

Joint venture structures Q&A: Japan

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This Q&A provides country-specific commentary on *Practice note, Joint venture structures: Cross-border*, and forms part of *Cross-border joint ventures*.

Contributor details

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1. What are the most common legal structures for joint ventures? Have these structures changed post-Brexit vote in the event the joint venture partners have, and/or the joint venture has, any connection with the United Kingdom?

The three basic legal structures are:

- Joint stock corporation (*kabushiki kaisha*) (KK).
- Limited liability company (*goudou kaisha*) (LLC).
- Limited liability partnership (LLP).

While all three structures provide limited liability of their members, the KK, the traditional form of corporate entity, continues to be the most commonly used vehicle for a joint venture. For details of the LLC and LLP structures, see [Question 5](#) and [Question 18](#), respectively.

We have not seen any significant change to the structures following the Brexit vote with regard to joint venture partners or joint ventures having connections with the United Kingdom.

2. Are there economic or financial incentives for foreign direct investments in a joint venture? Are these incentives different depending on whether the foreign investor is an EU, or non-EU, national or is incorporated in an EU, or non-EU, member state?

Japan does not offer any particular financial incentives for foreign direct investments in a joint venture.

3. What are the rules relating to validity and authorisation of joint ventures with foreign parties? Are these rules different depending on whether the foreign party is an EU, or non-EU, national or is incorporated in an EU, or non-EU, member state?

With respect to a joint venture that takes the form of a KK or LLC, there are no specific procedures that must be undertaken specifically by the foreign partners in a joint venture from a corporate law perspective. If the joint venture is to take the form of an LLP, the commercial registration of the LLP would require the submission to the local legal affairs bureau (*houmukyoku*) of the executed LLP agreement, as well as each partner's (including the foreign partner's) commercial registration in Japan and its seal. The procedures are not different if the foreign partner is an EU national or entity incorporated in an EU member state.

As an entirely separate issue, depending on the nature of the business to be conducted by the joint venture (for example, if it involves issues of national security), the investment by foreign partners might require applicable regulatory review under the Foreign Exchange and Foreign Trade Act (which authority carries out the review will depend on the industry involved).

4. Are there mandatory minimum equity investments or contributions in kind thresholds for a foreign joint venture member? Are these different depending on whether: (i) the joint venture is set up as a corporate entity or a partnership; and/or (ii) the joint venture foreign member is an EU, or non-EU, national or is incorporated in an EU, or non-EU, member state?

There are no such minimum requirements applicable to a foreign joint venture member.

5. Are there different forms of corporate entity? If so, which form is most likely to be used for a joint venture?

Corporate entities that may be suitable for a joint venture are the KK and LLC because the liability of their members is limited to their equity interest in the entity. Of the two entities, the KK is still the most commonly used vehicle for a joint venture.

Some of the features of an LLC are as follows:

- The liability of the members is limited to their equity interest.
- It provides greater flexibility in corporate management structuring. For instance, unlike a KK, the LLC has no mandatory requirement to have directors or to hold shareholders' meetings. The manager (*gyoumu shikkousha*) of an LLC, however, are limited to one or more members of the LLC and therefore no third party may be appointed to manage the LLC. This is because, unlike the KK, the ownership and management of an LLC are not expected to be separated.
- It is not qualified as a tax transparent entity.

The LLC has not been used as a form of joint venture as commonly as legislators might have expected. This may be because:

- An LLC is not transparent from a tax perspective.
- There is a lack of predictability regarding potential legal disputes involving an LLC, compared to the relatively established legal precedents regarding a KK.

6. Is the use of foreign language allowed in corporate joint venture constitutional documents or meetings (for example, shareholders' meetings)?

The original of the articles of incorporation must be in the Japanese language, as it must be notarised by a Japanese notary. However, an English translation is often prepared by the company internally.

The original of the minutes of shareholders' and board meetings must also be in Japanese (as certain resolutions require commercial registration with the local legal affairs bureau), but an English translation is often incorporated. The joint venture agreement or shareholders' agreement need not be in Japanese.

7. Are there any minimum/maximum capital requirements? Can corporate joint ventures' share capital be indicated by making reference to a foreign currency?

There are no minimum or maximum capital requirements to establish a KK. Payments of equity contributions can be made in foreign currencies, but the registered paid-in-capital will be recorded in JPY as converted from such foreign currencies.

8. Can shares be issued in consideration for the contribution of assets or services (present or future)? Are any formalities required if shares are issued for non-cash consideration?

The shares of a KK can be issued for non-cash consideration subject to a statutory court-controlled inspection process. Due to the lengthy and burdensome process involved, non-cash consideration is rarely used unless it meets certain exemptions.

The exemptions are as follows:

- The number of shares to be issued do not exceed 10% of the outstanding shares of the KK.
- The sum of the value of the non-cash consideration does not exceed JPY5 million.
- If the non-cash consideration is securities with a market price, those securities are valued at the market price or less.
- The reasonableness of the valuation of the non-cash consideration must have been verified by an attorney, certified public accountant or tax accountant (in the case of real estate, appraisal by a real property appraiser is also required).
- If the non-cash consideration is a monetary claim against the KK which has already fallen due, such monetary claim is valued at the book value or less.

9. Are there any specific restrictions on the form of management structure? Is a two tier board structure permissible and, if so, when is it adopted, and why?

Under the Companies Act, the management structure of a KK is quite flexible. For instance, because a joint venture is likely to be structured as a private company (that is, a company setting out in its articles of incorporation that share transfers are subject to approval by the company), it can elect not to have a board of directors.

Where a company elects not to have a board, each director in general has the right to represent the company. Where a company does have a board of directors, the company is represented by one or more representative directors who are elected by the board.

Another unique feature of a company without a board of directors is that it is not required to have a statutory auditor. In a company with a board of directors, it is in general a mandatory requirement to have one or more statutory auditors, whose role is to oversee the operations of the board. A statutory auditor is an individual officer of a corporation and should not be confused with an external auditing firm that may be retained to audit the corporation's accounts.

It is not possible to have a two-tier board structure, such as a supervisory board and operational board.

10. Are there any restrictions on the age, nationality or identity of directors or managers? Would more restrictive rules apply to non-EU nationals or companies incorporated outside the EU?

There are no age or nationality restrictions. The Companies Act, however, provides certain grounds for the disqualification of directors. For instance, corporate entities, or individuals who are recognised by the court as having certain mental disorders (for example, a *seinen-hi-koukennin* or *hi-hosanin*) or who are subject to certain criminal sanctions, cannot become a director.

No restrictive rules apply to non-EU nationals or companies incorporated outside the EU.

11. Do employees or shareholders have the right to appoint a certain number of directors?

Directors are elected by a majority vote of the shareholders holding voting shares. A corporation can issue non-voting shares or class shares with special voting rights entitling holders of those shares to elect a certain number of directors. Employees do not have any special right to elect directors.

12. What formalities are required for the establishment of a partnership?

The partners of a partnership under the Civil Code do not need to enter into a written agreement.

On the other hand, the partners of an LLP need to enter into a written partnership agreement.

To establish an LLP, a commercial registration with the local legal affairs bureau is also required (see [Question 19](#)).

13. Is the use of foreign language allowed in the constitutional documents or meetings (for example, partners' meetings) of a joint venture set up as a partnership?

With respect to a partnership under the Civil Code, there is no restriction on the language since the partners do not need to enter into a written agreement in the first place.

With respect to an LLP, the partnership agreement must be in Japanese as it will be submitted to the local legal affairs bureau for commercial registration. Informal minutes of partners' meetings can be recorded in any language.

14. Are there any restrictions on the age, identity or number of partners? Would more restrictive rules apply to non-EU nationals or companies incorporated outside the EU as opposed to EU nationals or companies incorporated within the EU?

There are no age or identity restrictions. A partnership must be comprised of two or more partners. No restrictive rules apply to non-EU nationals or companies incorporated outside the EU.

15. What is the extent of each partner's potential liability in respect of the partnership business?

Unless established as an LLP, partners are subject to unlimited and direct liability.

16. In what circumstances is a partnership structure more likely to be used than a company for a commercial joint venture?

Despite its characterisation as a tax transparent entity, the LLP is not as commonly used for a joint venture vehicle as the KK. This might be partly due to the complexity of its legal characterisation with respect to ownership of assets and contractual status (see [Question 18](#)), which only makes it a suitable investment vehicle in limited circumstances. For instance, an LLP might be suitable for a joint venture that focuses on internal research and development, and that is not expected to enter into many agreements with third parties.

17. Are there any circumstances in which a contractual joint venture could be categorised as a partnership (and the parties therefore become jointly liable in relation to the substance of the contract)?

If the contractual agreement creates the substance of a partnership (that is, to engage in joint business through investment by each of the partners), the parties may be construed to have formed a partnership regardless of the name of the agreement or the parties' intention.

18. Is it possible to have a limited partnership in your jurisdiction? If so, what are the main characteristics of a limited partnership?

Partners can elect to form an LLP. The main characteristics of an LLP include:

- Limited liability of the partners in respect of the partnership's business to the extent of their investment in the equity of the partnership.
- Flexibility of the profit and loss allocation mechanism, as well as allocation of power among the partners to operate the partnership, regardless of the ratio of their equity investment, and flexibility of management structuring as compared to corporate entities (that is, no mandatory organisational requirements, such as having directors or statutory auditors).
- It qualifies as a tax transparent entity.

An LLP, however, requires every partner to be involved in the operation of the partnership. This means that, although the operations of an LLP can be divided and shared among the partners, each partner must be involved in at least a part of the LLP's operations.

In addition, an LLP is not a legal entity that can own assets such as real property and intellectual property; therefore, any assets are jointly owned by its partners. Contracts are entered into by a partner on behalf of the LLP and belong to all of the partners of the LLP.

19. What formalities are required for establishing a limited partnership?

To establish an LLP, a commercial registry is required. The LLP must be registered at the relevant local legal affairs bureau office after the partners execute the limited liability partnership agreement and contribute the entire amount of initial investment into the partnership. Matters to be made publicly available in the commercial registry include:

- Business of the partnership.
- Name of the partnership.
- Address of the office of the partnership.
- Name and address of the partners.
- Effective date of the partnership agreement.
- Existing term of the partnership.
- Operating officer of the partner if the partner is a corporate entity.
- Dissolution event (if provided in the partnership agreement).

20. Are there any restrictions on the identity of partners or their role in a limited partnership?

Any individual or corporation can become a partner of an LLP. However, at least one partner must be a resident in Japan or a Japanese corporation.

Every partner must be involved in the operation of the partnership (see [Question 18](#)). An LLP is expected, in general, to make decisions by unanimous approval of its partners. The limited liability partnership agreement can, however, provide otherwise, subject to a limitation that disposal and acquisition of material assets and borrowings of a large amount must have unanimous approval (or approval by two-thirds of the partners under certain circumstances).

21. In what circumstances is a contractual joint venture more likely to be used than a company or a limited partnership for a commercial joint venture?

A contractual joint venture is not commonly used, as it could be construed to have formed a partnership in which partners are subject to unlimited and direct liability.

22. Is there a distinction between any statutory duty that a partner and a director owe stakeholders?

Both directors of a joint stock corporation (KK) and partners executing the management of an LLP owe a duty of care of a good manager (*zenkan chui gimu*).

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