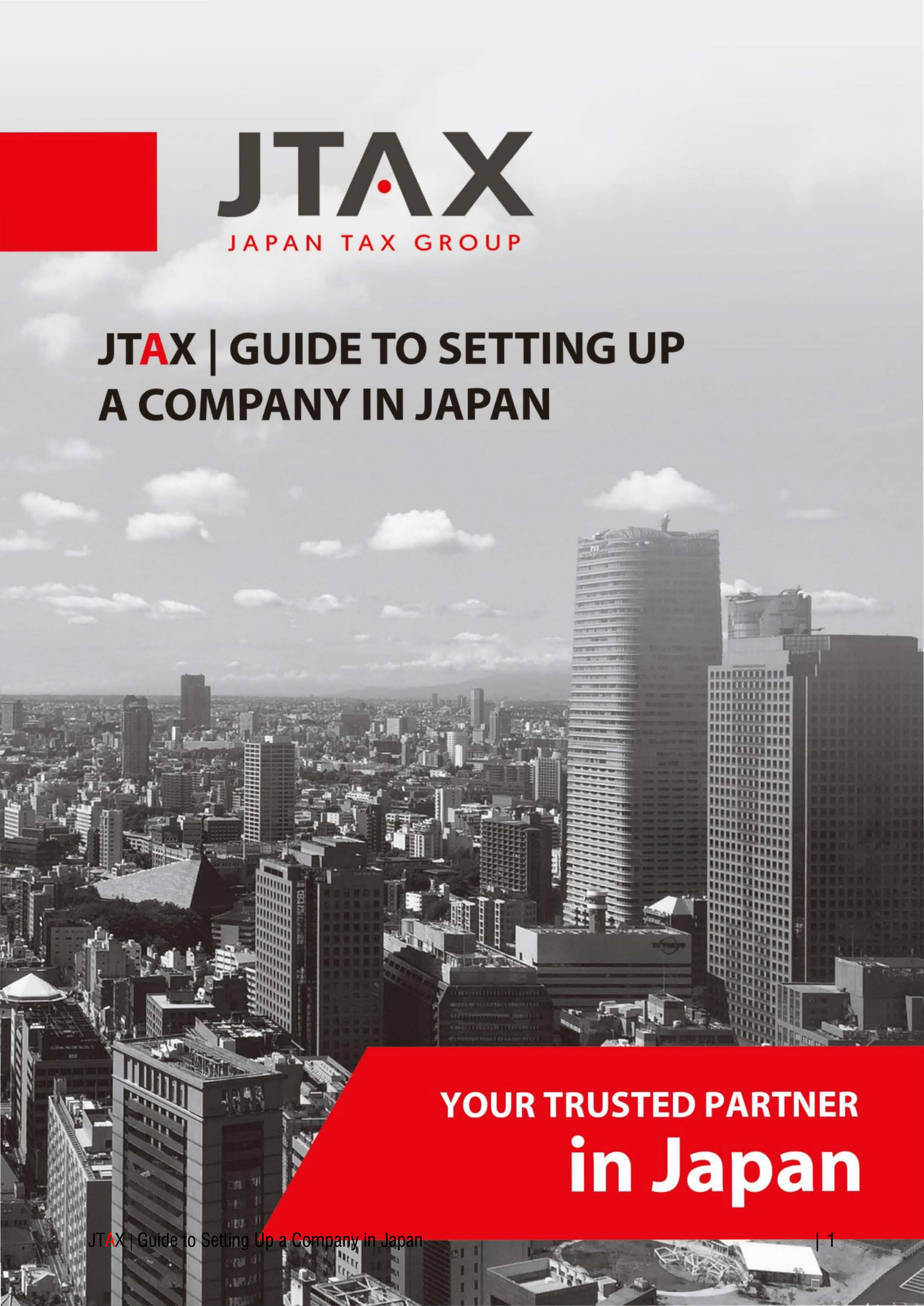

JTAX
JAPAN TAX GROUP

# JTAX | GUIDE TO SETTING UP A COMPANY IN JAPAN

**YOUR TRUSTED PARTNER in Japan**

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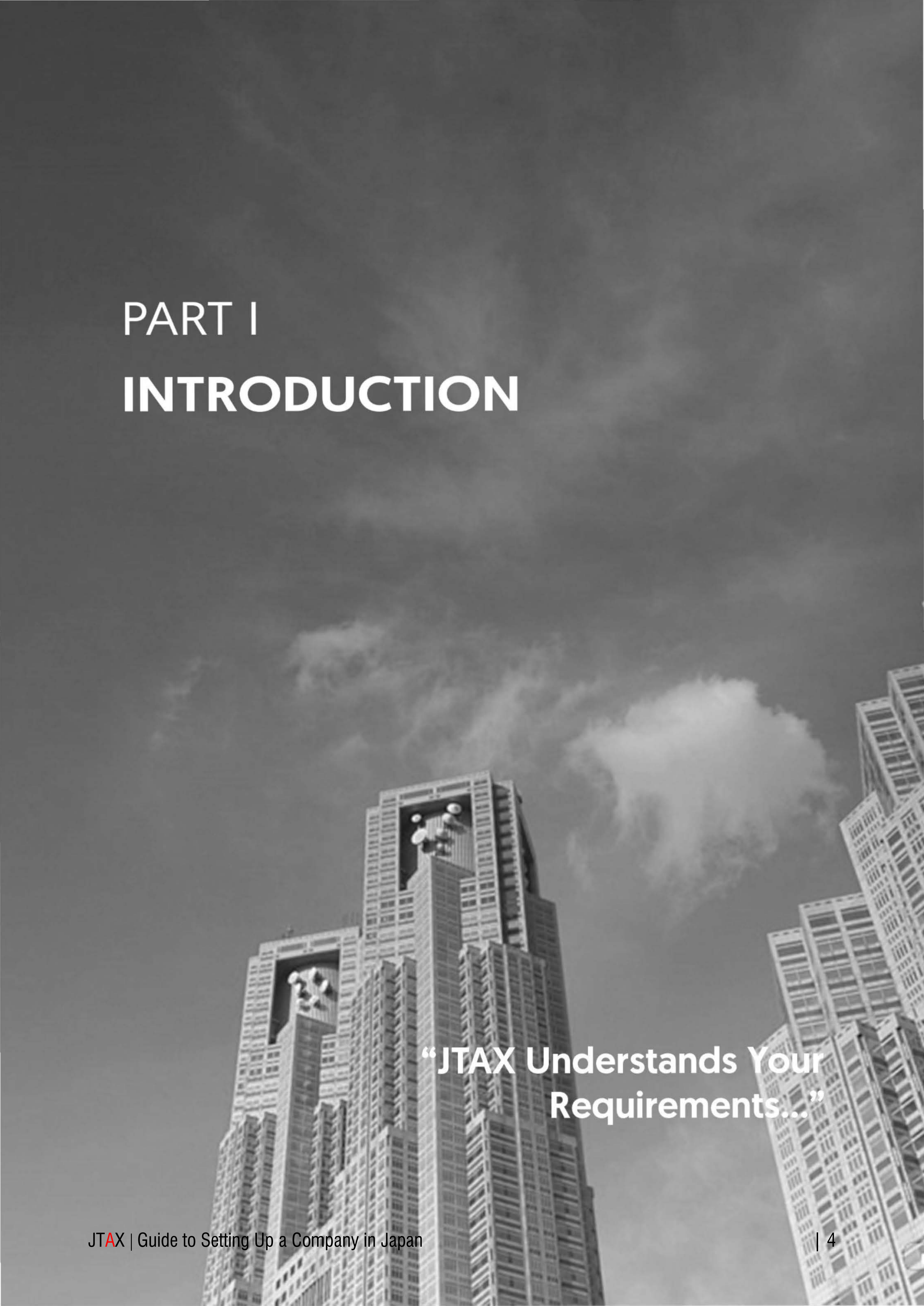


# PART I
# INTRODUCTION

**"JTAX Understands Your Requirements..."**



# ABOUT JTAX

JTAX is a member of the Accounting Asia Group, a leader in Asia focused professional services.

Tracing its roots to 2001, JTAX's team of Japanese and foreign professionals has assisted hundreds of foreign clients to establish and run their businesses in Japan. Our management is drawn from the Big 4 and has extensive experience responding to the requirements of clients ranging in size from listed multinationals to start-ups.

JTAX recognizes the practical difficulties associated with operating a business in Japan and our aim is to provide clients with one-stop assistance. Our team therefore provides a comprehensive range of services including tax advisory, tax compliance, incorporation, accounting, cash management / expense payment, payroll / HR, Japan resident nominee directors, and work visas. In addition to the convenience of dealing with a single service provider, JTAX ensures that its services are handled in a coordinated manner. For example, Japan work visas may be dependent on having a properly incorporated company and an appropriate tax structure, etc.

In addition to working directly with clients, JTAX is also able to assist foreign law firms and accounting firms whose clients require assistance in Japan.

Please Contact Us for more information about any of our services.



# JTAX MANAGEMENT

**Dean Page – Administrative Partner**

Dean Page is JTAX's administrative partner. He is a leading expert on Japanese and international tax and on doing business in Japan.

Dean worked for seven years in the Big 4, most recently as a partner at Ernst & Young (E&Y). At E&Y he served as the inbound account leader in which role he had responsibility for overseeing the delivery of services to E&Y Japan's foreign clients.

At PricewaterhouseCoopers ("PwC") Dean headed the Pathfinder Group, a team that specializes in assisting foreign clients to establish operations in Japan.

Since 2001, Dean has co-headed the International Tax Education Program (ITEP) and acted as an Adjunct Professor at the Beasley School of Law, Temple University, Japan Campus. He is the author of numerous articles related to Japanese and international tax.

Dean is admitted as both an attorney (England / Wales) and as a CPA (USA, California).



# JTAX SERVICES

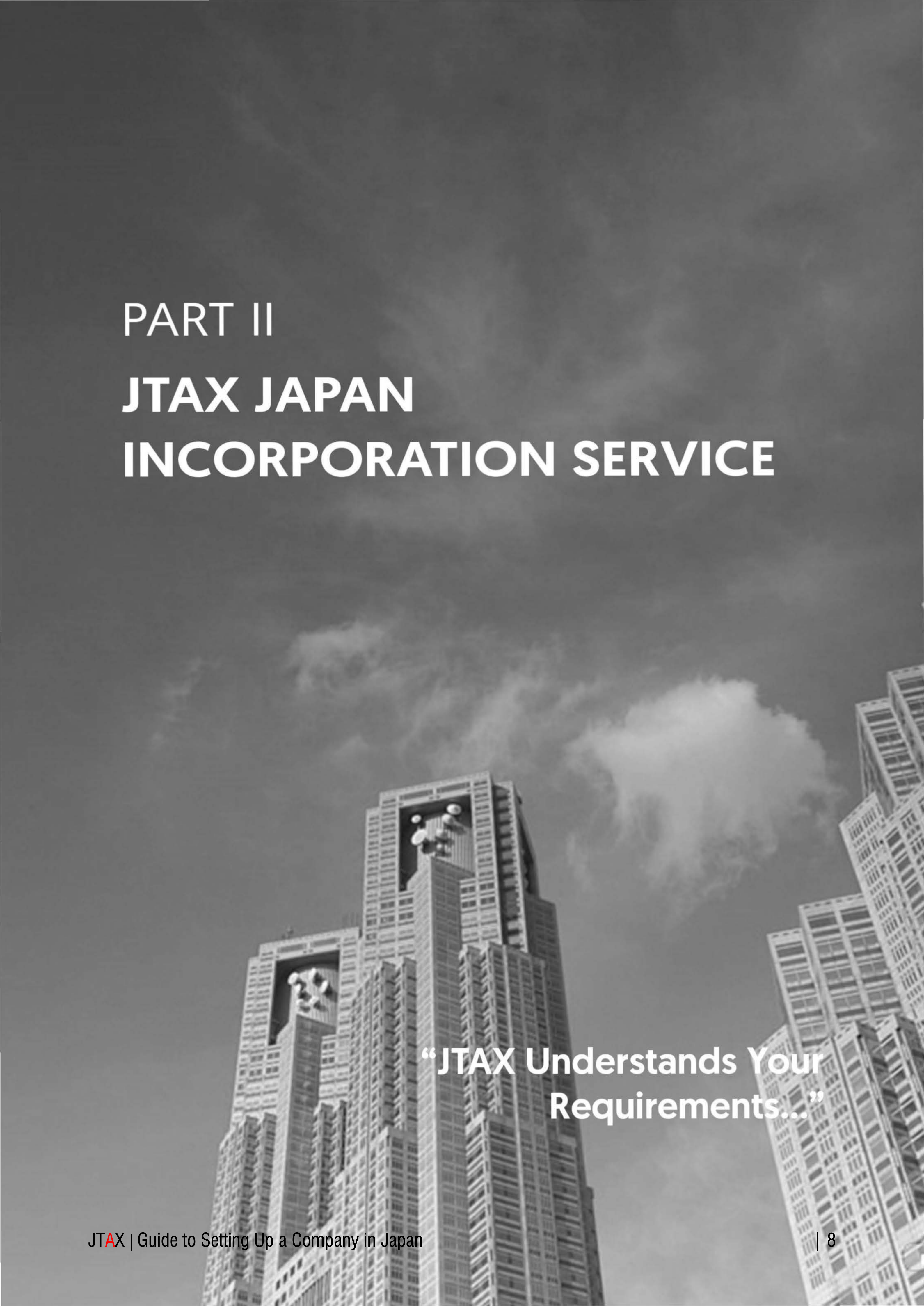
JTAX recognizes the practical difficulties associated with operating a business in Japan and our aim is to provide clients with *one-stop assistance*. JTAX key services include

- Tax Consulting and Compliance
- Tax Services
- Accounting & Bookkeeping
- Bank Account Management & Expense Payment
- Payroll & HR
- Japan Work Visas
- Japan Incorporations
- Japan Nominee Directors
- Japan Registered Address & Virtual Office Solutions
- Due Diligence & Deal Integration Services
- Outsourcing Solutions including Finance, Tax, Accounting, and Payroll & HR
- Real Estate Advisory Services

Please Contact Us for more information about any of our services.

PART II

# JTAX JAPAN INCORPORATION SERVICE



"JTAX Understands Your Requirements..."



# 1. Introduction to JTAX Japan Incorporation Service

## a. Overview

JTAX can assist its clients in the establishment of a wide range of entities in Japan.

Our main work in this area is helping clients establish:

- Incorporated Entities / Subsidiaries
  - Kabushiki Kaisha ("KK").
  - Godo Kaisha ("GK").
- Japan Branches of Foreign Companies in Japan.
- Japan Representative Office of Foreign Company / Japan Liaison Office of Foreign Companies.

The focus of this brochure is to provide clients with information regarding setting up an incorporated entity – i.e., a Kabushiki Kaisha ("KK") or a Godo Kaisha ("GK").

Please Contact Us if you would like more information about Japan Branches of Foreign Companies or a Japan Representative Office of a Foreign Company/ Japan Liaison Office of a Foreign Company.

### b. JTAX Incorporation Services

JTAX's key incorporation capabilities include:

- Initial consulting to assist clients in selecting a business entity that is appropriate to their needs.
- Provision of Japan nominee directors to ensure a smooth incorporation and also improve internal control in Japan.
- Provision of a legal registered address in Japan.
- Assistance with serviced offices and virtual offices.
- Registration of new entities.
- Assistance with post incorporation issues including initial tax filings.
- Outsourcing services to handle ongoing key functions in Japan including tax, accounting, payroll, etc.

# 2. Why Should We Incorporate In Japan?

Common reasons to incorporate in Japan include:

- Japan is the world's third largest economy. Incorporating a company in Japan will help you to take advantage of an unparalleled market opportunity.
- Japan is a difficult market to exploit without a solid presence on the ground. Potential Japanese customers and partners will have more confidence in your ability to deliver if you operate via a Japanese company.
- In order to employ top quality people, it is vital to have a local Japanese entity. If you do not have a local entity, potential Japanese employees will perceive that you lack commitment to the market. It is generally not possible to offer regular employee benefits if there is no Japan entity.

# 3. What Type of Entity Should We Establish In Japan?

Foreign companies setting up operations in Japan will generally choose to establish either a Kabushiki Kaisha ("KK") or a Godo Kaisha ("GK").

The following section provides some information about each of these entities.

## a. What is a Kabushiki Kaisha ("KK")?

K*abushiki Kaisha ("KK")* is a type of business corporation defined under Japanese law. The Kabushiki Kaisha ("KK") is a very well-known form of doing business in Japan with the first Kabushiki Kaisha ("KK") having been established in 1873. Due to this long history, the Kabushiki Kaisha ("KK") historically has been the most utilized form of doing business by foreign companies operating in Japan.

Some recent major changes to the law concerning Kabushiki Kaisha ("KK") (the Commercial Code and new Company Law) took effect on 1 May 2006. These changes allow for single director Kabushiki Kaisha ("KK") and also eliminate the previous requirement that Kabushiki Kaisha ("KK") be established with a minimum of JPY10 million in paid in capital.

Effective 1 April 2015 the *legal* requirement for a Japan resident director was removed but few foreign investors would set up operations in Japan without a local director. (see further comment on this issue below.)

## b. What is a Godo Kaisha ("GK")?

Godo Kaisha *("GK")* is a type of business corporation defined under Japanese law. Unlike the Kabushiki Kaisha ("KK"), the Godo Kaisha ("GK") is a relatively new entity type having been first allowed by the Companies Act of 2005 (with effect from 1 May 2006.)

Godo Kaisha ("GK") were put in place as a replacement for Yugen Gaisha ("YK"), which was a business structure utilized mainly by small / local businesses.

### Godo Kaisha ("GK") Compared to a US LLC

In principle, the Godo Kaisha ("GK") is modeled after the American limited liability company ("LLC"). However, there are a number of fundamental differences between US LLCs and Japanese Godo Kaisha ("GK").

These differences include:

- Taxation. Godo Kaisha ("GK") are subject to Japanese tax at the corporate level. This contrasts to US LLCs in which profits may *flow through* to investors without being subject to tax at the level of the LLC.
- Capacity to act. A Godo Kaisha ("GK") lacks legal capacity to act on its own. Rather it acts through its Members (shareholders.) This makes a Godo Kaisha ("GK") similar to a Japanese partnership (which acts through its partners.) A US LLC typically does have legal capacity to act.
- Godo Kaisha ("GK") do not have boards. Similar to the governance concepts applicable to Japanese partnerships, there is no separation between the investors and management in Godo Kaisha ("GK") (i.e., the investors are the management.) Thus, while a US LLC may have governance institutions that are separate from the investors (such as a board of directors or LLC managers) a Godo Kaisha ("GK") acts through its (Executive) Members.

# 4. Deciding Between A Kabushiki Kaisha ("KK") and A Godo Kaisha ("GK")

Deciding between a Kabushiki Kaisha ("KK") and a Godo Kaisha ("GK") is one of the most important decisions that needs to be made prior to starting business in Japan.

The following are some of the most important issues that are relevant to choosing between establishing a Kabushiki Kaisha {'KK") or a Godo Kaisha ("GK").

## a. Image

In some industries, a Kabushiki Kaisha ("KK") is perceived as presenting a more prestigious corporate image. While this may not be as important as it once was, there are certain industries where a Kabushiki Kaisha ("KK") may be the only commercially realistic option. There are also certain licenses that can only be held by a Kabushiki Kaisha ("KK") . In some cases, Japanese employees may prefer to work for a Kabushiki Kaisha ("KK") .

## b. Taxes

Both Kabushiki Kaisha ("KK") and Godo Kaisha ("GK") are taxable entities for Japanese corporate tax purposes. And neither Kabushiki Kaisha ("KK") nor Godo

Kaisha ("GK") offer the option of being "*disregarded*" for Japanese tax purposes.

However, for US tax purposes only, the US "*check-the-box*" regulations may allow a Godo Kaisha ("GK") to be effectively treated as a branch of its US shareholder. By contrast, for US tax purposes, a Kabushiki Kaisha ("KK") is always treated as a "*per se*" corporation. In cases that involve US shareholders, US tax advisors should be consulted about these issues.

### c. Flexible management

An important difference between Kabushiki Kaisha ("KK") and Godo Kaisha ("GK") is management structure. In general, Godo Kaisha ("GK") can be significantly more flexibility in terms of management structure and operation.

For example, a Kabushiki Kaisha ("KK") is typically required to distribute dividends to shareholders on a *pro-rata* basis. A Godo Kaisha ("GK") may be permitted to make distributions on any agreed basis permitted under its articles of incorporation.

### d. Ease of incorporation

The incorporation procedures and ongoing requirements for a Godo Kaisha ("GK") may be simpler than those applicable to a Kabushiki Kaisha ("KK") (though few foreign investors would make a decision based solely on this factor.)

## 5. Key Decisions

Regardless of whether a Kabushiki Kaisha ("KK") or a Godo Kaisha ("GK") is selected, there are five important issues that need to be decided prior to the incorporation moving forward:

### a. Directors

Both Kabushiki Kaisha ("KK") and Godo Kaisha ("GK") require directors. A director must be a natural person (i.e., not a corporate entity).

The technical name given to the representative position depends on the entity involved:

- *Representative Director* in the case of a Kabushiki Kaisha ("KK")
- *Executive Manager* in the case of a Godo Kaisha ("GK")

For convenience this brochure uses the word “director” to refer to both cases.

From 1 April 2015 the requirements were simplified such that the need for a Japan resident director has been removed and single director entities are possible.

That said, most foreign investors will still appoint a Japan resident director. Having a Japan resident director will facilitate the establishment of a Japan bank account and also make it easier to enter agreements such as office leases.

<u>A decision to have no Japan resident director should be carefully considered since it may render business difficult (if not impossible).</u>

It should be noted that there are adverse individual and / or corporate tax consequences associated with an individual acting as a director of a Japanese company.

JTAX may be able to provide individuals to fill any of the above positions via its **Japan Nominee Director Service.**

### b. Shareholder

The shareholder of a Kabushiki Kaisha (“KK”) or a Godo Kaisha (“GK”) can be either an individual or an incorporated entity. (Note that in the case of Godo Kaisha (“GK”), shareholders are referred to as Members.)

The residence of the shareholder can have important implications for such issues as withholding taxes on interest, dividends, and royalties paid from Japan.

### c. Address

Three important issues need to be considered with respect to the Japan address:

- **Legal registration issues**
  A Japan entity requires a legal registered address in Japan. Care should be taken in choosing this address since changes can be both costly (often several thousand USD) and time consuming (a month or more.)

- **Business address to receive phone calls, mail, etc.**
  Separate to the legal registered address, a business address is often required. This function can be handled by the new Japan business entity’s “real” office. An alternative may be a virtual office service that is able to provide phone answering, mail collection, etc.

- **Visa issues**
  Where visas for foreign employees may be required, a functioning business office will generally be needed. Virtual offices are usually not acceptable for visa purposes but a serviced office may be a workable solution.

JTAX is able to advise and help clients implement Japan office solutions via its Japan Registered Address and Japan Virtual Office Services. Our services will meet all of the above address requirements in a cost-effective manner. JTAX office solutions are provided via an office that we own in central Tokyo.

## d. Paid in Capital

Paid in Capital is relevant to the establishment of both Kabushiki Kaisha ("KK") and Godo Kaisha ("GK"). It represents the amount of cash (and sometimes other assets) that the owners / shareholders contribute to a company in exchange for shares in the company.

Paid in capital can be used as working capital in the business after the incorporation has been completed.

In addition to working capital requirements, there are four additional issues that are relevant when considering paid in capital:

- **Japanese VAT ("consumption tax")**
  New companies with JPY10 million or more in paid in capital are generally automatically required to file a Japanese consumption tax (VAT) return.

  Paid in capital of less than JPY10 million may give rise to consumption tax planning opportunities.

- **Commercial image**
  The amount of paid in capital is available in the public record. Japanese customers and potential business partners may be reluctant to do business with a Japan entity that has low paid in capital. In addition, low paid in capital may cause difficulties when negotiating with landlords to enter an office lease.

- **Tax based on paid in capital**
  One component (though typically small) of calculating a Japan entity's tax liability is the level of paid in capital.

- **Visa issues**
  Where there are plans to use the Japan entity to sponsor Japan work visas for foreign employees, the paid in capital must be high enough to demonstrate that the Japan operation is a viable business.

The following table provides additional guidance that may help you choose a level of paid in capital that best matches your requirements.

| Amount of Paid in Capital | Comment |
|---|---|
| JPY1 | Technically permissible but likely to create a poor commercial image. In particular, it may be difficult to lease an office and it may be difficult to find potential business partners. |
| JPY1 million | Often a reasonable compromise for companies that do not wish to contribute a high amount of paid in capital. |
| JPY5 million | Considered the lowest acceptable amount if the company will need to sponsor Japan work visas. |
| JPY10 million | This is the traditional minimum amount and is likely to be viewed favorably by potential business partners in Japan. |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