



Newsletter

ATSUMI & SAKAI
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Entry into the Kyushu, Japan Market

1. Opening Remarks

There has been a recent increase in news of Taiwanese companies entering the Japanese market, such as stories of a major Taiwanese semiconductor manufacturer building a semiconductor manufacturing plant in Japan and a major Taiwanese bank opening its second branch in Japan in Fukuoka.

Fukuoka City is among the growing cities in Japan, where the population continues to increase despite the fact that the population of Japan as a whole continues to decline. In recent years, both Fukuoka Prefecture and Fukuoka City have been taking active measures to attract foreign companies, with Fukuoka City having established a facility in Tenjin, the center of Fukuoka, for this very purpose. A&S Fukuoka LPC's office (hereinafter, "A&S Fukuoka") also is located in Tenjin, and since relocating to Fukuoka in 2021, co-author Mr. Usui has been providing support to overseas companies setting up operations in Fukuoka, and also cooperates with the local government to assist overseas companies.

Through this newsletter, we would like to introduce the support offered to foreign companies in Japan and particularly in Fukuoka, by Atsumi & Sakai and A&S Fukuoka (hereinafter, collectively "Atsumi & Sakai").

While not discussed in this newsletter, the M&A method of entering the Japanese market through the acquisition of shares of an existing company continues to be one of the most popular methods of entering the Japanese market, especially for industries that require licenses and approvals.

2. Establishment of a Japanese Corporation or a Branch Office

A foreign company can establish a subsidiary in Japan. If a Japanese attorney is retained, the subsidiary can be established in as short as 2-3 weeks. When establishing a corporation with the simplest governance structure, only one director is needed. In addition, the directors are not required to reside in Japan. A foreign company entering the Japanese market must choose whether to set up their company as a *kabushiki kaisha* (stock company) or a *godo kaisha* (limited liability company). It is generally said in Japan that *kabushiki kaishas* are more creditworthy, but in recent years, it has not been uncommon for foreign companies entering the Japanese market to choose to set up their companies as a *godo kaisha*¹.

In the alternative, it is possible to simply set up a Japanese branch of a foreign company without establishing a corporation. In such cases, a resident of Japan must be appointed and registered as the representative in Japan.

However, a branch is not a legal entity, and therefore is considered to be part of the legal entity of the foreign company. As a result, the foreign company directly bears legal risk if any liability arises at the Japanese

¹ *Godo kaisha* has an advantage of being able to reduce its taxes as it is not required to record a certain amount in its capital when effectuating a capital increase.

branch. Establishing a Japanese corporation avoids these risks, since under the Companies Act, the shareholders or equity holders of a *kabushiki kaisha* or *godo kaisha* have only limited liability. In any event, as long as the Japan office, regardless of structure, is the base of operations in Japan and actually conducts business in Japan, it is likely to be considered a permanent establishment for tax purposes.

3. Obstacles in Entering the Japanese Market

There are several typical problems that foreigners face when relocating to Japan. These issues are: visa (residence status), opening a bank account, non-responses from real estate brokers that hesitate to engage with non-Japanese clients and which often require that a non-Japanese tenant provide a guarantor, etc., and mobile phones (telecommunications company).

Atsumi & Sakai's visa team provides visa application services for foreign companies expanding into Japan. In addition, by partnering with Fukuoka City's Global Finance Center, A&S Fukuoka has established a system enabling the smooth handling of certain types of visa applications. Many of the issues are resolved once a visa is obtained, but the real estate issue remains.

A&S Fukuoka can introduce foreign companies to local, foreign-language-capable real estate companies that can assist with finding residential real estate.

While it is extremely difficult for individuals who do not reside in Japan to open a bank account, it is possible for individuals with residence in Japan to open a bank account if they hold a visa. The operations of mobile phone contracts differ for each telecommunications company. The Global Finance Center also provides assistance in opening bank accounts and acquiring mobile phones, and A&S Fukuoka can handle this through referral.

4. Visa Procedures

If a foreigner wishes to serve as an officer or representative of a Japanese branch or hire a foreigner as an employee, he/she must apply for the appropriate visa (status of residence).

(1) Principles

The Intra-Company Transferee Visa is available when a foreigner working for the parent company in his/her home country is sent to work in Japan (https://www.mofa.go.jp/j_info/visit/visa/long/index.html). To apply for the Intra-Company Transferee Visa, the applicant must have worked for the parent company in the home country for at least one year. In addition, the nature of the employee's anticipated duties in Japan must fall under the category of "engineer/specialist in humanities/international services" such as engineers in mechanical engineering, interpreters, designers, language teachers in private companies, marketing professionals, etc. The applicant also is required to receive compensation equal to or greater than that received by Japanese nationals who serve in a similar role. If the Japanese corporation or branch in Japan is established smoothly, the Intra-Company Transferee Visa can be used.

In some cases, the representative of a Japanese corporation obtains a Business Manager Visa. (https://www.mofa.go.jp/j_info/visit/visa/long/index.html)

In addition, it is often possible to secure an Engineer/Specialist in Humanities/International Services Visa when employing foreigners who already reside in Japan. A foreigner with a visa that does not impose any work restrictions, such as Permanent Resident, Long-term Resident, or Spouse or Child of Japanese National need not obtain a new visa.

(2) Fukuoka City's start-up visa system

Fukuoka City is designated as a National Strategic Special Zone. National Strategic Special Zones, limited to certain municipalities, are areas within which certain Japanese regulations are relaxed on a trial basis. National Strategic Special Zones related to the relaxation of visa regulations are utilized by Tokyo, Kanagawa

Prefecture, Kyoto Prefecture, Niigata City, Fukuoka City, Kitakyushu City, Sendai City, Aichi Prefecture, Hiroshima Prefecture, and Imabari City (as of January 4, 2023). In addition to being one of the most active municipalities in accepting foreign human resources, Fukuoka city is also recognized for the proactiveness and flexibility with which they operate, which only a compact city can provide.

As for the specific details of the relaxation of regulations, entry into Japan is permitted as long as it is likely that the visa holder will be able to meet the standards for the Business Manager Visa such as securing a place of business within 6 months. It is worth considering in the initial stages of entering the Japanese market, if a stay of several months is required. In order to obtain a Business Manager Visa under this system, a new business implementation plan must be prepared and submitted for the business intended to be conducted in Fukuoka City, and confirmation for such plan must be received from Fukuoka City. A New Business Implementation Confirmation is issued if Fukuoka City determines that there is a high probability that the contents of the business plan described in the new business implementation plan, after a six-month period of stay, is likely to be approved for a regular Business Manager Visa.

Upon receipt of the New Business Implementation Confirmation, the applicant will be issued a visa by applying for the Business Manager Visa at the Fukuoka Regional Immigration Services Bureau. (https://www.city.fukuoka.lg.jp/keizai/r-support/business/startupviza_2_2.html)

One approach might be to establish a Japanese company in Fukuoka City and build a factory in another municipality. Eligible industries that are expected to strengthen the international competitiveness of Fukuoka City's industries and expand employment, are as follows.

- Knowledge creation industries (fintech, semiconductor-related, software development, content production, robotics, etc.)
 - Health, medical and welfare-related industries (drug development ventures, medical technology development, regenerative medicine, welfare equipment development, etc.)
 - Environment and energy-related industries (green tech, clean energy development, next-generation power storage technology, geo-information systems, etc.)
 - Logistics-related business (global SCM services, 3PL services, international parcel delivery, drone logistics development, etc.)
 - Trade-related businesses (businesses that contribute to the development of overseas sales channels for products made in Fukuoka city, businesses that utilize the functions of Hakata Port and Fukuoka Airport, etc.)
- * For trade-related businesses, the business must be novel or contribute significantly to the growth of businesses in Fukuoka city.

A&S Fukuoka provides advice in cooperation with the Global Finance Center, which supports applications for the Start-up Visa, and also provides support towards the seamless entry into the Japanese market from all angles regarding the aforementioned issues faced by companies entering the Japanese market.

5. Language of A&S's services

In addition to Japanese and English, Atsumi & Sakai can provide services in Chinese, at both the Tokyo and Fukuoka offices.

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Authors/Contacts

Yuri Suzuki

Partner
Daini Tokyo Bar Association
E: yuri.suzuki@aplaw.jp

Yasuhiro Usui

Partner
A&S Fukuoka LPC, Fukuoka Bar Association
E: yasuihiro.usui@aplaw.jp

Collaborators:

Global Finance Center (<https://financialcity.fukuoka.jp/en/finance.html>)

Contact Information

For general inquiries regarding this newsletter, please contact the above authors.

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Atsumi & Sakai is a multi-award-winning, independent Tokyo law firm with a dynamic and innovative approach to legal practice; it has been responsible for a number of ground-breaking financial deal structures and was the first Japanese law firm to create a foreign law joint venture and so admit foreign lawyers as full partners. Expanding from its highly regarded finance practice, the firm now acts for a wide range of international and domestic companies, banks, financial institutions and other businesses, offering a comprehensive range of legal expertise.

Atsumi & Sakai has an outward-looking approach to its international practice, and has several foreign lawyers with extensive experience from leading international law firms, so providing its clients with the benefit of both Japanese law expertise and real international experience.

We are the only independent Japanese law firm which is located in New York, London and Frankfurt which together with our Tokyo head office and Fukuoka affiliate office enables us to provide real-time advice on Japanese law to our clients globally.

Atsumi & Sakai

www.aplawjapan.com/en/

Tokyo Head Office: Fukoku Seimei Bldg., 2-2-2 Uchisaiwaicho, Chiyoda-ku, Tokyo 100-0011, Japan

Fukuoka Affiliate Office: Tenjin Bldg. 10F, 2-12-1 Tenjin, Chuo-ku, Fukuoka-shi, Fukuoka 810-0001 Japan

New York Affiliate Office: 1120 Avenue of the Americas, 4th Floor, New York, New York 10036

London Office: 4th Floor, 50 Mark Lane, London EC3R 7QR, United Kingdom

Frankfurt Affiliate Office: OpernTurm (13F) Bockenheimer Landstraße 2-4, 60306 Frankfurt am Main, Germany

NOTICES

1. ABOUT ATSUMI & SAKAI

Atsumi & Sakai is a partnership consisting of Atsumi & Sakai Legal Professional Corporation, a Japanese professional corporation, a foreign law joint venture under the Act on Special Measures Concerning the Handling of Legal Services by Foreign Lawyers with certain Registered Foreign Lawyers of our firm, a Japanese Civil Code partnership among Japanese lawyers, represented by Yutaka Sakai, a lawyer admitted in Japan, and a foreign law joint venture with Janssen Foreign Law Office, represented by Markus Janssen, a foreign lawyer registered in Japan to advise on the laws of the Federal Republic of Germany. In addition to lawyers admitted in Japan, our firm includes foreign lawyers registered in Japan to advise on the laws of the US States of New York and California, India, England and Wales, and the State of Queensland, Australia. Foreign lawyers registered in Japan to advise on state laws also are qualified to provide advice in Japan on the federal laws of their respective jurisdictions.

Atsumi & Sakai has established an office in London operating as Atsumi & Sakai Europe Limited (a company incorporated in England and Wales (No: 09389892); sole director Naoki Kanehisa, a lawyer admitted in Japan), and has established an affiliate office in New York operating as Atsumi & Sakai New York LLP (a limited liability partnership established in New York; managing partner Bonnie L. Dixon, a lawyer admitted in New York and a Registered Foreign Lawyer in Japan). We also have a partnership with A&S Fukuoka LPC in Japan (partner: Yasuhiro Usui, a lawyer admitted in Japan) and an affiliate office in Frankfurt operating as Atsumi & Sakai Europa GmbH - Rechtsanwälte und Steuerberater, a corporation registered in Germany providing legal and tax advisory services (local managing directors: Frank Becker, a lawyer, and Miyuki Hanaoka a tax advisor, both admitted in the Federal Republic of Germany).

2. LEGAL ADVICE

Japanese legal advice provided by Atsumi & Sakai and our global offices is provided by lawyers admitted in Japan. Advice provided in Tokyo in respect of any foreign law on which one of our foreign lawyers is registered in Japan to advise, may be provided by such a Registered Foreign Lawyer. None of Atsumi & Sakai Legal Professional Corporation, Atsumi & Sakai Europe Limited or Mr. Naoki Kanehisa is regulated by the Solicitors Regulation Authority for England and Wales, and none will undertake any reserved legal activity as defined in the United Kingdom Legal Services Act 2007. Advice provided in Germany on the laws of Germany will be provided by a lawyer admitted in Germany, and advice provided in New York on the laws of New York will be provided by a lawyer admitted in New York.