

## Authorities, Responsibilities and Liabilities of Directors and Statutory Auditors of KK

If a company is a stock corporation of Japan (*kabushiki kaisha*/KK) with a Board of Directors (*torishimariyaku-kai*), at least three Directors (*torishimariyaku*) and one Statutory Auditor (*kansayaku*) must be appointed. If the company is a company without a Board of Directors, it needs only one Director. No Director is required to be a citizen or resident of Japan.

If the company has a Board of Directors, a Representative Director (*daihyo torishimariyaku*) must be appointed from among the Directors, and is authorized to formally represent and bind the company and implement decisions made by the Board of Directors. A Representative Director may authorize the other representative or executive directors or employees to represent the company for certain matters. The company can decide the titles and authorities to be granted to certain representative or executive directors and elect such directors with titles, such as Chairman of the Board, CEO, COO, President, Executive Vice President, Senior Managing Director and Managing Director. The company can also delegate authorities to its officers and employees, who are not Directors, and grant titles, such as Executive Officers (*shikko yakuin*) and General Managers.

Directors have the duty to conduct the business of the company with due care and duty of loyalty, which includes the duty to abide by applicable laws and ordinances, the company's Articles of Incorporation and other internal regulations and the resolutions of the shareholders meetings and board meetings. Directors are responsible through the Board of Directors for the supervision over the management activities by the other Representative or Executive Directors (*gyomu shikko torishimariyaku*).

The general duty of a Statutory Auditor is to audit Directors' performance of their duties. Such audit consists of business and accounting audits. Business audit means audit on whether or not the duties of the Directors have been performed in compliance with applicable laws and regulations and the Articles of Incorporation of the company. Since the Directors are required to perform their duty with due care and duty of loyalty under the Companies Act, the Statutory Auditor must audit on the Directors' performance from this perspective. Accounting audit means audit on financial statements and other related documents. The Statutory Auditor's authority can be limited to accounting audit by the Articles of Incorporation. In such case, the shareholders are authorized to convene a meeting of the Board of Directors and request disclosure of board minutes for their direct supervision over the Directors.

Directors and Statutory Auditors of a company are liable to the company if the company is damaged as a result of their failure to discharge duties as Director or Statutory Auditor, as the case may be. A Director (i) who is the counterparty in a transaction with the company in which the interests of the company conflict with the Director's interest or (ii) who offers an illegal benefit in connection with the exercise of shareholder rights will not be released from his/her liabilities even if he/she is not negligent.

Directors and Statutory Auditors may also be liable to third parties for damages caused by willful misconduct or gross negligence in performing their duties to the company. For example, if a company's bankruptcy is caused by a Director's gross negligence and a creditor of the company is damaged thereby, the Director can be liable to the creditor. Liability may also arise as a result of materially false statements contained in certain corporate documents, applications, reports, statements, etc. Directors can also become liable to third parties where a Director supports a resolution of the Board of Directors that ultimately results in damage to such third parties. The Directors whose opposition to such resolution is not recorded in the minutes are presumed to have supported the resolution. Additionally, Directors will also be liable for any damage to a third party caused by their own tortious conduct.

Process to incorporate a Japanese company will be discussed in a separate topic.

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This memo is for information purpose only, and must not be interpreted as legal advice. If you need any specific advice or assistance in connection with the above topics, please contact Kamiyacho International Law Office at [info@kamlaw.com](mailto:info@kamlaw.com).