

Justice and Order: Part 11

What is company law? Previously representative offices were very common, however now they are rarely seen anymore. As representative offices considered are foreign corporate persons at law, corporation registration with the Australian Securities and Investment Commission is difficult. On the other hand, the registration of Australian corporations is relatively simple.

It is contemplated that the reason representative offices disappeared is because it was the intention of head offices to withdraw Australia offices who were not financially sustainable here. Currently, the corporation's law has legislative power in the federal parliament, and the federal government maintains administrative control over the regime. However, the administrative authority of the federal government does not extend to unincorporated entities. Subsequently, representative offices were classified as foreign corporate entities under the Constitution and were placed under the regulatory authority of the Australian Securities and Investment Commission.

Whilst operators of unincorporated identities assume unlimited personal liability, companies hold not unlimited, but limited liability according to company law. Although management can escape from personal bankruptcy through corporation law, revision of the regime has been undertaken to prevent misuse and abuse of corporation legal protections.

As subsidiary corporations can only have limited liability, basically they are considered a separate entity to their parent corporations. In the case of representative offices, they will be directly answerable to the parent corporation. Subsequently, there are advantages to opening local subsidiaries in Australia.

In the case of a joint venture (JV), there is division into incorporated and unincorporated options. Company law is applicable to incorporated companies, but not applicable to unincorporated companies. Accordingly, unincorporated company investors will hold unlimited liability. It is considered that many Japanese companies choose the unincorporated joint venture structure and its associated risks in order to secure profits. In the case of incorporated companies, it is unclear whether or not they can receive dividends.

In the case of mergers and acquisitions (M&A), should the stock be bought entirely, or only partly? At what price should the stock be acquired? There are many issues to be considered. While an assessment of whether or not the purchase price is appropriate is important, it is also important not to forget to assess whether or not management practices could be continued that would satisfy the shareholders.