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Articles and Statements

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To the Status of Managers of Japanese Legal Persons

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Abstract

The article deals with the status of board of management of legal persons in Japan. A number of national norms, which measured legal status and liability of managers 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 the existing types of managers of commercial companies and their competence and liability.

Keywords: Japan, legal persons in Japan, managers of Japanese legal persons, rules applicable to legal persons.

Introduction

The formation, organization, operation and management of companies 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 Article 6 of CA the trade name is the name of a company. A company may not use in its trade name any word which makes it likely that the company may be mistaken for a different form of company. However, nobody hasn't the right to use of name, which is likely to be mistaken for a company. Any company who has permitted others to carry out a business or engage in any enterprise by using the company's own trade name shall be jointly and severally liable together with such others, vis-a-vis any person who has transacted with such others based on misunderstanding that such company carries out such business, for the performance of any obligations which may arise from such transaction.

There are following types of companies in Japan: a Stock company (Kabushiki-Kaisha), a General partnership company (Gomei-Kaisha), a Limited partnership company (Goushi-Kaisha), a Limited liability company (Goudou-Kaisha). In accordance to Article 3 of the Company act each commercial company is a legal entity.

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

Relating of managers of companies in Japan are used the following rules. There are the followings types of persons who may represent an Japanese company in different cases: a) a manager; b) a manager's authority of representation; c) a non-competition by manager; d) an apparent manager; e) officers to whom the authority of a certain kind of matter or a specific matter is delegated; f) officers of stores for the purpose of selling goods.

The legal status of such persons has following specialties.

A Manager. A manager carries out its business at its head office or branch office. A manager has the right to do all judicial and non-judicial acts on behalf of a company in connection with its business. But a manager hasn't commit the following acts without the permission of the company: a) engage in his own entity; b) carry out (for himself or for a third party) any transaction which is in the line of business of the company; c) become an employee of any other company or merchant; d) become a director, executive officer or any member who executes the operation of any other company.

An apparent manager. Any officer with a title which holds him out as the chief of the business of the head office or any branch office of a company shall be deemed to have the authority to do any and all non-judicial acts in connection with the business of such head office or branch office, provided, however, that this shall not apply to the cases where his counterparty acts with knowledge of his actual authority.

Officers to whom the competence of a certain kind of matter or a specific matter is delegated. Any employee to whom the authority of a certain kind of matter or a specific matter in connection with the business is delegated must have the competence to do any and all non-judicial acts in connection with such matter.

Officers of stores for the purpose of selling goods. Any employee of a store the purpose of which is the sale of goods must be deemed to have competence to conduct the sale of the goods located in such store, provided, however, that this shall not apply to the cases where his counterparty acts with knowledge of his actual competence.

As for commercial agents of the legal persons, so they are persons who acts on behalf of a company as an agent or intermediary in any transaction in the ordinary line of business of the legal person, and is not an employee of the company. An agent undertakes any transaction as an agent or intermediary, however the commercial agent shall give notice of that fact to the legal person without delay.

Non-Competition by commercial agent may not carry out any of the following acts without the permission of the company: a) carry out, for himself or for a third party, any transaction which is in the line of business of the company; b) become a director, executive officer or any member who executes operation of any other company which carries out the same kind of business as the company.

A Commercial Agent to whom the competence of the sale of goods or the role of intermediary in the same is delegated shall have authority to receive the notice regarding the sale and purchase including, but not limited to, the notice under Article 526(2) of the Commercial Code.

The legal person or the commercial agent may cancel the contract by giving an advance notice more than two months in advance.

According Article 38 Company Act the incorporator(s) shall elect the director at incorporation - person who becomes director at the incorporation. In cases where the stock company to be incorporated is a legal person with audit and supervisory committee, the election of directors at incorporation shall be implemented by distinguishing the election of a director at incorporation who is an audit and supervisory committee member at incorporation from among

other Directors at Incorporation. A person who may not be a director, an audit and supervisory committee member, accounting advisor, company auditor or financial auditor is defined by Article 331, 333(1) or (3), 335(1), 337(1) or (3) of the Company act.

The election of the officers shall be determined by a majority of the votes of the incorporators. Officers (directors, accounting advisors and company auditors) shall apply in Article 329, 371(4) and 394(3)) of the Company Act and financial auditors shall be elected by resolution of a shareholders meeting.

The following persons may not act as directors:

- a) a legal person;
- b) an adult ward, a person under curatorship, or a person who is similarly treated under foreign laws and regulations;
- c) a person who has been sentenced to a penalty for having violated the provisions of Company Act or the Act on General Incorporated Association and General Incorporated Foundation [7], or for having committed: a crime under Article 197-200, 203 or Article 205 of the Financial Instruments and Exchange Act; a crime under Articles 255, 256, 258 through 260 or 262 of the Civil Rehabilitation Act [8]; a crime under Articles 65-69 of the Act on Recognition and Assistance for Foreign Insolvency Procedures [9]; a crime under Articles 266-273 of the Corporate Reorganization Act [10]; or a crime under Articles 265-274 of the Bankruptcy Act, for whom two years have not elapsed since the day on which the execution of the sentence was completed or the sentence no longer applied;
- d) A person who violated the provisions of laws and regulations other than those provided for in the preceding item, was sentenced to imprisonment or severer penalty and who has not completed the execution of the sentence or to whom the sentence still applies (excluding persons for whom the execution of the sentence is suspended).

A stock company may not provide in the articles of incorporation that directors shall be shareholders; provided, however, that this shall not apply to a stock company that is not a public company. A director who is an audit and supervisory committee member may not concurrently act as an executive director, manager, or other employees of a company with audit and supervisory committee or its subsidiary, or accounting advisor or an executive officer of said subsidiary.

Directors' terms of office shall continue until the conclusion of the annual shareholders meeting for the last business year which ends within two years from the time of their election; provided, however, that this shall not preclude the shortening the term of the directors by the articles of incorporation or by the resolution of the shareholders meeting.

The directors shall execute the operations of the company, unless otherwise provided in the articles of incorporation. In cases where there are two or more directors, the operations of the company shall be decided by a majority of the directors, unless otherwise provided in the articles of incorporation.

Board of directors shall be composed of all directors. Board of directors shall perform the following duties: a) deciding the execution of the operations of the legal entity with board of directors; b) supervising the execution of the duties by directors; and c) appointing and removing representative directors. Accounting advisors, together with the directors, prepare financial statements. Company auditors shall audit the execution of duties by directors. Board of company auditors shall be composed of all company auditors.

To incorporate an General partnership company, Limited partnership company or Limited liability company (hereinafter - Membership Company, MC), its members must prepare articles of incorporation which must be signed by or record the names of and be affixed with the seals, of all members. A member shall execute the business of the MC, unless otherwise provided for in the articles of incorporation.

A member or members who execute the business shall represent the MC; provided, however, that this shall not apply in cases where members or other persons who represent the MCs are otherwise designated. In cases where there are two or more members who execute the business referred to in the main clause of the preceding paragraph, each member who executes the business shall represent the MC individually.

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. Officers who represent the

MC must have competence to do all judicial and non-judicial acts in connection with the operations of the MC.

Crimes of an aggravated breach of trust by a directors or others managers are defined by the rules of different acts. Subjects of such crimes are followings: a) an incorporator; b) a director at incorporation or company auditor at incorporation; c) a director, accounting advisor, company auditor or executive officer; d) a person to perform duties on behalf of a director, company auditor or executive officer under the provisions of Article 56 of the Civil Provisional Remedies Act [11]; e) a person who is temporarily to perform the duties of a director, accounting advisor, company auditor, representative director, committee member, executive officer or representative executive officer (Article 346(2), 351(2) 401(3), 420(3)) of the Company act); f) a manager; g) an employee to whom the authority of a certain kind of matter or a specific matter concerning business has been delegated; or h) an inspector.

When such persons, for the purpose of promoting such person's own interest or the interest of a third party or inflicting damage on a legal person, commits an act in breach of such person's duties and causes financial damages to such company, such person shall be punished by imprisonment with work for not more than ten years or a fine of not more than ten million yen, or both.

Conclusion

Thus, each act which a commercial company carries out as its business and any act which it carries out for its business shall constitute a commercial transaction. A legal person (including a foreign legal entity) may appoint manager(s) and have him/her carry out its business at its head office or branch office.

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. 48 of 2006
8. Act No. 225 of 1999
9. Act No. 129 of 2000
10. Act No. 154 of 2002
11. Act No. 91 of 1989

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О статусе менеджеров японских юридических лиц

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Аннотация. В статье говорится о статусе лиц, имеющих право действовать от имени коммерческих организаций в Японии. Исследуется большое число норм японского права, которые регламентируют правовой статус и ответственность менеджмента компании. Анализируются, в частности, положения закона о компаниях, коммерческого кодекса и других японских нормативных актов. Главное внимание уделяется описанию существующих типов лиц, действующих от имени японских компаний, их компетенцию и ответственность.

Ключевые слова: Япония, японские юридические лица, менеджмент компаний в Японии, правила, применяемые к юридическим лицам в Японии.