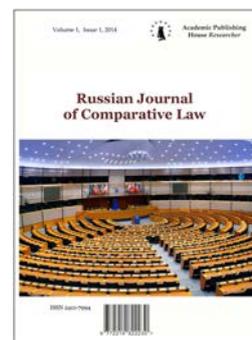


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## Articles and Statements

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### **Some Aspects of Legal Status of Japanese Companies without Share**

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#### **Abstract**

The article deals with the legal status of Japanese companies without share. A number of national norms of Japan, which measured legal status and liability of such of legal persons is given. In particular, it analyzes the provisions of the Company Act, Commercial Code and others Japan's normative acts. The main attention is paid to the description of existing types of companies without share and to their competence and liability.

**Keywords:** Japan, legal persons in Japan, Japanese companies without share, rules applicable to legal persons.

#### **Introduction**

The formation, organization, operation and management of Japanese companies without share or Membership Companies (hereinafter – MC) are regulated by the provisions of the Company Act [1], the Commercial Code [2], the Financial Instrument and Exchange Act [3], the Certified Public Accountant Act [4], the Bank Act [5], Civil Code [6] and others normative acts.

Pursuit to the Company Act the companies without share are following: a General partnership company (GPC or Gomei-Kaisha), a Limited partnership company (LPC or Goushi-Kaisha), a Limited liability company (LLC or Goudou-Kaisha). In accordance to Article 3 of the Company act each MC is a legal person.

#### **Materials and methods**

The main sources for writing this article became the official documents of the Japan, materials of the journal publications and archives.

The study used the basic methods of cognition: the problem-chronological, historical and situational, systemic and the method of comparative law. Author's arguments are based on problem-chronological approach. The use of historical and situational method allows to reproduce assessment approach to the problem of the Japanese company law. Method of comparative law defines the difference in views on actual rules of activity of Japanese legal entities. A systematic method does achieve a variety of disciplines (civil law, commercial law, administrative law etc)

accessible and comparable, as present is determined by the past and the future - by the present and the past.

### **Discussion**

First step to incorporation a company with share is the preparation of articles of incorporation. Article 575 of the Company act declares that to incorporate a company with share, persons who intend to be its members must prepare articles of incorporation. The articles of incorporation must be signed by or record the names of and be affixed with the seals, of all members. However, they may be prepared as an electronic or magnetic record.

In accordance to Article 576 CA articles of incorporation of MC must have the following matters: 1) purposes; 2) trade name; 3) location of the head office; 4) names and addresses of the members; 5) whether the members are members with unlimited liability or members with limited liability; and 6) subject matter invested by the members and the value and standard of evaluation of the same.

If the MC to be incorporated is:

- a) a GPC, a statement that all of the members are members with unlimited liability,
- b) a LPC, a statement that some of the members are members with unlimited liability and other members are members with limited liability,
- c) a LLC, a statement that all of the members are members with limited liability - must be stated or recorded.

A MC shall be incorporated by the registration of the incorporation at the location of its head office (Art. 576 of the Company Act).

Members of a MC shall be jointly and severally liable for the performance of obligations of the MC. Members with limited liability shall be liable for the performance of the obligations of the MC to the extent of the value of their investment.

A minor who is permitted to become a member with unlimited liability of a MC must be deemed to be a person with capacity to act regarding any act committed in his capacity as a member.

The following legal norms of Japan regulate the liability of members with limited liability for acts mistaken. In accordance to the Company Act, if a member with limited liability:

a) of a LPC engages in an act that causes such member with limited liability to be mistaken as a member with unlimited liability, such member with limited liability shall assume the same liability as that assumed by a member with unlimited liability in relation to persons who transact with the LPC based on such mistaken belief.

b) of a LPC or LLC engages in an act that causes mistake as to the extent of the liability of such member with limited liability, such member with limited liability shall assume the liability to perform the obligations of such LPC or LLC in relation to persons who transact with the LPC or LLC on the bases of such mistaken belief, to the extent of the liability so mistaken.

Chapter III of the Company Act regulates the questions of the administration of MCs. A member shall execute the business of the MC, unless otherwise provided for in the articles of incorporation. In cases where there are two or more members, the business of the MC shall be determined by a majority of the members, unless otherwise provided for in the articles of incorporation. Each member may perform the ordinary business of the MC individually; provided, however, that this shall not apply in cases where other members raise objections before the completion of the same.

One of the best ways of achieving relationship between members executing business and MC is the following. Members who execute the business: a) shall have the duty to perform their duties with due care of a prudent manager; b) must perform their duties for the MC in a loyal manner in compliance with the laws and regulations and articles of incorporation; c) must report the status of the execution of their duties whenever there are requests by the MC or other members, and must report the progress and outcome of their duties without delay after those duties end.

The provisions of Article 646 through 650 of the Civil Code must apply mutatis mutandis to the relationship between members who execute the business and the MC.

Members who execute the business may not carry out the following acts without the approval of all members other than such members:

- a) carrying out, for themselves or for a third party, any transaction which is in the line of

business of the MC; or

b) becoming directors, executive officers or members who execute the business of a Company the purpose of which is a business that is similar to the business of the MC.

The Company Act provides for the following mechanism of liability of members who execute operations to MC for damages. If members who execute the business fail to perform their duties, they shall be jointly and severally liable to the MC for losses arising as a result.

The liability of members with limited liability who execute business to MC for damages are provided for in Art. 597 of the Company Act. If such members was in bad faith or with gross negligence in discharging their duties, such members with limited liability shall be jointly and severally liable to compensate losses arising in a third party as a result.

There are special provisions where juridical persons are members executing business. Such juridical persons must appoint persons who are to perform the duties of members who execute such business and notify other members of the names and addresses of such persons.

Members who execute the business shall represent the MC. A MC may appoint members who represent the MC from among the members who execute the business pursuant to the articles of incorporation, or through the appointment by the members themselves pursuant to the provisions of the articles of incorporation.

Members who represent the MC have authority to do all judicial and non-judicial acts in connection with the operations of the MC.

A person who is appointed by a provisional disposition order provided for in Article 56 of the Civil Provisional Remedies Act [7] to act on behalf of members who execute the business or members who represent the MC, in carrying out of the duties of the same, must obtain the permission of the court in order to engage in any act which does not belong to the ordinary business of the MC, unless otherwise provided for in the provisional disposition order.

An act of a person who acts on behalf of members who execute the business or members who represent the MC in carrying out duties of the same that is performed in violation of the provisions of the preceding paragraph shall be ineffective; provided, however, that the MC may not assert that ineffectiveness against a third party in good faith.

A MC may admit a new member. Admission of members of a MC must take effect when a change relating to such member is effected in the articles of incorporation.

In cases where a LLC admits a new member, if the person who intends to become the new member has not performed all or a part of the payment or delivery relating to the contribution at the time of the change in the articles of incorporation in that paragraph, such person shall become a member of the LLC when such payment or delivery has been completed.

In cases where the duration of a MC is not provided by the articles of incorporation, or in cases where the articles of incorporation provide that the MC shall continue to exist for the life of a particular member, each member may withdraw at the end of the business year. In such cases, each member must give advance notice of withdrawal to the MC more than six months in advance.

Members shall withdraw on the grounds listed below: a) grounds provided for in the articles of incorporation having arisen; b) the consent of all members; c) death; d) merger; e) a ruling to commence bankruptcy procedures; f) dissolution; g) being subject to a decision for commencement of guardianship; or h) removal.

A MC may change its articles of incorporation with the consent of all members, unless otherwise provided for in the articles of incorporation.

A MC shall dissolve on the grounds listed below: a) the expiration of the duration provided for in the articles of incorporation; b) the grounds for dissolution provided for in the articles of incorporation having arisen; c) the consent of all members; d) the absence of all members; e) merger (but only if the MC disappears in the merger); f) a ruling for commencement of bankruptcy procedures; or g) a judgment ordering the dissolution.

The following persons shall become liquidators of a Liquidating MC: a) a member who executes the operations; b) a person prescribed by the articles of incorporation; or c) a person prescribed by the consent of a majority of members.

#### **References:**

1. Act No. 86 of 2005
2. Act No. 48 of 1899

3. Act No. 25 of 1948
4. Act No. 103 of 1948
5. Act No. 59 of 1981
6. Act No. 89 of 1896
7. Act No. 91 of 1989

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### **Некоторые аспекты правового статуса японских компаний без акций**

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**Аннотация.** В статье рассматриваются некоторые аспекты правового статуса японских т. н. "компаний без акций". Исследуется большое число норм права Японии, которые регламентируют правовой статус и ответственность компаний без акций. Анализируются, в частности, положения закона о компаниях, коммерческого кодекса и других японских нормативных актов. Главное внимание уделяется описанию существующих типов японских компаний без акций, их компетенцию и ответственность.

**Ключевые слова:** Япония; японские юридические лица; компании без акций; правила, применяемые к юридическим лицам в Японии.