

## *Abolishment of regulation for one resident representative director*

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In accordance with a notice issued by the Director of the Commercial Affairs Division of the Ministry of Justice of Japan (the “**MOJ**”) on March 16, 2015, Japanese companies would no longer need to have at least one representative director that is a resident in Japan (the “**Notice**”). This newsletter update provides an overview of the relaxation of the regulation as well as its material implications.

### **1. Relaxation of limitations on requiring at least one representative director to reside in Japan for Japanese companies**

Prior to March 16, 2015, the Legal Affairs Bureau of Japan, in practice, required that all *kabushiki kaisha* (or joint stock companies) (“**KKs**”) have at least one representative director who is a resident in Japan. This requirement for a Japanese resident was criticized for being a barrier of entry for many foreign firms without directors who are residents in Japan.

However, on and after March 16, 2015, pursuant to the relaxation of residency requirements under the Notice, **KKs** would no longer need to have at least one representative director that is a resident in Japan. This effectively means that all directors of a **KK** may be foreign residents, a significant step forward from the previous residency requirement.

The relaxation is applicable not only for **KKs** which are newly established on and after March 16, 2015 but also for those which were established prior to March 16, 2015.

The Notice does not expressly apply to other forms of corporations such as a *Godo Kaisha*, *Gomei Kaisha* and *Goshi Kaisha* (or joint limited liability companies (*mochibun kaisha*), collectively referred here as “**GKs**”). However, according to the Commercial Affairs Division of the **MOJ**, residency requirements for **GKs** have been also abolished. That is to say, all representative equity holders of a **GK** may be foreign residents. In case of a **GK**, if a representative equity holder of the **GK** is a company, it must appoint a natural person to physically perform its duties (*shokumu shikkosha*). In cases where a company (regardless of whether it is a Japanese company or a foreign company) is the only equity holder of a **GK**, on and after March 16, 2015, the *shokumu shikkosha* may be a foreign resident, although prior to March 16, 2015, the company needs to appoint at least one *shokumu shikkosha* that is a resident in Japan.

Please note that under the Companies Act of Japan, foreign companies which intend to continuously engage in commercial transactions in Japan must appoint at least one representative who is a resident in Japan, and this regulation is maintained regardless of the Notice.

## 2. Practical implications of the relaxation of limitations

With the relaxation of the residency requirements, Japanese companies would no longer be required to appoint a Japanese resident as a representative director. Many anticipate that the relaxation of the regulations, would further invigorate the Japanese economy, with Japan's business environment arguably becoming even more foreign-friendly.

In a similar vein, Japanese banks may no longer require a director of a KK to be physically present in Japan in order to open bank accounts for the KK. We have confirmed with a certain bank that a representative director that is not resident in Japan may issue to any resident in Japan (such as an employee of the KK or an outside lawyer or accountant) a Power of Attorney to appoint him/her as an agent to assist with the opening of bank accounts for the KK.

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