence must be translated into Japanese. By contrast, the parties can agree to arbitrate in any language.

JUDGES/ARBITRATORS

Judges are considered neutral, but they are not necessarily familiar with complex technical issues and specialized business practices. Yet, the parties cannot compensate for this shortcoming by selecting an appropriate judge. By contrast, parties to arbitration can agree on the nationality, number and expertise of the arbitrators.

OPENNESS/SECRECY OF FORUM

With a few limited exceptions, court proceedings, trials and judgments are considered matters of public record. However, arbitration proceedings and records can be kept private. This is a particular advantage in disputes over trade secrets and other cases involving sensitive information.

TIME FRAME/COSTS

A traditional court trial can be time consuming, with the average civil trial lasting approximately 6.5 months (more complex cases can take more than two years). Decisions may be appealed, with both findings of fact and conclusions of law reviewable. There is even the possibility of introducing new evidence. Court hearings are spaced out and held every month or so. On the other hand, arbitral proceedings can be quicker, and arbitral decisions cannot be appealed, i.e., they are final and conclusive. All costs for arbitration proceedings are borne by the parties (this differs from court, where the parties do not pay any fees for the judges).

FOREIGN JUDGMENTS/ARBITRAL AWARDS

A final and conclusive judgment rendered by a non-Japanese court will be enforceable in Japan subject to certain conditions.

Japan is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). Further, Japan has concluded bilateral treaties with various countries concerning the recognition and enforcement of foreign arbitral awards.

11. WHAT RECOMMENDATIONS CAN YOU OFFER FOR HOW BEST TO NEGOTIATE AND CONDUCT BUSINESS IN JAPAN?

- Although technology allows for an unprecedented level of connectivity, many Japanese still appreciate personal connections, even in the business world. If possible, therefore, it is a good idea to ask a mutual contact or some other go-between to introduce you to potential business partners rather than making direct contact yourself by cold calls.
- Once a meeting with a prospective business partner is set up, providing the other side with a written agenda of the meeting is often appreciated. Many Japanese find it challenging to have meetings in English, even to the point where an interpreter is needed. Providing a written agenda allows the Japanese side to have a clear idea of what to expect at the meeting, and should go a long way in putting their minds at ease.
- The very first meeting in Japan starts with a formal greeting and the exchanging of *meishi* (business cards). During this exchange, it is considered polite to receive the other person's *meishi* with both hands, and it is customary to let the higher-ranked people go first. Study the *meishi* for a moment and memorize the passer's name and position. Do not just stuff it in your pocket.
- When negotiating with a Japanese party, take into account the longer time frame necessary for the Japanese side to conduct an internal review and make a final decision. In many companies (especially the larger ones), making a decision can require obtaining the approval of several divisions and sections within the company. As a result, do not be surprised if responses sometimes take longer than expected, or if the same questions or topics are repeated at another time by different people in the company. It does not necessarily mean the other side is not eager to proceed. It may just be that the person in charge of the negotiation does not have the full authority to make any final decisions on his or her own.

12. WHAT PRACTICAL ADVICE CAN YOU SHARE WITH INVESTORS WHO DECIDE TO DO BUSINESS IN JAPAN?

- Some foreign investors set up a company in Japan and allow the Japanese representative they have selected to run the company with little or no control or oversight from the foreign parent. There have been instances where the Japanese representative is left with the full responsibility to use his discretion to spend company funds and decide hiring practices and employee benefits. To avoid this situation, it is critically important to monitor the Japanese subsidiary or branch office on a regular basis.
- Japanese companies and branches are required to create an official corporate seal that is registered at the Legal Affairs Bureau. This seal is customarily affixed to important contracts and other documents rather than having those documents signed by hand. To prevent the improper use of the seal, a law firm will sometimes agree to act as custodian of the seal. The local representative then uses the seal only after the client provides the law firm with specific instructions.
- Records of the subsidiary or branch should be properly kept. Otherwise the investor can completely lose track of the investor's rights (shareholder information is not registered or publicly available), resulting in significant obstacles to a corporate reorganization or sale of the business.
- The traditional Japanese wage structure provides for lifetime employment. A new employee right out of school would get regular promotions and retire at age 60. This system does not apply to individuals such as directors or CEOs, and there is no requirement that longer service will lead to higher pay or job security. To understand these personnel matters, consult a local lawyer or a person with expertise in this area.

KOJIMA LAW OFFICES

Kojima Law Offices was founded in Tokyo, Japan in 1984. The attorneys of Kojima Law Offices regularly handle commercial transactions and corporate legal matters of all types, including assisting with outbound investments for Japanese clients as well as inbound investments for American, European and other foreign corporations and individuals.

Kojima Law Offices prides itself on providing practical and timely legal advice. Japan has unique business customs and we know well how to guide our clients through the intricacies of conducting business in Japan.

There is a broad range of areas where we provide assistance. First, we handle Foreign Direct Investment (FDI) activities for Japan-bound investors. For over three decades we have guided a wide variety of foreign clients—from an international beverage company to foreign governments to start-up businesses—to successfully establish operations in Japan. In the early 1990s, we were the first law firm to establish a legal mechanism to assist Japanese companies opening factories in India. We continuously strive to live up to our belief that a law firm must be capable of analyzing laws and, equally important, presenting practical and feasible options for foreign investments to be viable in Japan. Establishing joint ventures, strategic alliances, mergers and acquisitions are some of the areas in which we have extensive experience. We then work with foreign companies to solve day-to-day issues arising in their continuing operations, including regulatory compliance and employment issues.

Our firm has a strong litigation department and on a number of occasions has represented foreign governments before the Japanese courts. Some of the judgments we successfully obtained in Japanese courts are cited by law journals and viewed as established precedents in the relevant areas. Our lawyers also have extensive experience representing both Japanese and foreign clients before international arbitration tribunals.

Our global clients include North American, European and Asian multinational corporations conducting business throughout Japan. Domestically, we regularly represent major Japanese companies in the automotive and parts industries, chemicals, medical equipment and medical testing, semiconductors, food and beverage, clothing and apparel, musical instruments, prepaid cards, cable manufacturing and other infrastructure industries, shipping, insurance, banking and finance, housing and construction businesses.

The ever-changing economic and legal environment constantly creates new challenges for our lawyers. By embracing these challenges and employing our legal expertise, Kojima Law Offices strives to serve our clients' interests to the highest degree and ultimately contribute to the betterment of society.

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