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Practice Group:
Corporate M&A

Abenomics Liberalization: Japanese Companies no Longer Require a Japanese Resident Representative Director

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Summary

On March 16, 2015, the Civil Affairs Bureau of the Ministry of Justice of Japan (the “CAB”) issued a notice (the “Notice”) that the Legal Affairs Bureaus (the “LAB”) would accept incorporation applications for corporations (*kabushiki kaisha*, “KK”) without requiring a representative director to reside in Japan. Previously, the LAB required KOs to have at least one representative director be 'ordinarily resident' in Japan. The Notice also clarified that the LAB would accept applications to register the appointment or reappointment of a KO's representative director(s) even if all the representative directors of the KO are not Japanese residents. In the past the 'residency requirement' has been criticized as acting as a barrier for foreign companies or individuals. When starting a business in Japan by incorporating a KO, or when operating a KO in Japan, it is no longer necessary to appoint a Japanese resident as a representative director.

Practical Points to be Noted

1. The Notice is not a change in law, but rather a change in interpretation/operation by the LAB. Additional changes may occur in the future.
2. The Notice only refers to KOs incorporated in Japan. Article 817 of the *Company Act* still requires that in a case where a foreign company (*gaikoku kaisha*) is required to continuously engage in business in Japan (through either its branch office (*shisha*) or representatives), it shall have at least one representative person who is resident in Japan be appointed and registered.
3. On February 27, 2015, the commercial registry rules were amended to require Japanese companies to submit a certificate of identification for all of its officers (e.g., not only representative directors but also directors, corporate officers) when applying for the registration of the appointment or reappointment of such officers. This new requirement is an additional burden for a company that has a foreign person as an officer, since the company must provide a certificate of the officers' identification documents (e.g., passport, driver's license) to the LAB, together with translations into Japanese.
4. Even though it is now not required for a KO to have a Japanese resident as a representative director, practically speaking, there are many occasions where a KO might benefit from doing so. For example, a person who is not resident in Japan cannot register the company's seal with the CAB, or obtain a seal certificate of the person, both of which are commonly required for many transactions (e.g., leasing an office, opening a bank account, obtaining a business license). Thus, even though it is now possible to open a KO in Japan without a Japanese resident representative director, practical considerations may outweigh doing so.

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K&L Gates's Tokyo office supports start-up businesses as well as the day-to-day business operations of both foreign and domestic businesses in Japan, including advising on the issues discussed above. Please do not hesitate to contact us with any questions.

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