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Appointment of Non-Japan Residents Only as *Shokumu Shikkoshas* of *Godo Kaisha*

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1. Abolishment of residence requirement for representative members of *Godo Kaisha* and persons who perform their duties (*shokumu shikkoshas*) under the registration practice

A *Godo Kaisha* (a "GK", meaning a limited liability company in Japan) is a comparatively new type of company introduced by the 2006 Companies Act and, in recent years, in addition to its use as a vehicle in structured finance transactions, we can often see examples where a GK is used as a Japanese subsidiary of large-scale foreign-affiliated business enterprises.

If a form of GK is utilized as a Japanese subsidiary of a U.S. corporation, by virtue of the Check-the-box Regulation under U.S. tax law, the U.S. corporation can enjoy pass-through treatment with respect to the GK's profits and losses under U.S. taxation, which can be an advantageous factor for a U.S. enterprise to choose the form of GK as its Japanese subsidiary.

Furthermore, due to a recent change in the registration practice, it has become easier for foreign companies to use a GK as a form for establishing a base of operations in Japan. That is, previously, as with the treatment regarding representative directors of a *Kabushiki Kaisha* (a "KK", meaning a joint-stock company in Japan)¹, unless at least one representative member of a GK or a person who performs its duties (*shokumu shikkosha*)² has a residence in Japan, applications for registration of incorporation of a GK and registration of appointment of a representative member and its *shokumu shikkosha* were not acceptable; however, as from March 16, 2015, the treatment was changed to make applications for the registration of incorporation of a KK and the registration of reappointment or appointment of its representative director acceptable even if all the representative directors do not have residence in Japan³, and simultaneously, applications for the registration of incorporation of a GK and the registration of appointment of the representative member and its *shokumu shikkosha* also became acceptable even if none of



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¹ Treatment that applications for registration of incorporation of a KK and the registration of reappointment or appointment of its representative director would not be accepted unless at least one representative director has a residence in Japan (Reply of Director of the Fourth Division of Civil Affairs Bureau, No. 4974, September 26, 1984 and Reply of Director of the Fourth Division of Civil Affairs Bureau, No. 1480, March 11, 1985)

² If a corporation is the managing member of a GK, such corporation must appoint at least one natural person who performs its duties (*shokumu shikkosha*) (Article 598, paragraph 1 of the Companies Act). Name and address of *shokumu shikkosha* of the representative member are the matters to be registered (Article 914, item 8 of the Companies Act).

³ Notice of the Ministry of Justice No. 29 dated March 16, 2015

them have residence in Japan⁴. Due to this change, appointment of at least one *shokumu shikkosha* from among the residents of Japan, which used to be a bottleneck for foreign companies when establishing their subsidiaries in the form of a GK in Japan, has become unnecessary, and a foreign company which will become the parent company of a GK can assume the office of representative member and can appoint only non-Japan residents, such as a representative who resides in the home country of such foreign company, as its *shokumu shikkoshas*.

2. Whether all of the residents of Japan who are engaged in GK's business can become covered by labor insurance by appointing non-Japan residents only as *shokumu shikkoshas* of the GK

Since it is generally understood that a person having a right to execute business cannot be insured under labor insurance (worker's accident compensation insurance and employment insurance), it is understood that the managing members (including the representative member) of a GK and their *shokumu shikkoshas* cannot be covered by labor insurance⁵. Accordingly, under the former registration practice, a resident of Japan who was appointed as the representative member or its *shokumu shikkosha* could not be insured under labor insurance.

In this connection, now that the residence requirement of the *shokumu shikkosha* has been abolished, in a case where a foreign corporation assumes the office of the sole managing member and representative member of the GK, it will become an issue whether, by having a resident of Japan retire from his/her position as its *shokumu shikkosha* and replacing him/her with a non-Japan residents, all of the residents of Japan who are engaged in the GK's business, including the retired person, can be covered by the labor insurance.

According to the result of an inquiry with the Labor Insurance Contribution Levy Department of the Tokyo Labour Bureau on this issue, in the above case, if all of the *shokumu shikkoshas* are non-Japan residents, it is necessary to appoint a person who will be indicated as a representative in a "notification of establishment of a business covered by employment insurance" (one of documents required when joining the labor insurance) from among the residents of Japan who are engaged in GK's business other than the *shokumu shikkoshas* and such representative him/herself cannot be covered by the labor insurance. According to such treatment, the resident of Japan who is appointed as the representative cannot be covered by the labor insurance even though he/she is not the *shokumu shikkosha*.

Since the treatment regarding labor insurance might change in the future further to the change in the registration practice, one should get prior confirmation from the competent authorities before filing the notification. However it should be noted that there is still a possibility that not all residents of Japan who are engaged in GK's business can be covered by labor insurance even now when all *shokumu shikkoshas* can be appointed from among non-Japan residents.

⁴ Result of a telephone inquiry with the Tokyo Legal Affairs Bureau; Nobukazu Matsui, "Shogyo Toki Handbook (Third Edition)" (*Shojihomu, Co., Ltd.*, 2015), page 612. It should be noted that, with respect to a foreign company that intends to carry out transactions continuously in Japan, it is still required that at least one representative in Japan must be a resident of Japan (Article 817, paragraph 1 of the Companies Act).

⁵ Ministry of Health, Labour and Welfare, "Manual on Declaration of Fiscal Renewal of Labour Insurance (for renewal in 2015)", page 4, "2. Scope of persons subject to labor insurance"