



Venture in japan

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Letter to foreign entrepreneurs of business ventures in Japan

◎ April 2, 2015 April 8, 2015 ◎ 角田進二

1. *Reasons for choosing Japan as your Venture destination*

We are aware that Japan has not yet reached the level of progress made in the USA[2] where tons of ventures appear and are supported by many companies such as venture capitalists, attorneys and CPAs. However, we are also aware that our infrastructure for ventures has been ameliorated in various ways such as the “Mothers”[3] market established by the Tokyo Stock Exchange for listing ventures. Accordingly, the amount of venture capital invested appears to have increased recently though there was a tendency towards decline in investment prior to 2012.[4] In particular, many early stage ventures received investment funds.

Business in Japan and the USA is quite different and sometimes the Japanese language and culture might create extra hardships and burdens on foreigners in order to establish companies. However, there are many foreign people successfully investing their funds in Japan to do business.[5] In addition, the Japanese government has recently considered deregulation of the current investment Visa[6] and of the requirements for establishing corporations.[7] In this case, due to such deregulation, as long as a venture has the potential to make a return on investment and has social value, venture capitalists and other experts as well as the Japanese Government will support it. We expect that foreign investors’ impressions of the investment climate will also soon improve.

Please note that the success of a venture is always a long way from its starting point. Such hardships are also suffered by normal Japanese business people but foreigners who also do not understand Japanese language and culture understandably have extra struggles. On the other hand, foreigners can benefit from the fact that they have different education and cultural experiences, which might give them a leg up. Open-minded people who have strong business backgrounds are able to succeed anywhere despite such difficulties in the beginning.

Networking is important, however if you aim to obtain credit from those with a more passionate and sincere attitude than others, you might find opportunities to meet appropriate persons.

I will not discuss abilities, attitude or luck concerning how to succeed in business in this letter. However, from my experience a good attitude seems to facilitate greater success. If you do not like Japanese culture, such an attitude is (whether intentionally or not) communicated to Japanese clients. It is true that some types of business do not rely on communication with other people. But most business people who begin learning a business need to undertake marketing to improve their services. Without finding niche areas, you need to compete with already established Japanese business, which will create a “red ocean” of saturated market share and the need to compete aggressively. Thus, forming a strategy to differentiate oneself from businesses in Japan is also important.

From now, I will share some information about the road for business ventures – in particular the legal aspects associated with undertaking such ventures for the reader’s reference.

2. *Recent changes and rough foresight*

The Act for Partial Amendment of the Immigration Control and Refugee Recognition Act (Act No. 74 of 2014), which was passed and enacted at the 2014 ordinary session of the Diet, was promulgated on June 18, 2014. This Act reorganizes the categories of residence status for foreigners[8]. For example:

- Establishment of a new status of residence, “Highly Skilled Professional”, for foreign human resources with advanced and specialized skills,
- The previously named “Investor/Business Manager” status has been changed to “Business Manger”, and
- Consolidation of the “Engineer” and “Specialist in Humanities/International Services” statuses.

Additionally, the Tokyo Metropolitan Government has established a robust policy to promote foreign investment[9]. In relation to the Act on National Strategic Special Zones, Tokyo is aiming at establishing a one stop center for starting businesses (Tokyo kaigyō one stop center) at the Jetro office. This will facilitate foreigners starting businesses by establishing a single window via which foreign business people can make applications for administrative procedures such as commercial registration, tax, pension, social insurance and status of residence with English assistance in collaboration with the Government. This service is expected to be provided from April 1st this year[10].

Furthermore, as of March 16th this year, it is no longer a requirement to have a representative director who is resident in Japan in order to incorporate a company.

3. *Conclusion*

The above are several examples to show that the Japan government is eager to accept foreign investment in Japan. In the future, I am planning to provide an explanation of the regulation and environment concerning venture in Japan.

[1] Website: <http://www.ailaw.co.jp/> (<http://www.ailaw.co.jp/>), Phone number: (81)3 3548 2702, Address: 5F Nishikan Honten Bldg 1-10, Kyobashi 1-Chome Chuo-ku, Tokyo 104-0031

[2] http://jvca.jp/inquiry/2012_Data.pdf (http://jvca.jp/inquiry/2012_Data.pdf)

[3] Market of the high-growth and emerging stocks

[4] http://jvca.jp/inquiry/2012_Report.pdf (http://jvca.jp/inquiry/2012_Report.pdf),
http://www.vec.or.jp/wordpress/wp-content/files/VEC_H26_05_new.pdf
(http://www.vec.or.jp/wordpress/wp-content/files/VEC_H26_05_new.pdf),
http://www.vec.or.jp/wordpress/wp-content/files/VEC_H27_01.pdf
(http://www.vec.or.jp/wordpress/wp-content/files/VEC_H27_01.pdf)

[5] <http://www.nikkei.com/article/DGXNZO72495410O4A610C1LDA000/>
(<http://www.nikkei.com/article/DGXNZO72495410O4A610C1LDA000/>)

[6] http://www.nikkei.com/article/DGXLASFS18H13_Z10C15A1MM8000/
(http://www.nikkei.com/article/DGXLASFS18H13_Z10C15A1MM8000/)

[7] http://www.nikkei.com/article/DGXLASFS02H30_S5A300C1MM8000/
(http://www.nikkei.com/article/DGXLASFS02H30_S5A300C1MM8000/)

[8] <http://www.immi-moj.go.jp/english/nyukan2015/index.html> (<http://www.immi-moj.go.jp/english/nyukan2015/index.html>)

[9]
http://www.seisakukikaku.metro.tokyo.jp/invest_tokyo/japanese/resources/pdf/leaflet_en.pdf
(http://www.seisakukikaku.metro.tokyo.jp/invest_tokyo/japanese/resources/pdf/leaflet_en.pdf)

[10] <http://www.kantei.go.jp/jp/singi/tiiki/kokusentoc/tokyoken/dai3/shiryous3.pdf>
(<http://www.kantei.go.jp/jp/singi/tiiki/kokusentoc/tokyoken/dai3/shiryous3.pdf>)

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Trademarks

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For internet services, many people want to create an attractive mark and obtain the exclusive trademark rights to use that mark.

For business venturists, the services intended to be offered are typically unconventional ones. As such, it is difficult to find appropriate descriptions included in the Japan Patent Office's list of descriptions and "similar group codes" for goods and services.

The advantage of conducting a trademark search is that before you use such a trademark you can check whether your mark is already a registered trademark owned by someone else offering similar goods or services, in which case your use would infringe upon their rights. If you continue such infringement, the trademark owner might be able to stop you from offering your services or you might be subject to a penalty. Your expert adviser will be able to help you find appropriate goods or services descriptions in order to search for trademarks offering similar goods or services to you.

As internet services contain many aspects, you may sometimes need to consider applying for trademark protection in more than one class of goods and services. However, as applying in additional classes incurs additional costs, you would be wise to find the most efficient class(es) to cover your mark. Although, of course there is some risk if you choose not to apply in every applicable class.

I might suggest that you need to be aware of the risks, but that it is also not reckless to simply understand the risks, and make a judgment call to avoid the worst case scenarios. It is important to know which category of good and service is your core business, and how to deal with litigation if any problems arise.

Similarly, if you proceed with a trademark application without undertaking a prior search and become aware later, due to a provisional refusal, that there are similar trademarks, you face a dilemma. If you want to keep your mark, you might only be able to obtain protection in a smaller number of categories, and might have to miss out on ones important for your business due to the similar trademark already being used in those categories.

Trademark protection is an important matter for Ventures – arguably even more so than establishing the company – because trademark infringement can cause tangible damage to your business prospects and even result in penalties. As such we suggest that specialist advice should be sought.



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Visa changes and starting up companies in Japan

◎ [April 3, 2015](#)[April 8, 2015](#) ◎ [角田 准二](#)

For a Chinese version of the article please click [here](#).

<https://venturejapan.wordpress.com/2015/04/08/%e5%a6%82%e4%bd%95%e5%88%a9%e7%94%a8%e6%96%b0%e7%b6%93%e7%87%91>

The Act for Partial Amendment of the Immigration Control and Refugee Recognition Act (Act No.74 of 2014) was promulgated on June 18, 2014 and will take effect on April 1. The changes that will be instituted have reopened opportunities for small to medium sized companies to enter the Japan market.

Now the requirements for obtaining a visa for the purpose of starting a business (a “business manager visa”) are as follows:

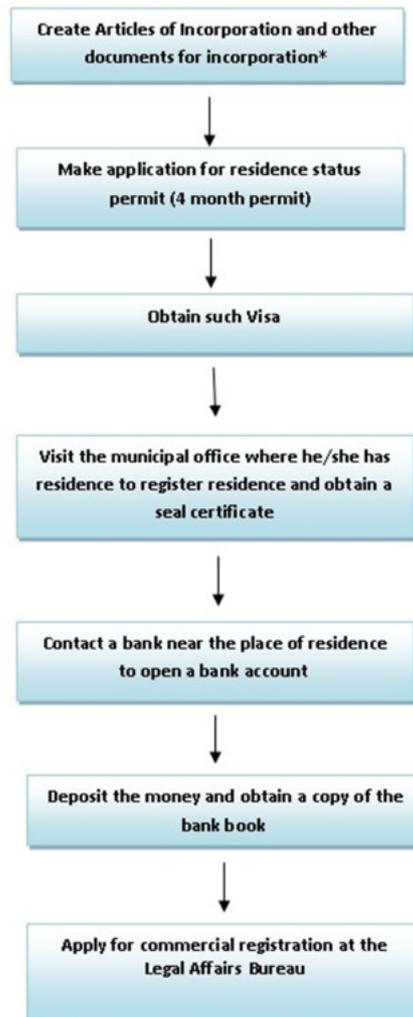
1) The applicant has an office address from which to operate the business in Japan (this must be indicated in the application form)

2) Either:

- More than two permanent personnel who reside in Japan and are engaged in the business besides the managing or administrative person. These personnel do not include the applicant; or
- A minimum of 5 million yen in capital; or
- The circumstances are considered to be similar to (a) or (b) above.

3) If the applicant has an intention to engage in the administration of the business he/she must have more than 3 years experience in business management or administration. (If the applicant majored in business management or administration in graduate school, such a period may be included) and additionally that he/she receives a salary competitive to that of a person engaging in similar activities in the same or similar industry in Japan.

Steps for Starting a Business in



*Please note that it does not indicate notarized Articles of Incorporation but only the Articles of Incorporation. This is subject to change.

Documents

- Copy of business plan.
- In the case of starting a business and the commercial registration of the judicial entity has not yet been finalized, the Articles of Incorporation or the document proving that he/she has an intention to establish such an entity. Note that in this case a profit and loss statement etc. is not necessary.
- A document proving the amount of capital to be contributed.
- documents outlining the office such as lease contract for the office and the brochure of the company.
- A document proving the intended activities, period, position and remuneration such as the service provider contract in case where he/she is retained for the management of the company.
- In the case of management or administration, a document proving the qualifications and experience of the applicant.

Given the above requirements, you therefore need to find a place to operate and conclude the agreement. The requirement regarding the “Articles of Incorporation” does not clearly indicate that notarized Articles of Incorporation are required. It might depend on the circumstances, but at the least, it would be preferable that it be signed by all of the promoters.

You might make an application via your Embassy or an Immigration office using an agent.

If you obtain this visa, you might have at least a 4 month residence status which will allow you to apply for residence registration at your municipal office. After you receive such a certificate and registered seal, you might want to visit the bank to open a bank account (the requirements regarding this are subject to the bank’s discretion, but it is usually necessary to get a residence certificate and registered seal first).

After successfully opening a bank account, you then deposit the amount of start-up capital which is specified in the Articles of Incorporation and make a copy of the bank book for proof.

After collecting all of the required documents, you should submit them to the Legal Affairs Bureau in order to incorporate the company. After you obtain the certificate of commercial registration and registered representative seal, you can visit the bank again to open a corporate bank account and you have completed the steps for commercial registration.

If you wish to stay in Japan longer, you need to apply for renewal of your managing and administrative Visa.

Note that you should not forget other procedures such as with regards to tax etc.

Reference:

http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri07_00088.html
(http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri07_00088.html)

http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri07_00052.html
(http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri07_00052.html)

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Patents

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If you regard your company as a technology oriented one, you need to consider applying for a patent.

In order to be applicable for a patent, your product needs to:

- Be an industrially applicable invention
- Be novel
- Have included an “inventive step” in its creation.

Inventions relevant to software are also patentable if all of the above criteria are met.

I don't intend to discuss the application process in detail here, but rather discuss aspects particular to ventures.

When writing about trademarks previously, I noted the importance of conducting a prior search. However, with respect to patents, ventures cannot usually afford to do a prior search for similar patents as the costs are often overwhelming. As such, I usually suggest that, in the case of patents, ventures leave the Japan Patent Office to examine the patentability of your proposed patent.

Why are patents good for ventures?

If you hold a patent, it can add a lot of value to your venture and become something to differentiate you from the many other ventures in Japan. Such added value may attract not only customers, but also venture capital. Therefore, if you find your work patentable, you might well consult with a specialist so that you may safely obtain a patent.

Although it is important to protect your patentable invention, it is often said that the primary purpose of the first application by ventures is to attract customers and venture capital, rather than exclude other competitors in your domain. If you try to obtain the broadest possible right for the patent in order to exclude competitors, it might become a very costly and time consuming affair. This may not be ideal in early stages of business, although it would of course be beneficial to obtain such a right in the long run. You also need to consider the costs of litigation in the case of seeking redress for infringement.

Please consult with your specialist advisor to holistically consider the best course of action for your business.



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Agreement between founders

◎ April 15, 2015 ◎ 角田進二

It is common for initial members of a venture to change and rare for remaining members to stay in the same company long term even if the founders got along well in the beginning.

Considering such observations, current founders and joining founders might adopt a reverse vesting clause which protects the remaining founders and the company itself from joining founders leaving newly funded startups with their shares.

For example, such a clause might mean that if the joining founder loses his/her position as an officer or employee, his/her shares shall be transferred to the current founder.

The price of the transfer shall be the same as the purchase price paid unless there has been some reorganization of shares (e.g. merger, division or issue) in the meantime.

You might also need to consider preventing joining founders from transferring shares to others unless he obtains consent from the current founder.

It is also wise to consider succession as this is one variation in which new shareholders might join. While hoping for the best, we should prepare for the worst and not proceed on the basis that the friendship and collaboration between founders will last forever. As such, it is important to prepare for conflict among the founders at the outset.

If joining founders are also contributing patents, copyrights or other property essential for the company, it would be good to transfer ownership of such property to the company before any problems arise.

Please note that current founders shall issue many shares before any one joins the company in light of VC and joining partners, as founders need to have controlling power.

With regards to all of the above elements, I would recommend that you consult with experts as the details of such clauses can be quite complex yet very important.

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Copyright

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For the software industry, copyright is an important issue.

A software program is in itself one of the copyright works listed in Article 10 of the Copyright Act so is subject to copyright law.

Copyright contains two categories: moral rights and proprietary rights.

The Copyright Act contains provisions in favor of a company with regards to software program as between the company and employees. For example, under Article 15, unless otherwise stipulated in contract or the working rules, the company owns the copyright in works created by employees during the course of his performance of his work duties.

Ventures sometimes outsource drawings to independent contractors. In such cases, ventures shall conclude an agreement indicating the objectives of the arrangement such as with regards to the transfer of the copyright, price and other important elements because if the company has a conflict regarding such important terms with such contractors it might not use them any longer. In order to avoid such a situation it is wise to conclude an agreement early before the venture grows.

Of course, the company shall include the non-exercise obligation of the moral right borne by the independent contractor in the agreement in cases where the company concludes an agreement for transfer of copyright. .

With regards to outsourcing of software development, there are many aspects to be considered and so I will write about this in a separate article later.

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Unfair Competition

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With regards to unfair competition, sometimes there are hidden risks associated with using an unregistered mark if the use of such a mark has the possibility of infringing on another mark with respect to trademark rights and unfair competition.

Unfair Competition Prevention Act – important provisions

Article 2 (1) The term “unfair competition” as used in this Act means any of the following:

(i) the act of creating confusion with another person’s goods or business by using an indication of goods or business (meaning a name, trade name, trademark, mark, container or packaging for goods which is connected with a person’s operations, or any other indication of a person’s goods or business; the same shall apply hereinafter) that is identical or similar to an indication of goods or business that is well-known among consumers as that of another person, or by assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing or providing through a telecommunications line goods that uses such an indication;

(ii) the act of using an indication of goods or business that is identical or similar to another person’s famous indication of goods or business as one’s own, or of assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing, or providing through a telecommunications line goods that use such an indication;

(iii) the act of assigning, leasing, displaying for the purpose of assignment or leasing, exporting or importing goods that imitate the configuration of another person’s goods (excluding configuration that is indispensable for ensuring the function of said goods);

For software, it is usually important to pay attention to 2(1)(i) and (ii). However, unless the other mark is well-known, it might still be possible to use it.

It is also important to note Article 8 of companies act:

No person may use, with a wrongful purpose, any name or trade name which makes it likely that the person may be mistaken for the other Company.

(2) Any Company the enterprise interests of which have been, or are likely to be, infringed by the use of any name or trade name in violation of the provisions of the preceding paragraph may seek an injunction suspending or preventing the infringement against the person who infringes, or is likely to infringe, those enterprise interests.

The risky part is that you might need to immediately stop using the mark (which might already cause financial loss), pay damages and also be subject to a penalty.

As such it is at your own risk as to whether you use an unregistered mark or not. As always, ventures need to assess hidden risks and consider whether benefits outweigh the costs and the likelihood of those costs being incurred.

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Hiring Employees in Lieu of Finding Partners

◎ ~~April 24, 2015~~ April 28, 2015 ◎ 角田進二

For several reasons, you might consider retaining employees rather than entering into partnerships. In such a case, you need to be aware that Japanese Labor laws are not favorable for venture companies.

Working hours shall be in principle, 8 hours per day, 40 hour per week under Article 40[1] of the Labor Standards Act. Annual paid holidays shall also be granted to workers under Article 39[2].

Please note that employers shall also provide health insurance. If start-up companies comply with such laws, it might be difficult to continue to manage such activities because there are huge gaps between the reality and the spirit of these laws, due to limitations of human resources and scarcity of assets.

In principle, companies shall comply with every law. However, there are some priorities. Health is a very important issue for workers, for example. Employers shall give higher priority to employees rather than themselves in many aspects such as compensation, healthcare and welfare so that you can avoid many conflicts.

It might work to give stock options to employees; however it is better to not give shares to employees unless they are treated as joining founders.

It is not necessary to conclude an employment agreement with workers, however if you have concerns regarding conflicts it might be wise to conclude such an agreement in order to indicate your expectations to workers. There are minimum requirements regarding recruitment. For working conditions for which notification must be given, see Article 15[3] of the Labor Standards Act (*roudou jouken tsuuchi-sho*)

<http://www.mhlw.go.jp/bunya/roudoukijun/roudoujouken01/>
(<http://www.mhlw.go.jp/bunya/roudoukijun/roudoujouken01/>)

It is also important to consider collective agreements between employers and workers. If employers retain more than 10 workers, the said employers shall create “working rules” under Article 89 of the Labor Standards Act[4].

In order to avoid conflicts due to incompatibility between employers and workers, employers should conduct a robust recruitment regime and take their time to assess the suitability of candidates using paper examinations and other tests.

As labor regulations are complex, it is recommended that you consult with experts such as attorneys or labor and social security agents (*shuroushi*).

[1] Article 32 (1) Employers shall not have Workers work more than 40 hours per week, excluding rest periods.

(2) Employers shall not have Workers work more than 8 hours per day for each day of the week, excluding rest periods.

Article 40 (1) With respect to Business other than that stipulated in items (i) through (iii), (vi) and (vii) of Appended Table No. 1, in which there is a necessity in order to avoid public inconvenience or other special needs, special provisions may be established by Ordinance of the Ministry of Health, Labour and Welfare to the extent that is unavoidably necessary, regarding working hours under Articles 32 through 32-5 and rest periods under Article 34.

[2] Article 39 (1) Employers shall grant annual paid leave of 10 working days, either consecutively or divided, to Workers who have been employed continuously for 6 months from the day of their being hired and who have reported to work on at least 80 percent of the total working days.

[3] Article 15 (1) In concluding a labor contract, the Employer shall clearly indicate the Wages, working hours and other working conditions to the Worker. In this case, matters concerning Wages, working hours and other matters stipulated by Ordinance of the Ministry of Health, Labour and Welfare shall be clearly indicated in the manner prescribed by Ordinance of the Ministry of Health, Labour and Welfare.

[4] Article 89 Employers who continuously employ 10 or more Workers shall draw up rules of employment covering the following items and shall submit those rules of employment to the relevant government agency. In the event that the Employer alters the following items, the same shall apply:

- (i) Matters pertaining to the times at which work begins and ends, rest period, days off, leave, and matters pertaining to shifts when Workers are employed in two or more shifts;
- (ii) Matters pertaining to the methods for determination, calculating and payment of Wages (excluding Special Wages and the like; hereinafter in this item the same qualification shall apply); the dates for closing accounts for Wages and for payment of Wages; and increases in Wages;
- (iii) Matters pertaining to retirement (including grounds for dismissal);
- (iii-ii) In the event that there are stipulations for retirement allowances, matters pertaining to the scope of Workers covered; methods for determination, calculation, and payment of retirement allowances; and the dates for payment of retirement allowances;
- (iv) In the event that there are stipulations for Special Wages and the like (but excluding retirement allowances) and/or minimum Wages, matters pertaining thereto;
- (v) In the event that there are stipulations for having Workers bear the cost of food, supplies for work, and other expenses, matters pertaining thereto;
- (vi) In the event that there are stipulations concerning safety and health, matters pertaining thereto;
- (vii) In the event that there are stipulations concerning vocational training, matters pertaining thereto;
- (viii) In the event that there are stipulations concerning accident compensation and support for injury or illness outside the course of employment, matters pertaining thereto;
- (ix) In the event that there are stipulations concerning commendations and/or sanctions, matters pertaining to their kind and degree;
- (x) In the event that there are stipulations applicable to all Workers at the workplace in addition to those contained in the preceding items, matters pertaining thereto.

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Options for Visas

◎ April 7, 2015April 28, 2015 ◎ 角田進二

To be honest, the 4 month business manager visa may not be feasible for entrepreneurs engaging in business for the first time as such people do not know the market in Japan and may need to stay longer initially.

Rather, if you are just beginning, you might need to undertake some university study or obtain work experience in Japan to learn the ins and outs of the business world in Japan. It is also important to network with many people who might be able to help you later.

Please note that the statuses of “working holiday”, “college student” and “engineer and specialist in humanities/international services” are subject to limited activities with respect to paid work. If you need to work beyond the scope of your permitted activities, you need to apply for Permission to Engage in Activity Other Than That Permitted under the Status of Residence Previously Granted. As such processes are generally discussed, I will not explain in detail. Please consult with specialists.

However, preparation for business ventures is an important issue. If you work in a company or study at a university, you may want to use your remaining time to undertake preparations. If you gain profit from such preparation, you might be again subject to penalties and/or sanctions, so please also consult with specialists.

Note that there are some exceptions under Article 19-3 of the Ordinance for Enforcement of the Immigration Control and Refugee Recognition Act such as rewards, prize money and other payments for the following activities not given on a regular basis:

1. Lectures, classes, discussions and other similar activities
2. Advice, appraisal and other similar activities
3. Production of novels, papers, pictures, photographs, programs and other works.
4. Participation in events, appearance in movies or broadcasting programs and other similar activities.

Please note these exceptions are applied in a strict manner and with the discretion of the authorities, so it is desirable that you interpret them on a narrow basis.

As a rule of thumb however, if the activities are other than that applicable to the status in question and remuneration or rewards accompany such activities, you need to obtain Permission to Engage in Activity Other Than That Permitted under the Status of Residence Previously Granted. On the contrary, if remuneration or rewards do not accompany such activity you do not have to obtain a special permit. For example, people who have the residency status of engineer and specialist in humanities/ international services may attend a school.

In this sense, preparation without earning rewards or remuneration might be workable unless such activities prevent you from carrying out the activities that are central to your residency status. For example a person holding a student visa being unable to attend school because they are too busy programming software. It is also necessary to note that such activity should not cause damage to activities included in your status. For example, using a social network service during working hours might cause problems with respect to labor matters for a person with “engineer and specialist in humanities/ international services” status, as it might violate rules of employment.

Occasionally attending competitions and winning awards is one way to success during preparation to launch a venture, and could be submitted as evidence for a person having status as a college student when seeking a change of status to the business manager visa, though there are further elements to be considered.

Changing status from student to business manager visa is a difficult procedure, as the Immigration Office might suspect that many people want to stay in Japan by paying some amount of money. Such preparations might be useful in order to prove you can are likely to successfully continually manage a business, study and work experience might also help you to construct your networks in Japan and allow you to lay the ground work for your future goals.

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Crowd-funding in Japan

◎ May 2, 2015 ◎ 角田進二

Funding is important for entrepreneurs. Of course, you may start with your money, which is quite common. But sometimes Crowd-funding is one of choices.

Following websites are crowd-funding agents.

Readyfor

<https://readyfor.jp/> (<https://readyfor.jp/>)

Campfire

<http://camp-fire.jp/> (<http://camp-fire.jp/>)

Makuake

<https://www.makuake.com/> (<https://www.makuake.com/>)

However, there are many risks for crowd-funding.

First, your idea might be stolen by third parties. Second, crowd-fund is raising fund from normal people. If project owners fail to reach the objects, it might be difficult to find other places to raise the fund due to damaging your reputation by such failure.

In this sense, this crowd-funding is too risky to use for the start-up. Rather it might be better to use for the promotion purpose.

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crowdfunding association will be soon established

◎ May 3, 2015May 4, 2015 ◎ 角田進二

Masujima, attorney at law, collaborated with crowdfunding players such as readyfor and Makuake. It is really amazing that such association will be created soon as all of players are new and competitors. I also agree that this domain might cause huge controversy so they need to prepare it and distinguish themselves from others who have malicious intention. Though such malicious persons are quite few, usually people think that they are major parts. It is really good idea to establish such association shortly.

<http://safe-crowdfunding.jp/news/201504-1/> (<http://safe-crowdfunding.jp/news/201504-1/>)

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Venture Capitals in Japan

◎ May 11, 2015 ◎ 角田進二
(Legal issues)

We sometimes use Limited Partnerships for Investment to establish the venture capital, though we have other forms such as the joint stock company, which is often used for the said purpose.

Though the translation in following site is not updated and people need to check amendments, however it might be useful for your reference.

Limited Partnership Act for Investment

<http://www.japaneselawtranslation.go.jp/law/detail/?id=96&vm=04&re=01&new=1>
(<http://www.japaneselawtranslation.go.jp/law/detail/?id=96&vm=04&re=01&new=1>)

Enforcement Order of the Limited Partnership Act for Investment

<http://www.japaneselawtranslation.go.jp/law/detail/?id=154&vm=04&re=01&new=1>
(<http://www.japaneselawtranslation.go.jp/law/detail/?id=154&vm=04&re=01&new=1>)

you may find the model contract which was provided by Misnistry of Economy, Trade and Industry, in the following link.

http://www.meti.go.jp/policy/economy/keiei_innovation/sangyokinyu/lps_model2211.pdf
(http://www.meti.go.jp/policy/economy/keiei_innovation/sangyokinyu/lps_model2211.pdf)

(the list of Venture Capitals and Accelerators)

The following site indicates the list of venture capitals in Japan.

<http://www.turnyourideasintoreality.com/2013/12/vcinjapan/>
(<http://www.turnyourideasintoreality.com/2013/12/vcinjapan/>)

For your reference, the Accelerators are as follows.

http://www.turnyourideasintoreality.com/2014/01/vcs_for_seedstartups/
(http://www.turnyourideasintoreality.com/2014/01/vcs_for_seedstartups/)



Venture in japan

在日本創業

“My number” system will be effective soon.

◎ May 20, 2015 ◎ 角田進二

1) Though the law itself seems to be very strict, I am wondering what if the companies located in a foreign country try to steal Japanese “my number” using some fraudulent website.

2) Private sector’s support is necessary but seems not many private sector are not willing to provide the government with such support. The use by private sectors is very important. I am wondering whether the government think of the use of the private sector in detailed manner.

I will review this law more closely about these two issues and if possible I will made more comment.

<http://www.cas.go.jp/jp/seisaku/bangoseido/english.html>
(<http://www.cas.go.jp/jp/seisaku/bangoseido/english.html>)

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Copyright

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En ce qui concerne l'industrie des logiciels (softwares), le droit de copyright est un sujet important.

En effet, un logiciel est une œuvre protégée par l'article 10 de la Loi sur le Copyright. A cet égard, un logiciel est soumis au Droit d'auteur.

Le Copyright comprend deux domaines: le droit moral et le droit de la propriété.

En ce qui concerne le droit de la propriété, il est important de pouvoir déterminer, entre l'employé et l'employeur, la personne propriétaire du droit d'auteur d'un logiciel. A cet égard, la Loi sur le Copyright contient certaines dispositions. Par exemple, en vertu de l'article 15 et sauf stipulation contraire dans le contrat ou dans un règlement, la société détient le droit d'auteur sur les œuvres créées par ses employés au cours de leurs fonctions dans l'entreprise.

Il arrive que certaines sociétés viennent à externaliser la création de dessins en faisant appels à des professionnels indépendants. Dans de tels cas, il est important que les sociétés concluent un accord précisant les termes du contrat, tels que, le transfert du droit d'auteur, le prix et d'autres éléments importants. En effet, si la société venait à entrer en conflit avec ces professionnels à l'égard de ces termes, elle ne serait plus en mesure d'utiliser lesdits dessins. Afin d'éviter une telle situation, il est sage de conclure de tels accords le plus tôt possible, et notamment en prévision du développement futur de la société.

Il est également important que la société inclut dans le contrat, une obligation de non-exercice par le professionnel indépendant, du droit moral, dans le cas où la société a conclu un accord sur le transfert du droit d'auteur.

En ce qui concerne l'externalisation du développement de logiciels, il existe de nombreux aspects à prendre en considération et qui seront traités dans un article distinct.

© Français

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在日本創業

Changing the environment in Japan and creating an ecosystem for venture

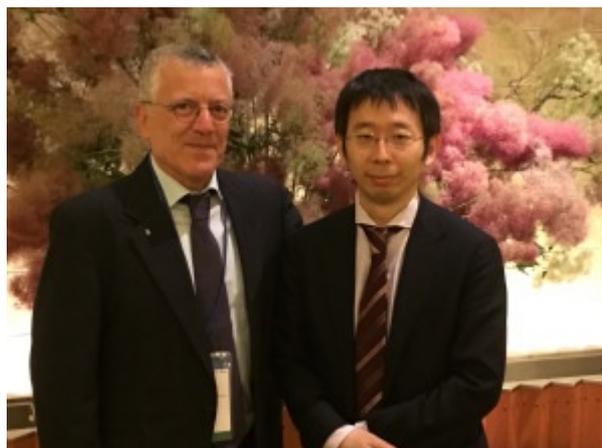
◎ May 27, 2015 ◎ 角田進二

1. Currently, our atmosphere in Japan is not conducive to enabling people to take risks. People are afraid to take risks in order to pave the way against a difficult future such as aging problems and competition with emerging countries.
2. My purpose is to help create an ecosystem for venture in Japan. Regardless of nationality, we should accommodate ventures to boost innovations in Japan.
3. Israel is one of the leading innovative and risk-taking countries in the world. We believe mutual collaboration between Japan and Israel may facilitate healthy and peaceful innovation for the World, which may eventually contribute to World peace.

Last night I met with Mr. Boaz Golany, Vice President at Technion Israel Institute of Technology. Mr. Golany is currently in Japan and is working to create a Technion Open Innovation Center at the University of Kyoto. I enjoyed our engaging conversation and hope that we might be able to collaborate to achieve my above aims. According to him, in order to boost startups, he offered the following points:

- Set deadlines
- Respect team work
- Take and respect leadership
- Work with limited resources
- Enjoy the uncertainty
- Take risks

It was really meaningful for me to meet with him.





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在日本創業 (for peaceful business)

The Visa Headache

◎ June 9, 2015 ◎ 角田進二

For foreign investors in Japan, one big headache is obtaining a visa.

To obtain a visa based on a Business Manager Status of Residence, investors usually need to invest 5 million yen, which is huge money. If you have a company in your home country, you may consider an alternative choice such as the Specialist in International Service or Intra-company Transferee Visa.

Here, for your reference, is a public notice issued by the Ministry of Justice, regarding the Business Manager, Specialist in International Service or Intra-company Transferee.

http://www.moj.go.jp/nyuukokukanri/kouhou/nyukan_nyukan20.html
(http://www.moj.go.jp/nyuukokukanri/kouhou/nyukan_nyukan20.html)

- Business Manager

A person obtaining Business Manager status shall substantially manage and administrate the business activity, or engage in such management. To obtain such a visa one of the following criteria must be met:

- The person shall employ at least 2 full-time employees in Japan (excluding foreign nationals residing in Japan under the statuses of residence listed in Appended Table I of the Immigration Control Act) in addition to those who operate and/or manage the business.
- The amount of capital or investment shall be 5 million yen.
- Cases similar to the above

You do not need to invest more than 5 million yen each year. Once you invest the said amount, as long as you keep the said amount without recouping it later, you can continue the business.

In cases where the activities seem to overlap between that of Business Manger, Engineer and Humanities and International Services the Business Manager status should prevail. If the former does not cover such activities, only then will the latter be applicable.

When you are promoted to become a business manager, you are not immediately required to change your visa status. However, you might need to change status soon.

2) Specialist in International Service or Intra-company Transferee

Of course, as it is mentioned above, if the Business Manager status is applicable, you have no choice but to apply for that status.

But if you have no intention to substantially manage and administrate the business activity, or engage in such management, you might choose the Intra-company Transferee or Specialist in International Services status as an employee etc.

The difference between Specialist in International Service or Intra-company Transferee is that Intra-company Transferee is applicable to activities during the specific term in which the person is dispatched and he/she cannot provide services except in the specific business location where he/she is transferred.

A contractual relationship between a public or private organization in Japan and an applicant is not limited to an employment contract but also to a contract of mandate, service agreement etc.

However, such a contract shall have the characteristic of continuing the activity.

3) If you are interested in the management of business, you do not need to look at this option. However, if you consider the development of business in the future, the information above might be helpful.

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Equity Finance2

◎ June 18, 2015 ◎ 角田進二

For the seed round, in Japan thus far I never heard that convertible notes were utilized, though some of VCs used bond as bridge finance.

<http://www.startupcompanylawyer.com/category/convertible-note-bridge-financing/>
(<http://www.startupcompanylawyer.com/category/convertible-note-bridge-financing/>)

Some of VCs might use convertible bonds etc., however they are likely to increase the cost such as attorney fee. Most of Japanese attorneys recommend the class share.

Class share is actually so far better than other tools in many aspects. However, it seems that we, Japanese attorneys do not discuss about how to provide more efficient, cheaper and simpler service to seed companies in the comparison with USA (<https://www.ycombinator.com/documents/> (<https://www.ycombinator.com/documents/>)). If you adopt Class share, you need to change the article of incorporation and commercial registration. If you change the commercial registration, the terms of condition also will be published. In this aspect, I believe that we need to adopt open innovation ways. all venture capital shall disclose the terms of condition format which shall be subject to public review. If we can standardize such format of class share, we can save the time and money to pay to attorneys and other specialists.

Mr. Isozaki, who is CPA and Venture Capitalist, provides many update information to promote Venture ecosystem in Japan.

<http://www.tez.com/blog/> (<http://www.tez.com/blog/>)



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在日本創業 (for peaceful business)

"My Number" system: the basics

◎ June 17, 2015 ◎ 角田進二

1. Scope of application for My Number

The My Number system requires every resident in Japan to be issued with a 12-digit Individual Number. Individual Numbers are allocated on a permanent basis (i.e. they remain allocated to that individual for their lifetime) and will be used for administrative procedures related to social security, taxation, and disaster response. For example, such tasks might include procedures related to unemployment and medical insurance, receipt of welfare benefits, and filing income tax returns. Residents can also apply for a card with their Individual Number on it (an "Individual Number Card").

Private businesses, within the scope of the law, will also handle the Individual Numbers, for example for the purposes of withholding tax for their employees.

2. Timeline

The system will become effective on October 5th, with Individual Numbers beginning to be used for applicable administrative procedures from January 2016.

| | 2015 | October | 2016 |
|---------------|--|---|---|
| System | | Notification of Identification Numbers to residents | Deliver Individual Number Cards to residents |
| | | | Utilization of Individual Number system |
| Entrepreneurs | Preparation for implementation of the system | Can obtain in bulk | |
| | | May obtain Individual Numbers from employees etc. | Execution (use Individual Numbers in necessary) |

| | | | | | | |
|--|--|--|--|--|--|--------------------------------------|
| | | | | | | procedures e.g. for withholding tax) |
|--|--|--|--|--|--|--------------------------------------|

3. Relationship with Personal Information Protection Acts

This system is established under the *Act on the Use of Numbers to Identify a Specific Individual in the Administrative Procedure* (an English translation of which can be found on the website of the Cabinet Secretary here: <http://www.cas.go.jp/jp/seisaku/bangoseido/pdf/en3.pdf> (<http://www.cas.go.jp/jp/seisaku/bangoseido/pdf/en3.pdf>)).

In the first Article of that Act, it specifies that its purposes are to provide special provisions for the *Act on the Protection of Personal Information Held by Administrative Organs*, the *Act on the Protection of Personal Information Held by Incorporated Administrative Agencies*, and the *Act on the Protection of Personal Information* so that Specific Personal Information, such as Individual Numbers, is handled safely and appropriately, as well as efficiently.

Note that inappropriate obtaining and use of an Individual Number are punishable acts.

4. Goals of the My Number system

The Government hopes that the implementation of the My Number system will:

- *Improve administrative efficiency*, by saving time and labor to compare various types of information in administrative agencies,
- *Enhance public convenience*, by simplifying administrative procedures and the number of documents required to be submitted by residents, and
- *Contribute to a fairer and more just society*, by helping to prevent tax evasion and unfair receipt of benefits, as well as facilitate the proper provision of assistance to those who are truly eligible.

5. Guidelines

The Specific Personal Information Protection Commission has issued guidelines in Japanese here: <http://www.ppc.go.jp/legal/policy/> (<http://www.ppc.go.jp/legal/policy/>)

For a brief summary of the new system in English, please see the website of the Cabinet Secretary here: <http://www.cas.go.jp/jp/seisaku/bangoseido/pdf/en1.pdf> (<http://www.cas.go.jp/jp/seisaku/bangoseido/pdf/en1.pdf>)



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Godo Kaisha

◎ July 8, 2015July 10, 2015 ◎ 角田進二

Godo Kaisha is a company structure that was established upon the passing of the new Company Law in 2006. The use of GKs is increasing in Japan, and here we give brief outline of some of the key points about them.

1. Cannot become a listed company

According to the Securities Listing Regulations, rule 205 aims at “domestic stocks, etc.” which, according to rule 2(79) means “a domestic stock or a preferred equity investment security”. In this sense, a GK cannot be vehicle for listed company.

So, I am not willing to explain such system in this blog.

However, as the number of GKs is has been increasing recently, and there are a number of famous foreign companies that have established their subsidiaries in Japan as GKs, I decided to write a little about it.

The number of registered GKs over the last few years has been as follows:

19,808(2014) 14,581(2013) 10,889(2012) 9,130(2011)

<http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001134471> (<http://www.e-stat.go.jp/SG1/estat/List.do?lid=000001134471>)

Some examples include Apple Japan, Cisco system, P&G Maxfactor etc.

On the other hand, the number of registered Kks over that time has been:

86,639(2014) 81,889(2013) 80,862(2012) 80,244(2011)

2. Why are GKs popular?

- The cost of establishment for GKs is cheaper if the article of incorporation is simple.
- The internal management is flexible

Please note that in Japan we have no pass through system in GK unlike with respect to LLCs in the USA

3. Similarities between GKs and Kks

Both are composed of limited liability associates (ss104, 580), are legal entities (s3), have the duty to create accounting documents and to keep them (s435, s617), must allow the right of review and copy to creditors (ss442, 625) and have similar procedures for creditor protection (ss449, 627).

Furthermore, if all of the shares in a KK are subject to restriction of transfer of shares, regardless of the value of contribution, the Articles of Incorporation may decide various

treatment against each shareholder (s109). This is similar to GKs (s621).

4. 5 major differences

1) Establishment

– GKs do not need to have notarization by a notary public.

– Registration tax is 60,000, duty stamp 40,000, totaling 100,000 yen for GKs. In comparison, for KKs, registration tax is 150,000, duty stamp is 40,000 and notarization will cost at least 50,000, totaling at least 240,000 yen.

2) Directors and officers etc

GKs do not to have statutory auditors and accounting auditors while a KK needs to have shareholder meetings and have directors (s326) in addition to a statutory auditor or accounting auditor in certain cases (e.g. s328).

The managing associate in a GK is not limited to a physical person but may be a legal person (s598).

3) Activities

Associates may execute their activities by agreement among the associates (s590), and may also give a mandate to executive associate (s591).

4) Accounting

KKs shall publish accounting reports (s440), while GKs do not need to do so.

5) Share transfer

As GKs have a strong relationship amongst associates, in principal, the transfer of shares requires consent from all associates (s585). For GKs, in certain cases associates may remove shares from the company (s606).

FINALLY, Please note that for a GK, in principal, modifications to the Articles of Incorporation require consent from all associates (s637), so please be careful to find appropriate associates.

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Ordinance On National Strategic Special Zone will be effective soon

◎ August 9, 2015September 3, 2015 ◎ 角田進二

[http://search.e-gov.go.jp/servlet/Public?](http://search.e-gov.go.jp/servlet/Public?CLASSNAME=PCMMSTDETAIL&id=300130088&Mode=0&fromPCMMSTDETAIL=true)

[CLASSNAME=PCMMSTDETAIL&id=300130088&Mode=0&fromPCMMSTDETAIL=true](http://search.e-gov.go.jp/servlet/Public?CLASSNAME=PCMMSTDETAIL&id=300130088&Mode=0&fromPCMMSTDETAIL=true)

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The draft of this Ordinance included the procedure for obtaining Business Management visa by foreign investors(Article 5). Investors shall submit the plan to certain local governments(Article 2). After local governments consult with experts who know well about management of business, they will make decision whether or not to issue the conformation certificate of startup activity(Article 3). Once they issue such certificates, they shall take appropriate actions to give consultation concerning startup to these investors and if investors' business is not successful, these governments assist investors to return to their home countries in appropriate manner(Article 4).The term of the said visa will be 6 months(Article 5).

This draft is now subject to Public Comments. This Ordinance is supposed to be effective on September 1, 2015.

It was published on 31th of August and was effective on September 1, 2015.

[http://search.e-gov.go.jp/servlet/Public?](http://search.e-gov.go.jp/servlet/Public?CLASSNAME=PCMMSTDETAIL&id=300130088&Mode=3)

[CLASSNAME=PCMMSTDETAIL&id=300130088&Mode=3](http://search.e-gov.go.jp/servlet/Public?CLASSNAME=PCMMSTDETAIL&id=300130088&Mode=3) (<http://search.e-gov.go.jp/servlet/Public?CLASSNAME=PCMMSTDETAIL&id=300130088&Mode=3>)



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Regulation for Health Care Software Programs: Part 1

◎ August 23, 2015 ◎ August 25, 2015 ◎ 角田進二

The Law Concerning the Establishment for Pharmaceuticals and Medical Devices is related to software programs in relation to health equipment. Under the 2014 revision, medical device under Article 2(4) includes programs prescribed in cabinet order for such purposes as: diagnosing programs for disease, medical treatment programs for disease and programs for the prevention of disease.

Such programs were included for the following reasons: (1) due to telecommunication development and the expansion of smart phones, we can easily foresee that program itself will disseminate rapidly without equipment via the internet etc. , (2) in foreign countries such programs are regulated as medical devices, (3) the traditional procedure, where a set of devices including programs are subject to authorization for each individual update of program, is not practical.

Distribution of programs is also regulated; such regulation includes one for internet distribution.

Under the guideline, where a program does not have any influence on human life and health, even if there are defects in the program, such a program might be excluded the definition of medical device.

For further information, please seek professional advice.



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Regulation for Health Care Software Programs: Part 2

© August 23, 2015 © September 11, 2015 © 角田進二
<http://www.jaame.or.jp/mdsi/261114.pdf> (<http://www.jaame.or.jp/mdsi/261114.pdf>)

When we determine the applicability of programs within the scope of medical device, we have to take into consideration two elements:

- (1) What contribution can the program provide to medical treatment, diagnosis, etc of disease?
- (2) What is the likelihood of risk to human life and health if disorders arise in relation to said program?

The following examples are not within the scope of medical device:

- 1) A program which enables the data obtained from other medical devices to be transferred, stored and indicated for the purpose of diagnosis records.

For example:

a) Where the program does not contain the function to indicate the data, rather enables the data from medical devices to be transferred to other programs etc without modification, apart from compression.

1. Where the program enables the format of data from medical devices to be changed and unified, etc for the purpose of indication and edits the information of patients and the report of examination for diagnostic records.
2. Where the program enables images captured by graphic diagnosis devices (such as CT) to be transferred, stored and indicated for the purpose of diagnosis records.
3. Where the program enables the reports of each patient to be stored and managed continuously by input, indicating the item of examination.
4. Where the program enables parameter data, such as the names and ID of patients to be transferred etc. Without modification of such data.

2) A program which enables the data, excluding images, to be modified and applied (except for the purposes of diagnosis)

For example:

1. Where the program enables the data obtained from medical devices to be modified and applied to be indicated via computer (except where the program to read via computer the data from the CPAP device using SD cards and create charts)
2. Where the program is used to create graphs indicating data and store said data.
3. Where the program is used for statistic processes such as locating significant difference etc.

3) Educational programs

For example:

1. Where the program is designed for the purpose of training medical persons
2. Where the program enables the transfer of live information from the surgery room to be displayed as video outside of the surgery room.

4) Program used for the purpose of giving explanations to patients

For example:

1. Where the program is used to facilitate doctors or other persons to explain surgery etc. to patients using animation and image

5) Programs used for maintenance purposes

For example:

1. Where the program enables the information concerning the timing of change consumable goods and maintenance to be checked, transferred, recorded and indicated
2. Where the program checks the performance and the history of processes automatically
3. Where the program records and indicates information such as: performance history, serial ID, ID of the person in charge etc.

6) Programs for the purpose of supporting internal activity within the hospital

For example:

1. Where the program is used for the purposes of making internet reservations for diagnosis
2. Where the program assists internal processes in relation to clinical data collection of printing out the data, accommodating the patients and calculating itemized statements of medical expenses.
3. Where the program enables the management of the sale of the medical devices, the management of stock, the record of entering and dispatching etc.
4. Where the program enables recording and indicating of appended paper in relation to medical devices in order to manage integrally the appended papers of medical devices.

7) Health Care Programs

For example:

1. Where the program which enables parameters for health conditions such as weight, blood pressure, heart beat, and blood glucose level, to be indicated, transferred and recorded for

daily management of health.

2. Where the program which enables the data from medical devices such as the electronic measure of blood pressure to be transferred, indicated, graphed and recorded for personal record.
3. Where the program enables medicinal information and child health handbook records to be shown partially or totally, in order to manage the history of taking medicine, history of health for mothers and children.
4. Where the program enables the personal health history to be shared with service providers for the management of health (limited to the non diagnosis purpose).
5. Where the program enables home appliances to be controlled using sensors in order to improve the environment of daily life.
6. Where the program provides a menu for the improvement of daily life as well as other advice using sensor detected personal health information, such as calculation of the walking steps in order to improve physical condition.
7. Where the program enables the diagnosis data to be managed and the health check reports to be prepared for the sake of health examination.
8. Where the program enables the result of health examination to be input, recorded, managed and provided in graph format.
9. Where the program enables the data to be prepared for the purpose of health preservation.
10. Where the program is used to discover variations in health preservation advice determined by academic association for the purpose of improving daily life practices.

8) Programs equal to general medical devices (where there is no influence on human life and health even in the case of device malfunction), which have been excluded from the scope of medical device by order of enforcement.

For example:

1. Where the program is used to examine the visibility of the eye and color sense via general computer and portable device.
2. Where the program enables detection of body movements using sensor of portable devices.
3. Where the program supports the allocation medicines by giving notice of appended paper and guidelines etc.

The above mentioned information is for summary purposes only. Please seek professional advice for further information.



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Regulation for Health Care Software Programs: Part 3

◎ August 25, 2015 ◎ 角田進二
<http://good-hs.jp/> (<http://good-hs.jp/>)

Even if you believe your program is not within the scope of “medical device,” you have to consider the risk that your program might be subject to the act due to the additional modifications.

Additionally, if it turns out that your program has problems on human life, you might need to find any justifiable ground for your business activity. As such, you might need to consider GHS development guideline below.



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Regulation for Health Care Software Programs: Part 4

◎ August 30, 2015 ◎ 角田進二

<https://www.jetro.go.jp/world/qa/04M-010754.html> (<https://www.jetro.go.jp/world/qa/04M-010754.html>)

If your product is within the scope of the Law Concerning the Establishment for Pharmaceuticals and Medical Devices, you will face the difficulties.

If you want to import medical devices or medicine, you will need to obtain many permits in addition to the compliance with indication duty.

Other relevant laws:

Electrical Appliances and Materials Safety Act

Industrial Standardization Act

Act against Unjustifiable Premiums and Misleading Representations

Unfair Competition Prevention Act

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