

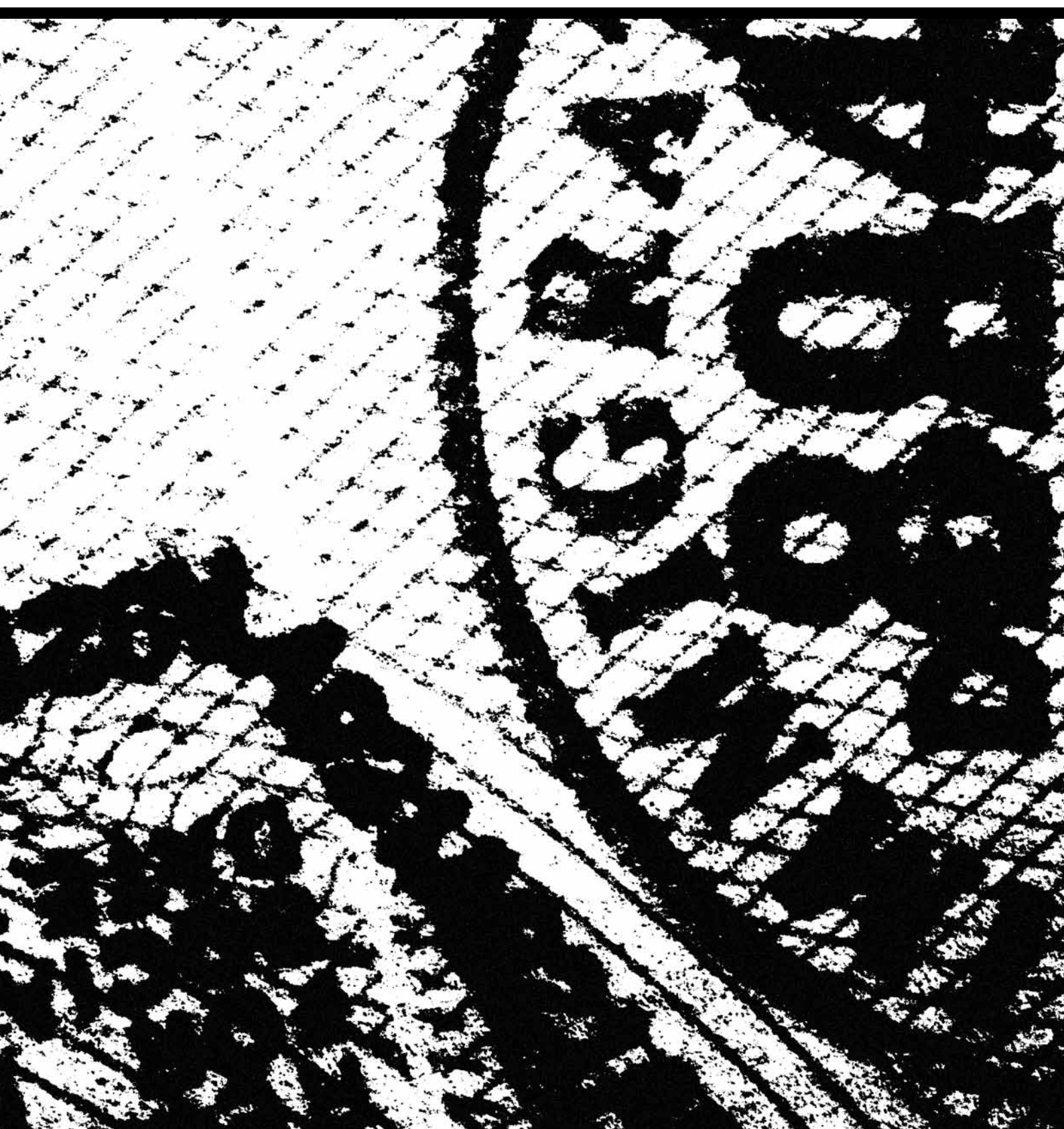


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# Immigration and Nationality Law News

Newsletter of the International Bar Association Legal Practice Division

**VOLUME 16 NUMBER 2 DECEMBER 2011**



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# Would Japan help entrepreneurs?

**T**his article is meant for international readers who are interested in living in Japan as an investor/entrepreneur. In the second part of the article, I will focus on the particular visa category designed for investors and entrepreneurs; I will describe its characteristics and requirements, and then discuss the advantages and disadvantages of this visa.

## Japan and its immigration policies and statistics for foreign investors

The Japanese Immigration Law does not have a concept of ‘immigrants’, mainly because it is not a young country that was recently built by immigrants, unlike the United States or Australia. Those who come to Japan merely intending to work for a short period of time and those who intend to work and stay in Japan for the rest of their lives are treated in the same manner. A permanent residency status is only granted upon the fact that the particular foreign national has actually led a decent life in Japan for a substantial amount of time, which is generally ten years. There is no specific investment-type permanent residency status. Renewal of an already obtained working visa status is possible an unlimited amount of times.

Because of the long-time economic slump, discussion of how to increase foreign direct investments and an influx of talented people has been taking place in Japan. After the Great East Japan Earthquake and the following disaster in March 2011, not only the Ministry of Justice but also other ministries covering economic activities, industries, tourism, finance, or labour are seemingly accelerating their discussions in order to accept more non-Japanese citizens including entrepreneurs. A drastic change in Japan’s immigration policies may be introduced in a few years time.

According to the *2010 Immigration Control*, which was released by Japan’s Ministry of Justice in 2009, about 850 foreign nationals newly obtained an investor/business manager status. The figure differs from year to year,

though it has been between 600 and 900 over the past few years. The total number of foreign nationals currently staying in Japan on the investor/business manager status as of 2010 is about 10,908. This total number has been steadily increasing over recent years, which indicates that foreign nationals who come to Japan on the Investor/Business visa tend to stay in Japan on the same residency status for at least a few years. The number of holders of the Investor status is comprised of not only entrepreneurs but also business managers and directors of large established companies. The share of entrepreneurs is supposed to be no more than 20 per cent.

## Requirements for the ‘Investor/Business Manager’ visa and other working statuses for entrepreneurs

### *Investor/Business Manager status*

#### MAJOR CHARACTERISTICS – ‘REAL’ BUSINESS REQUIRED

One of the Japanese entrepreneur-based statuses of residence is called ‘Investor/Business Manager’. However, there is a large difference in its concept when compared to its counterparts in some other countries. In short, Japan does not have a programme that allows you to ‘buy’ a residency status: it would rather have a real business up and running in Japan than just an investment.

Compared to the legislations in other countries, ¥ 5m is the amount required for an initial investment which should be much more affordable compared to other countries. This gives opportunities to foreign entrepreneurs with relatively small sizes of capital. Meanwhile, from time to time, it can be difficult to maintain the visa status by doing ‘real’ business and running the business soundly.

#### REQUIREMENTS

The Ministerial Ordinance (Ordinance of the Ministry of Justice No 16 of 24 May 1990) provides specific criteria for the Investor/Business Manager status. To briefly sum up;

- The foreign national must establish an entity by investment and commence its operation.
- The office/facilities of the business must be located in Japan.
- The business must have the capacity to employ at least two full-time employees.

The last requirement of creating two full-time positions in Japan is currently not examined by the immigration authorities when ¥ 5m or more is invested since the law requires only 'the capacity' to employ two staff members, and it does not always require actual employment at the time of the initial application to the immigration office.

The Regional Immigration Bureau requires the submission of the following:

- a resume of the applicant, business plan, certificate of company registration and investment;
- a report to commence salary payments to a tax office; and
- a copy of an office lease contract.

Usually only a one year duration of investor status will be granted to small businesses on the initial application. Therefore before its expiry date the following year, the status has to be renewed by lodging an application for the extension of period of stay to the Immigration Bureau. In this next application, the annual report of the company and a certificate of personal tax payment of the applicant should be attached. If the performance of the company in its financial report is found not to be sound, the extension may be denied and the entrepreneur will need to leave Japan unless he or she injects an additional investment or changes their visa status to another type.

Since the 'Investor/Business Manager' visa is activity-based, your activities have certain restrictions such as you cannot engage in other money earning activities enumerated in a different residency status category. This is quite different from the status based residency status, such as 'Spouse of Japanese National', with which you can engage in any kind of activities. If you stay in Japan with the 'Investor/Business Manager' visa and would like to engage in activities other than running

your own business, such as working for another company as an employee, you would have to either obtain special permission to engage in those other activities on a part-time basis or change your visa.

### Self employment status

There is no residency status called 'self employment' nor is there a 'self-sponsored' type of visa specified in the immigration code, although it is often referred to by foreign residents in Japan.

Two popular working statuses are 'Specialist in Humanities/International Services' and 'Engineer'; neither actually require employment. Supposing a person provides IT consultancy to multiple clients, they may be able to obtain the 'Engineer' status by those contracts as an independent consultant. If someone teaches English at two or three language schools, they may obtain the 'Specialist' visa. An entrepreneur could also apply for an 'Engineer' or 'Specialist' status by providing their services to clients while they may not have invested in nor registered an entity. However, it would not be easy to obtain because of the irregular application to the immigration officials. If the applicant has ¥ 5m to invest, the investor visa status mentioned earlier must be the first option to recommend in general.

### Conclusion

If you are interested in living in Japan as an investor/business manager, you will have to actually run a business that 'has the capacity' to employ two full-time workers, while the amount of initial investment to obtain an investor/business visa can be comparatively small in comparison to other advanced countries' criteria for investor visas. The downside of the Japanese investor visa is that activities other than the operating of a business are restricted, yet a new policy to ease the running of business for foreign entrepreneurs in Japan could be introduced in a few years time.