



Relocation & Global HR Solutions

ESTABLISHING A NEW ENTITY IN JAPAN

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Process for Establishing an Entity

Step I

Have a representative member's or executive officer's seal made by the seal carver.

Estimated Time to complete: 3 days

Step II

Acquire certificate of seal registration of incorporators and representative directors at the Ward office. The representative managing member must provide one copy of the certificate of seal registration in order to register with the Ministry of Justice.

Estimated Time to complete: 1 day

Step III

Register at the Head office or a branch of the Legal Affairs Bureau of the Ministry of Justice. Documents can be returned for revisions. Once documents are accepted, company applies for issuance of company registration and certificate of seal registration at the same location, the Legal Affairs Bureau of the Ministry of Justice. Generally a judicial scrivener would be asked to complete the registration procedure.

Estimated Time to complete: 1 – 3 weeks

Step IV

File Notification of the Incorporation of a Company, the Opening of a Payroll Office and Application for the Approval of Blue Tax Returns with District Tax Office. The Notification of the Incorporation of a Company must be filed within 2 months after the date of incorporation. Notification of the Opening of a Payroll Office must be filed within 1 month after the opening of a Payroll Office. Application for the Approval of Blue Tax Returns must be filed within 3 months after the date of Incorporation or the ending day of the first fiscal year, whichever comes first.

Estimated Time to complete: 1 day

Step V

File Notification of the Commencement of Business with the local Tax Office (the office of local or prefectural government). Filing must be done within 15 days after the commencement of business or after the opening of a business office.

Estimated Time to complete: 1 day

Step VI

Submit employment regulations and notifications of start of business and labor insurance to the Labor Standards Supervisory Office (for companies with 10 employees or more). The employment regulation stipulates working hours, vacation with pay, dismissals, methods of wage payment, benefits, bonuses, retirement payments, etc.

In addition, irrespective of number of employees, (i) Notification of Applied Business will be filed without delay after the start of business operation, (ii) Report of Start of Labor Insurance will be filed within 10 days from the day following the day of start of



labor Insurance, and (iii) Agreement on Over-Time or Holiday Work will be filed when the company anticipates to have its employees from time to time to do over-time work or holiday work.

Estimated Time to complete: 1 day

Step VII

File applications for health insurance and public welfare pension with the Social Insurance Office.

Estimated Time to complete: 1 day

Step VIII

File application for employment insurance and workmen accident compensation insurance with the Public Employment Security Office.

Estimated Time to complete: 1 day



Labor Laws and Employment Terms

Labor Standards Law

- The basic laws in Japan governing employment are the Labor Standards Law (“*rodo kijunho*”).
- The Labor Standards Law are intended to establish minimum working conditions only and employers are expected to endeavor to exceed those standards. Any working conditions stipulated in an employment contract that fall below such minimum standards are, by definition, invalid.
- In addition to the Labor Standards Law the following are also relevant to the employment relationship in Japan:
 - ❑ Rules of employment (“work rules”) established by each employer.
 - ❑ The individual employment contract entered into between each employer and its employees.
 - ❑ Case law.

Contract of Employment

- Employment contracts, excluding those without any set period, shall not be concluded for a period longer than one year except those requiring a definite period for the completion of a project.
- The contract is only valid when the employer clarifies the wages, working hours, privileges, and other working conditions to the worker. When the provisions stipulated in the said contract are in contrast to what the employee is receiving, the worker may cancel the labor contract without notice.
- An employer also need to specify, at the time of hiring, all the relevant information in regard to retirement allowances, bonuses, expenses reimbursement, safety and sanitation, vocational training, accident compensation, sick leave and temporary suspension. However, an employer may present its rules of employment to all of the employees instead of separately informing the workforce about such items if they are set forth in the rules of employment.
- The employer is not allowed to fix in advance either the sum payable to the employer for breach of contract or the amount of indemnity for damage. Furthermore, the employer cannot deduct wages to collect the money advanced to the worker or any other claim from the worker.

Probationary Period

- Japanese companies commonly have probationary periods for new employees of three to six months (also the law permits a probationary period of up to one year).
- A contract of probation is considered an employment contract that the employer may terminate in case the employee is unsuitable for the job.
- Although the employer has more flexibility in deciding to terminate an employee on probation, the employer is still required to have a justifiable reason why the employee is not suitable for permanent employment.



Termination of Employment

- Japanese case law places significant restrictions on termination of employees and has established the doctrine known as the “abuse of the right of dismissal” which state that the right of dismissal shall be exercised honestly and with fidelity. Even if an employment contract contains an “at will” termination clause, any termination based on such clause will not be valid.
- Following are the categories of grounds of dismissal that can constitute justification for termination under case law doctrines:
 - ❑ Mental or physical incapacity for work.
 - ❑ Poor performance.
 - ❑ Delinquent attitude or lack of cooperation.
 - ❑ Significant misconduct or dereliction of duty
 - ❑ Economic necessity.
- The following types of termination are prohibited:
 - ❑ Discriminatory termination on the grounds of nationality, creed, or social status.
 - ❑ Termination during leave of absence for a work-related illness or injury or within 30 days thereafter.
 - ❑ Termination during the period of maternity leave or within 30 days thereafter.
 - ❑ Discriminatory termination of a female employee.
 - ❑ Termination of a female employee on the grounds of marriage, pregnancy, childbirth, or for having taken maternity leave.
 - ❑ Termination because an employee is a member of a labor union, has attempted to join or organize a labor union, or has engaged in legitimate union activity.
- The issue of whether or not the grounds for dismissal are reasonable is a question of fact that depends on the circumstances of the actual dismissal.
- Many dismissed employees will request a “provisional disposition order” (similar in effect to a temporary restraining order). Japanese courts usually grant requests for such orders.

Notice

- In case of termination the employer is required to give a one-month notice period or compensation in lieu.
- The one-month notice period can be modified by an employment contract, work rules, a collective bargaining agreement, or case law.

Termination Indemnities

- The Labor Standards Law does not require an employer to pay termination indemnities to its employees upon dismissal, resignation, or any other termination and leave the issue to other voluntary regulations and agreements.
- Employment agreements in Japan provide one to three months of termination indemnities to employees who worked at the company for more than three years. The pay normally will be based on the last monthly salary (excluding bonuses or allowances).



Hours of Work, Recess, Rest Days and Sick Leave

- The legal workweek is 40 hours.
- If the employer, however, wishes the worker to render overtime work on special days, a provision on overtime should be clearly stated in the contract. The employer shall pay for the labor rendered by the worker by at least 25% of the normal wages.
- The working hours may only be extended if there is a written agreement with the trade union or the person representing the majority of the workers.
- A worker is entitled to have at least forty-five minute recess if he/she has worked for six hours and one-hour recess if he/she has worked for eight hours. In addition, workers are given at least one rest day per week.
- An employee with less than 3 years of service is entitled for 3 months of short-term disability benefit. An employee with more than 3 years of service is entitled for 6 months of short-term disability benefit.



Cash Compensation Survey

<u>Job Description: Country Manager</u>	
Experience	At least 5 years of executive experience in relevant positions
Educational Background	Ideally an M.B.A or other relevant advanced degree from top educational institution. An undergraduate and/or graduate degree in engineering or a related field would be desirable.
Reporting Level	Worldwide Vice President of Sales
Scope of Position	<u>Territory:</u> Japan
	<u>Functions reporting directly:</u> Sales (direct & indirect), Tech Support, Professional Services, G&A <u>In matrix:</u> -
	<u>Number of employees reporting directly:</u> up to 5 employees <u>In matrix:</u> -
	<u>Budget:</u> \$0.5M - \$1.0M
	<u>Annual Target Revenues:</u> \$3M - \$5M
Job Description	<p>This position is the most senior executive of the local subsidiary of the company. Responsible for directing the organization to ensure the attainment of revenue and profit goals, completion of product deployment and customer's satisfaction. Responsible to corporate management for profit/loss and the achievement of current and long-range objectives.</p> <p>Receives assignments in the form of objectives with goals and process to meet goals outlined. Provides direction to employees according to established policies and management guidance. Administers company policies that directly affect subordinate employees. Recommends changes to unit or sub-unit policies. Frequently interacts with outside customers and functional peer groups at management levels. Interaction normally requires the ability to gain cooperation of others, conducting presentations of technical information concerning specific projects/schedules, etc. .</p>



Survey Highlights

1. The survey is based on a salary survey conducted by HRBS (HR Business Solutions).
2. The salary information includes base salary and target variable components (bonus & commission).
3. The cash salary information does not include Social Benefits and Salary Benefits.
4. The range does not take into account exceptional numbers (both directions).
5. All figures are annual.
6. Salary data has been aged effective September 2007. Average salary increase rate forecasted for H2/07 is 1.8%.

Definitions:

1. **Annual Base Salary:** Monthly basic salary X 12 + any legally mandated or guaranteed payments.
2. **Target Variable Salary:** Performance based bonus/incentive and commissions. Based on 100% goals achievement and/or 100% quota attainment.
3. **Total Cash Compensation:** Annual base salary + Target variable salary.



Compensation Information

- The following table provides the annual total compensation under the above job title and description.

	<u>Range</u>	<u>25% (Q1)</u>	<u>Median</u>	<u>75% (Q3)</u>
Base Salary	¥9,000 - ¥14,000	¥10,100	¥11,000	¥12,200
Variable Salary (Target)	¥2,800 - ¥7,500	¥3,900	¥5,100	¥6,200
Total Cash Compensation	¥12,800 - ¥19,600	¥15,000	¥16,600	¥17,900

Variable Salary Structure

- All of the surveyed companies award this level of position with a target of bonus payment in the 17% - 42% range, with an average of 30.9% of the Total Target Cash Compensation. Those bonuses are dependent on 100% achievement of objectives by the employee/group.

Variable Salary Target

% From T. Cash Compensation	Up to 20%	20% to 25%	25% to 30%	30% to 35%	Above 35%
% Of Companies	12%	10%	45%	16%	17%

- 61% of the companies pay a target bonus of 25% to 35% of the Total Cash Compensation.

Types of Bonus

Bonus Type	Any Bonus Type	Individual Bonus	Group Bonus
% Of Companies Using Bonus Type	100%	100%	68%

- All of the companies are paying a performance bonus based on individual goals.
- In 68% of companies the bonus for this position is also based on group goals.

Variable Salary Goals

Goal	Individual Bonus	Company/Group
% Of Variable Salary	60%	40%

- 60% of the bonus is being paid according to individual goals
- 34% of the bonus is being paid according to company/departmental goals.



Benefits Survey – Country Manager

Statutory contributions

- Following are the statutory contributions to the social security plan:

<u>National Insurance Program</u>	<u>Employer Contribution Rate</u>	<u>Employee Contribution Rate</u>
Employees' Pension Insurance	7.321% of total remuneration (up to a ceiling)	7.321% of total remuneration (up to a ceiling)
Long-Term Insurance	0.615% of total remuneration (up to a ceiling)	0.615% of total remuneration (up to a ceiling)
National Health Insurance	4.1% of total remuneration (up to a ceiling)	4.1% of total remuneration (up to a ceiling)
Unemployment Insurance	0.8% of total remuneration	0.6% of total remuneration
Workers' Accident Compensation Insurance	0.55% of total remuneration	-

Long Term Incentives

- 72% of foreign-owned companies provide stock options to local executives.
- The average value of stock options as percentage of annual base salary for local executives in Japan is 69%.

Company Car

- Company cars are provided only by 29% of companies for this level of position. Typical models include GM Vectra, VW Passat, Honda Legend, Nissan Cellio and Toyota Carudana.
- 77% of the companies providing a car to this level of position cover all fuel expenses (including for private use).
- Company cars for this level of position are replaced every 3 years.

Health Insurance

- All employees are covered under the National Health Insurance program on a compulsory basis. Premiums are deducted from salary on a monthly basis.
- Only 17% of companies provide a complementary medical insurance plan to this level of position.

Pension Plan (EPI)

- All Japanese nationals between the ages of 20 to 60 are required to join the national pension plan (EPI, Employees Pension Plan).
- 48% of multi-national companies are also providing a private pension plans. The most popular type of private pension plans is defined-benefit plans in which the employer contribute to such a plan an average of 6.1% of salary



Sick Leave/Short-Time Disability

- Employees are being covered under the Employee Health Insurance in case of sickness and are being provided with a sickness allowance equal to 60% of standard cash compensation.
- It is not customary to provide employees on sickness/short term disability leave with a complementary company financed disability allowance.

Long-Term Disability

- Employees are being covered under the National Pension and Employee Pension Insurance in case of permanent disability.
- It is not customary to provide employees on a long-term disability leave with a complementary company financed disability allowance.

Life Insurance/Death Benefits

- Families of employees are provided for, in the event of death, under the National pension plan and the Employee Pension Insurance.
- 82% of foreign-owned companies cover managerial employees with life insurance plan providing their survivors' a lump-sum ranging typically in the amount of 2 times annual salary up to an annual ceiling of ¥25,000,000.

Perks

- The average value of perks as percentage of annual base salary for local executives in Japan is 17%.
- The most common perks provided to local executives are:
 - ❑ Housing allowance – companies are sponsoring savings plans, low interest loans and special company subsidy.
 - ❑ Club membership
 - ❑ Education allowance.

Annual Vacation

- The Labor Standards Law provide an annual leave depending on the amount of years of service which begin at 10 days (after 0.5 years of service) and goes up to 20 days (after 7 years of service). The worker receives the sum equivalent to his average wage per hour for the paid holidays.
- The employer is required to grant an annual holiday with pay of six consecutive working days for a worker who has been employed continuously for a year and was present for over 80% of the total working days. When the worker is employed for two or more years, the annual holiday with pay is increased to seven days.
- The average initial annual vacation for the relevant position is 21 days.



Public Holidays

- Following are the public holidays in Japan as follows:

New Year's Day	Jan 01
Bank Holiday	Jan 01-02
Coming-of Age Day	Beginning of January
National Foundation Day	Feb 11
Vernal Equinox Day	Mar 21
Showa Day	Apr 29
Constitution Memorial Day	May 03
Greenary Day	May 04
Children's Day	May 05
Marine Day	End of July
Respect-of-the-Aged Day	End of September
Autumnal Equinox	Sep 23
Health-Sport Day	Beginning of October
Culture Day	Nov 03 Nov 03
Labor Thanksgiving Day	Nov 23
The Emperor's Birthday	Dec 23



Annual Cost Analysis

	<u>Range</u>	<u>Average</u>
Establishing a Legal Entity	¥110,000 – ¥372,000	¥213,000
Monthly Accounting Expenses	¥75,000 – ¥160,000	¥105,000
Monthly Office Lease (15–20 sqm)	¥120,000 – ¥300,000	¥225,000
Monthly Exec. Office Lease (15–20 sqm)	¥400,000 – ¥800,000	¥625,000
Monthly Office Utilities & Connectivity	¥30,000 – ¥48,000	¥40,000
Monthly Secretarial Services (50 hours)	¥100,000 – ¥175,000	¥145,000
<u>Monthly Operational Cost</u>¹	¥715,000 – ¥1,555,000	¥1,128,000
<u>Annual Operational Cost</u>²	¥8,580,000 – ¥18,660,000	¥13,536,000
Annual Cash Compensation (C. Manager)	¥12,800,000 - ¥19,600,000	¥16,600,000
Annual Benefits (C. Manager)	¥4,330,000 - ¥6,180,000	¥5,170,000
<u>Annual Total Cost (JPY)</u>	¥25,710,000 – ¥44,440,000	¥35,306,000
<u>Annual Total Cost (US\$)</u>³	\$223,565 – \$386, 435	\$307,009

1: Assuming Executive Office Lease

2: First year of operation

3. ¥115 to 1.0 US\$