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### NEWS LETTER

The Japanese Government has announced that a new Corporate Act (the “Corporate Act”) will come into force on May 1, 2006. The Corporate Act will substantially change the forms of business in Japan, together with another new statute, the Limited Liability Business Partnership Act (the “LLP Act” enacted in 2005, which authorizes the formation of a limited liability partnership as a “pass through” entity. This letter is to provide you with information of the Corporate Act and LLP Act.

#### **I. What is the Corporate Act?**

##### **1. Forms of Corporation**

Under the existing Commercial Code (effective until April 30, 2006), there are only two types of limited liability corporations in Japan:

- (1) Stock Corporation (Kabushiki Kaisha or “KK”); and
- (2) Limited Liability Corporation (Yugen Kaisha or “YK” )

The most significant difference between KK and YK is the minimum capital requirement. The KK requires 10 million JPY of capital, while the YK requires 3 million JPY. The Corporate Act abolishes the minimum capital requirement.

Instead, the Corporate Act introduced a new Joint Corporation (Godo Kaisha or “GK”). Although GK is sometimes referred to as a Japanese LLC, GK is not a “pass through” entity for the purpose of Japanese tax, unlike a U.S. LLC.

A Japanese branch of a foreign corporation is still available under the Corporate Act.

##### **2. Directors**

Under the existing Commercial Code, at least

three (3) directors and one (1) statutory auditor are required for a KK. There must also be at least one Representative Director among the directors, who has the statutory authority to act on behalf of the corporation.

Under the Corporate Act, even a KK may now have only one (1) director without the statutory auditor, if the corporation has restrictions on share transfer.

##### **3. Japanese Resident Requirement**

Under the Corporate Act, the Japanese Government has not changed its prior position of requiring all entities to have at least one (1) Japanese resident who is in charge of the operations of the corporation or branch. The KK must have at least one (1) Japanese resident as the representative director, or as the sole director if the KK has no board of directors. A GK must have at least one (1) resident member (who made a capital contribution), whether an individual or an entity. A branch of a foreign corporation must have a resident of Japan as its legal representative in Japan.

##### **4. Compliance System**

A KK having 500 million JPY in paid-in capital or 20 billion JPY in debts is required to design and install the internal system to ensure the activities of directors are in compliance with the laws and Articles.

##### **5. Effects on Existing Companies**

The Corporate Act will honor the existing KK and does not require re-incorporation under the Corporate Act. The Corporate Act abolishes the

YK Act and the YK form itself. However, an existing YK will be deemed a Special KK under the Corporate Act, although it cannot identify itself as a KK without adopting a new corporate name and performing a required registration.

The Corporate Act has some provisions under which certain specific revisions to the Articles are automatically deemed to have been made when the Corporate Act becomes effective. However, if a company fails to amend its Articles, the written Articles would no longer reflect the true and enforceable Articles, and complications may result. It is therefore prudent to amend the Articles in compliance with the Corporate Act. In addition, because the Corporate Act gives many possible options in designing the corporate structure of KK, a review of the Articles from the point of the Corporate Act is recommended.

## **II. What is the LLP Act?**

On August 1, 2005, the LLP Act came into force. Prior to this new Act, all partnership in Japan were ones with unlimited liability. Therefore, many partnerships creating films or animation in Japan were those unlimited liability partnerships. Under the LLP Act, a limited liability partnership (“LLP”) is now available in Japan.

### **1. Pass Through Entity**

An LLP is designed as a “pass through” entity, so that no Japanese corporate tax is imposed on the profit of the LLP. The tax is imposed on the relative profit attributable to each partner as an income of each partner.

### **2. No Legal Personality**

Unlike KK or GK under the Corporate Act, an LLP has no legal personality. Because of this, an LLP may not be the right form of entity under certain specific industry regulations; however, in a limited sense an LLP can enter into contracts and hold title and other interests under the name of one of the LLP partners, by specifying that it is done on behalf of the LLP.

### **3. Requirement of Partners**

As a partnership, an LLP is required to have at least two (2) partners. If an LLP comes to have only one (1) partner, its dissolution is triggered unless the LLP adds a new partner within two (2) weeks. The LLP Act also requires at least one (1) partner must either be an individual resident in Japan or have an address in Japan for more than one (1) year, or it must be a corporation having its principal place of business in Japan.

### **4. Contribution Made by the Partners**

Contributions to be made by the partners shall be set forth in the partnership agreement. Contributions are typically made in cash, but may be made by other assets, either tangible or intangible. However, contribution of services is not acceptable for the partnership accounts.

### **5. LLP Agreement**

An LLP Agreement must set forth the following items:

- (1) Business of the LLP;
- (2) Name of the LLP;
- (3) Address of the LLP;
- (4) Name and address of the partners;
- (5) Effective Date of the Agreement;
- (6) Duration of the Agreement (which can be extended later by the consent of all partners);
- (7) Contribution to be made by each of the partners and its price; and
- (8) Fiscal year of the LLP.

This newsletter provides the general legal information and is not conveying a legal advice on any specific matter. If you have any questions, please do not hesitate to contact the following attorneys in the International Practice Group of South Toranomon Law Offices:

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