

J-LLC & J-LLP: Innovation of Business Organization Law in Japan

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New Business Organizations

In 2005

Godo-kaisha (limited liability company; “J-LLC”)

(will be effective in May 2006)

Yugen-sekinin jigyo-kumiai (limited liability partnership; “J-LLP”)

(effective in Aug 2005)

LLC (and LLP) in the U.S.

J-LLC & J-LLP: Inspired by successful experiences of LLC and LLP in America

LLC (created by each State statute)

Over one million, in 2003 (IRS)

45% of total new business filings (Friedman 2004)

Key Features of the U.S. LLC

- Flexible governance/profit-sharing structure
- Limited liability of members
- Pass-through taxation

In contrast, neither J-LLC nor J-LLP have all these features (as explained later)

J-LLC/J-LLP and tax regime in Japan

- Difficulties in importing LLC into Japanese law (especially tax concerns)
- In Japanese tax law,
 - (A) All incorporated entities are taxed, whether or not their members enjoy LL
 - (B) Unincorporated organizations are disregarded in principle (pass-through). BUT if they are organized very similarly to corporations, they are taxed as if they were incorporated (so-called “Jinkaku-no-nai-shadan”)

Legislative history of J-LLC/ J-LLP

- METI and supporters first promoted J-LLC, but... because J-LLC was characterized as an incorporated entity in Corporation Act, pass-through status was difficult to obtain
 - METI then promoted J-LLP, an unincorporated organization
- In order to avoid being regarded as “*Jinkaku-no-nai-shadan*” by tax authority, J-LLP was intentionally structured *not* like corporations

Features of J-LLC

- Because J-LLC is an incorporated entity, it is likely to be taxed as a corporation (and its members are double-taxed).

On the other hand,

Members of J-LLC enjoy LL,

And almost unlimited flexibility of governance structure

Features of J-LLP

- Partners of J-LLP enjoy both LL and pass through status
- In exchange of those benefits, J-LLP is “handicapped” in terms of its legal status and inflexible governance structure
- Legal status: J-LLP is not incorporated, not an “entity” (legally its is “aggregate” of its members)
- Governance structure: all partners MUST manage partnership affairs (LLP, Art 13) ← a mandatory rule

Conclusion

- Rationality of limited liability & pass-through taxation
- But how about LL to tort creditors?