

## Labor & Employment Law Newsletter

### Japan Employment/Labor Law Update

#### Ending the Residency Requirement for Representative Directors in Japan

Japan's Ministry of Justice announced on March 16, 2015 that it would no longer require most Japanese companies to have at least one of their representative directors be a resident of Japan.

Prior to this change, virtually all Japanese subsidiaries of foreign companies were required to appoint at least one resident of Japan as a representative director.

The residency requirement had been a headache for foreign companies wishing to establish a subsidiary in Japan. In particular, it was not easy for companies with little experience doing business in Japan to find a candidate that they could trust. Because representative directors have broad authority to represent and bind the company, it was especially risky to hand that power over to someone the company was not familiar with. For this reason, many foreign companies have relied on intermediary companies to find suitable candidates who could meet the residency requirements. For an additional fee, those companies could even make their own staff members available to serve as temporary representative directors to satisfy the residency requirement.

The Japanese government made this change as part of its recent push to promote inbound investment. With residency no longer an

issue, foreign companies will now be able to establish subsidiaries in Japan without appointing a locally-based representative director. (It should be noted that the residency requirement still applies to certain business structures such as branch offices.) With the change, foreign companies can now run their Japanese subsidiaries with much more flexibility than before. Another benefit is the potential to avoid having to pay an exorbitant amount to secure a resident representative director, who is typically Japanese and bilingual. As discussed in the January 2015 issue of this newsletter, the pool of qualified bilingual candidates in Japan isn't very big, which means those candidates can often command higher salaries. Lastly, by appointing a non-resident, non-Japanese individual to head its Japanese subsidiary, a company may be able to minimize cultural differences that sometimes create misunderstanding and conflict with resident representative directors.

But don't break out the bubbly just yet. A non-resident still faces certain hurdles that a resident does not. For example, the representative director is required to open a bank account during the subsidiary's incorporation phase to certify payment of the initial capital. Simple, right? Not for non-residents. Japanese banks are generally reluctant to allow non-residents to open individual accounts. This effectively means that foreign companies will probably end up having to rely on a resident promoter to open the bank account and certify the initial capital.



Kinkakuji in Kyoto (the Golden Pavilion)

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#### Message from the Labor and Employment Practice Group

*Kojima Law Offices have provided legal services in the area of labor and employment law since its founding in 1984. Our Labor and Employment Practice Group represents clients in labor disputes and assists them in structuring and implementing HR policies. We work with both foreign headquarters and local management to timely and appropriately resolve employment issues that overseas companies face operating in Japan. As part of our continuing effort to reach out and share our expertise with others, the Labor and Employment Practice Group publishes this newsletter to provide a better understanding of this complex area of law, thereby enabling the reader to make more appropriate employment and labor decisions. We hope you find the newsletter both interesting and informative and welcome any feedback you wish to share with us.*

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## Introduction of the “My Number” ID System

Many countries assign their citizens a unique ID number for purposes of work, taxes, and other government-related functions (think social security numbers in the US). Japan has until recently declined to adopt such a system, in part due to concerns over privacy and identity theft. However, this will all change starting in October, when the Japanese government will issue what is rather fancifully called a “My Number”.

Like its counterpart in other countries, the My Number system is designed to manage an individual’s information in connection with social security benefits, taxes and government-provided pension. Under this system, the government will issue a 12-digit ID number to all Japanese citizens and resident foreigners. This number is required to be included on a variety of tax and social security documents that a company handles. The system is scheduled to be implemented in January 2016. Employers therefore need to be ready by making sure the ID numbers are on all of the required documents for all of their employees, as well as by taking any necessary measures to otherwise implement the system.

Not surprisingly, most of these measures are rather detailed and will be handled by a company’s local HR department.

Some of the more notable tasks include verifying the identity of the employees at the time they provide the company with their ID numbers in order to prevent identity theft or other improper use of the numbers. The company can complete this step by requiring employees to show some form of government-issued ID such as a driver’s license or a passport.

Under the relevant guidelines, employers must also take steps to ensure that the numbers are kept safe to prevent loss or unintended disclosure. Of particular note, employers must:

- (a) Identify a specific person and department that will be responsible for the employees’ personal information;
- (b) Designate a specific part of the company where the employees’ personal information can be physically stored in a safe and secure manner; and
- (c) Implement technical measures to ensure that no confidential information is lost or accidentally disclosed.

## Bill to eliminate overtime pay for white collar workers under discussion

The Diet is considering passage of a bill that would exclude employers from having to pay overtime to certain white-collar workers in fields such as R&D and investing (including fund managers). Under current law, with very few exceptions employers must pay overtime to employees who work more than eight hours per day and 40 hours per week. The bill would change this by dropping the requirement for those employees whose positions require specific professional knowledge and skills. In addition to standard overtime, the bill also covers extra pay for working on national holidays and for work performed past 10:00 pm. However, employers will be exempt from paying overtime under the bill only if they: (i) provide employees with at least 104 days off per year (including weekends and holidays); (ii) ensure that employees have a certain amount of break time per day; and/or (iii) limit the total

amount of time employees are actually in the office.

But there’s a catch for small to mid-sized companies. These employers are currently exempt from having to pay overtime for work performed in excess of 60-hours per month (150% over the base salary) as well as for work performed after 10:00 pm that exceeds 60-hours per month (175% over the base salary). If the bill passes, however, this exemption will likely end in March 2019.

Not surprisingly, labor unions have criticized the proposed exemption. They fear it will encourage longer working hours and have a detrimental effect on worker health. In particular, unions worry that the exemption could exacerbate depression and death from overwork (*karoshi*) that have proven to be serious problems in Japan. By contrast, employers welcome the exemption as a way to be more flexible and efficient in their personnel and management decisions. We will provide updates as developments on this issue become available.

The contents of this publication, current at the date of publication, are for reference purposes only. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

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