

Company's Organ Layout (General)

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Pursuant to Corporate Law, which was proclaimed in 2005 and enforced May 1, 2006, let us sort out what the following companies are: Stock Company (including Tokurei Yugen Gaisha, i.e. Limited Liability Corporation with Special Provisions), Gomei Gaisha (General Partnership), Goshi Gaisha (Limited Partnership Corporation) and Godo Gaisha (Limited Liability Company).

In contrast to Stock Company, the following three forms of enterprises have come to be generically named "Equity Companies" according to Corporate Law implemented in 2006: Gomei Gaisha, Goshi Gaisha, and Godo Gaisha. In order to describe each form of these companies, basic terms regarding Capital Investor and Content of Investment need to be explained. First, Capital Investor is referred to as "Shareholder" in Stock Company, and "Partner" in other company forms. Further, there are two kinds of Partner; one is Partner with unlimited liabilities to liquidate/reimburse liabilities by spending one's entire fortune, and the other is Partner with limited liabilities to bear responsibility by placing the limit at amount of one's investment. Shareholder of Stock Company is "Partner" with limited liabilities.

As for methods of investing money, there are three ways in total. In addition to Property Investment by way of money or in kind that is normally conducted, there is Labor Investment that is adopted, though not often, when a long-service employee is taken up to Partner, or upon making an engineer required for corporate management Partner. Another way is Credit Investment which is employed with an objective to let a company take advantage of one's credibility. Among these, Labor Investment and Credit Investment are not posted up in capital account, but when net profit or loss is shared at a term end, they are to receive pro rata allocation in accordance with their appraised amount. On the foundation of these basic terminologies, characteristics of each company form can be sorted out as in Chart 1.

In the old Commercial Law, a company was regarded as an association with objectives to run business of commercial transactions and other profit-making activities (Article 52 of the old Commercial Law), thus a joint business configuration which did not distribute profit to constituent members was not considered a company by the law. In fact, a form of Sogo Gaisha (Mutual Company) peculiar to insurance firms, for example, is a special legal format which can be established only on the basis of the insurance business law enforced since 1940. Its legal public stance is corporate body having

insurance as its objective for 100 or more people in need of insurance to get together, collect fund, mutually cooperate and assist among policyholders. Originally major insurance companies in Japan had been Stock Companies, but they came to be restructured into Sogo Gaisha when the Zaibatsu dissolution was implemented by the occupation forces in post-World War II with the purpose to minimize Zaibatsu's surviving influence as much as possible. Nevertheless, there have been some movements to turn Sogo Gaisha to Stock Companies in order to make their fund procurement and M&A easier. In April 2002, Daido Life Insurance Co. changed its organization from Sogo Gaisha to Stock Company and took it public, on which occasion the stocks were delivered to its insurance policy holders.

Chart 1 Forms of Enterprises

Legislative ground	Corporate Law (enforced May 1,2006)				Statute on Limited Liability Partnership contract (2005)	
	Commercial Law (1890)	Yugen Gaisha Law (1938)	Commercial Law (1890)			
Enterprise form	Stock company		Equity companies *2			Limited Liability Partnership
		Tokurei Yugon Gaisha *1	Gomei Gaisha	Goshi Gaisha	Godo Gaisha	
Model response		German GmbH			U.S. LLC *6 (Limited Liability)	UK LLP (Limited Liability Partnership)
Capital investor	Shareholder (limited)	Partner with limited liabilities	Partner with unlimited liabilities *3	Partner with limited liabilities		Partner with limited liabilities
Content of investment	Property Investment only		Any Investment of Property, Labor, or Credit	Property Investment only		Property Investment only
Interest transfer	Free in principle	Free among partners; others require approval of general meeting of partners	Require consent of all partners	Require consent of all executive partners		
Executive power	Director	Director	All partners in principle *4 (autonomy on articles of incorporation *5)			
Representation right	Representative director	Director	All managing partners in principle (autonomy on articles of incorporation*5)			
Taxation formula	Corporate tax				Membral tax (pass-through tax)	
Benefit to investor	Recognized				Unrecognized	

1 Yugon Gaisha Law (the law governing Limited Liability Corporations) was abolished in 2006 with the enforcement of Corporate Law, thus no Yugon Gaisha can be established any further. Existing Yugon Gaishas continue as "Stock Companies" said in Corporate Law (No. 1 in Article 2 of the legislation concerning the improvement of relevant laws along with the enforcement of Corporate Law, hereinafter referred to as Improvement Law). But as long as they continue to use "Yugon Gaisha" in their

corporate names, they get treated as “Tokurei Yugen Gaisha (Limited Liability Corporations with Special Provisions)” (Article 3 of Improvement Law). Some of special rules for Tokurei Yugen Gaisha retain characteristics which are likely to secure their vested rights: (1) the exemption from obligation to announce account settlement (Article 28 of Improvement Law), and (2) no regulation on directors’ tenure (which is 10 years at maximum in case of Stock Company) (Article 18 of Improvement Law).

*2 To change “the form of company” among the three Equity Companies of Gomei Gaisha/Goshi Gaisha/Godo Gaisha is positioned as an amendment of articles of incorporation (Articles 638-640 of Corporate Law). On the other hand, the switch between Stock Company and any one of Equity Companies is called “the change of organization” (No. 26 in Article 2 of Corporate Law).

*3 Corporate Law provides the following which were prohibited in the old Commercial Law:

(1) Corporate body can become Partner with unlimited liabilities (Article 55 of the old Commercial Law → Article 598 of Corporate Law);

(2) Establishment/continuation of any of Equity Companies is recognized with one Partner (No.4 in Article 94 of the old Commercial Law → No.4 in Article 641 of Corporate Law).

*4 The old Commercial Law did not allow Goshi Gaisha’s Partner with limited liabilities to execute operations (Article 156 of the old Commercial Law → No. 1 in Article 590 of Corporate Law).

*5 To denote that organs can be freely laid out by articles of incorporation. For example, an allocation of profit and authority is not restricted by ratio of capital contribution, and an institution of board of directors or auditors is not compulsory.

*6 Godo Gaisha has been introduced to Japan modeling after American LLC, and has been called “Japanese version of LLC” until the denomination of “Godo Gaisha” was finalized. But the pass-through taxation (i.e. a membership taxation directly imposed on Capital Investors, thereby eluding the payment of corporate tax), being one of the merits of American LLC, was not realized due to the objection raised by Finance Ministry, and Limited Liability Partnership (LLP) was enshrined into law on a very short notice (LLP is a partnership, not a corporate body, hence no corporate tax or corporate inhabitant tax, being 70,000 Yen at minimum, to be imposed). Accordingly, Godo Gaisha cannot be said to correspond to its original model of U.S. LLC. An actual example of Limited Liability Partnership is “Suica Dissemination LLP” founded in October 2005 jointly by East Japan Railway, NTT Dokomo and NTT Data, each of which invested 400 million Yen.