

A Brief Summary re Japan Branch Office, Subsidiary Co. & Business Establishment

Opening a Company in Japan

How a foreign company or entrepreneur sets up a business presence in terms of the formation of a legal entity depends upon the nature and magnitude of the business, proposed business operation, as well as legal, Tax, and other considerations.

Many options exist, ranging from a "Branch office" or a "Japanese subsidiary company" such as **Kabushiki-Kaisha [KK Co.] (Joint-stock corporation)**, **Godo-Kaisha [GK Co.] Limited Liability Company (LLC)** and several other types of local company formations are available. There is also a Japanese version of a **limited liability partnership (LLP)**, not a corporation, but a partnership format.

Foreign companies doing some research will find that "administrative, legal matters" for doing business in Japan post company registration may even sometimes easier compare to their home-country!. With the proper professional assistance, "Setting up a company and post-registration administrative operation" is a relatively simple and not that challenging and complicated task, as many foreign companies or entrepreneurs may perceive it!

In the recent past Japanese government has also made efforts to attract foreign businesses to Japan and made promises to solve inconvenience by removing language barriers, enhancing the educational environment for expatriate children, further improving internet connectivity (Free Wi-Fi), and so forth.

Setting up a business presence (a legal-entity) in Japan

A foreign company can set up a business presence in Japan in any one of the following 4(four) formats:

- **Representative Office**
- **Branch Office**
- **Subsidiary Company (Kabushiki-Kaisha [KK] or Godo-Kaisha [GK])**
- **Limited Liability Partnership (LLP)**

However, to engage in **commercial business activities in Japan**, the practical option is to establish a "Branch office" or a "Local KK/GK subsidiary company" as a legal entity.

Representative Office:

A "Representative office" is generally established for carrying out **market research, purchasing, advertising**, and liaison activities on behalf of parent co. **It does not allow to conduct of commercial business activities in Japan. Therefore no registration is required at the legal affairs bureau,** nor can it be subjected to corporate Tax under Japanese tax laws, except banking, security, or similar businesses.

Branch Office

The simplest method for a foreign company to establish a legal entity for commercial business operations in Japan is to set up a Branch Office. There are no fundamental differences between the branch office and domestic corporations regarding the range of business activities allowed. Taxed on branch office income only, and the rate is the same as local co. **For registration, there is no requirement to establish a statutory officers/management body, and it only needs a local physical address (not a PO Box) and a Representative in Japan (must be a "Resident of Japan").** In general, transfer of operational funds between the branch and its head office can be made without restrictions and is not subject to withholding tax. A Branch Office can register a maximum of 2 (two) "Representatives in Japan," but one must be a "Resident of Japan" and, besides, a director/member of the parent co with his/her overseas resident address.

Subsidiary Company

A foreign company willing to establish a subsidiary company in Japan may choose from the following options:

- (a) **Kabushiki-Kaisha [KK Co.]** (Joint-stock corporation) {Kabushiki Joto Seigen Kaisha – (If No Committee is Established)}
- (b) **Godo-Kaisha [GK Co.]** Limited Liability Company (LLC) or similar entity stipulated by Japan's Companies Act.

There are formats such as Gomei-Kaisha (unlimited partnerships) and Goshi-Kaisha (limited partnerships) under the Companies Act. Still, they are rarely chosen in practice because equity participant's burden is unlimited rather than limited liability.

A subsidiary company is a separate legal entity from the promoter's foreign parent company; therefore, the foreign company will bear the liability of an equity participant stipulated by law for all debts and credits generated by the subsidiary company's activities.

For incorporation of either a KK or GK Company, the minimum standard criteria are as follows:

- A "Japan physical address" for the co.'s "Registered Office Address" (**physical address and not a PO Box**)

Note: A foreign entrepreneur or a corporation can register a Godo-Kaisha(GK) or Kabushiki-Kaisha(KK) in Japan without a "Local Resident in Japan" under the amendment in the Companies Act introduced in March-2015.

Paid-up Capital procedure: Any of the following options are available.

- 1) The investor shareholder having a bank account with a branch of a Japanese bank in the home country;
- 2) The investor shareholder is temporarily using a bank account of a "Resident of Japan." However, in this case, the below-mentioned steps need to be followed:
 - Japan resident's bank account is used for paid-up capital/equity procedures for registration purposes.
 - Once the registration is completed, the resident's token share/equity can be transferred back to the overseas investor through an internal company document duly endorsed by both parties.
 - However, in the "**Notification to Bank of Japan**," the share/equity participation at the registration time shall be reflected and cannot be amended post-registration.

The foreign investor's reflection of 100% investment shall reflect on the company tax-return document once the first company tax return is filed to the tax authorities.

Limited Liability Partnership (LLP)

This format also allows doing business by using a **Yugen Sekinin Jigyo Kumiai**. It is considered a **Japanese version of a limited liability partnership (LLP)**. It is not a corporation, but a partnership formed only by the equity participants, who have limited liability. Taxes are levied on profits allocated to equity participants but no tax on LLP. The format is typically used for carrying out a time-bound project. **One partner must be a local "Resident of Japan"** (either a Japanese national or a foreign national, but in the case of a foreign national, the person must have an appropriate residence status as per immigration law).

Option regarding the formation of a legal business entity in Japan for ongoing commercial activities:

The option is either to establish a "**Branch Office**" or a local "**Subsidiary Company (Kabushiki-Kaisha or Godo-Kaisha)**."

Japan Representative Office

A "Representative office" is generally established for carrying out primary and supporting tasks to enable foreign companies to engage in full-scale commercial business operations in Japan in the future.

A "Representative office" is generally established for carrying out **market research, purchasing, advertising,** and liaison activities on behalf of parent co. **It does not allow to conduct of commercial business activities in Japan. Therefore no registration is required at the legal affairs bureau, nor can it be subjected to corporate Tax under Japanese tax laws.** However, representative offices established by **foreign banks, insurance companies, securities companies, or other financial institutions are exceptions;** prior notification must be provided to the Financial Services Agency for such representative offices (as stipulated in the Banking Law, Securities Exchange Law, and other laws).

In principle, **a representative office is not a company, which is registered as a corporation.** The office format may be used by foreign corporations, **which do not conduct commercial business in Japan** but expect to carry out the activities such as:

- **Advertising and promotional activities, providing information, carrying out market research, conducting primary research, and other activities to support the foreign corporation's undertakings.**
- **Purchasing and storing of goods on behalf of the head office (parent company overseas).**

Main Features of a Representative Office

- ❖ **No registration is required under the Commercial Code in principle.**
- ❖ No report of direct inward investment to the Ministry of Finance via the Bank of Japan is required under the Foreign Exchange Law ([except for the sectors mentioned above](#)).
- ❖ Since the representative office does not conduct business in Japan, it is not regarded as a permanent establishment and is therefore not subject to corporate taxes.
- ❖ However, the advantage of no required reporting does not apply in financial institutions such as foreign banks, insurance companies, or securities companies. Under the laws concerning banking, foreign insurance operations, and foreign securities brokers, such institutions must submit a report in advance to the Ministry of Finance to establish a representative office.
- ❖ The lease for a representative office's office space may be signed between a foreign co. or the representative in Japan in his/her individual capacity and the Japanese building owner. In many cases, however, the owner will require that the representative office have a guarantor who is a resident of Japan.
- ❖ [In theory, a representative office can open an ordinary savings account \(Futsu Koza\) at a Japanese bank using an account name such as "Tom Smith, XXX Inc. Representative Office in Japan," a hybrid of individual and corporate status. However, "opening company/business bank a/c" in practice is challenging.](#)
- ❖ A representative office **is not allowed to do business in Japan**, whether it expects a profit or not.
- ❖ **However, foreign corporations intending to do commercial business activities in Japan may not use the representative office format. Their choices are establishing a Branch Office or forming a Subsidiary Co. / domestic corporation (Local Company such as Kabushiki-Kaisha or Godo-Kaisha in Japan).**

Japan Branch

Foreign companies willing to engage in commercial business operations in Japan must establish a "branch office" or a local "subsidiary company" as a legal entity in Japan.

The simplest model for a foreign company to establish a legal entity for commercial business operations in Japan is to set up a branch office. A Branch office can start business operations as soon as registration is completed with the local authority and all post-registration mandatory notifications to relevant local authorities are submitted.

A branch office of a foreign company carries commercial transactions in Japan as per the decision/instruction of the parent company and usually is not expected to independent decision-making.

A branch office does not have its own independent local legal corporate status. Instead, it is deemed to be within the umbrella of the parent company's corporate status outside of Japan. At the time of registration of a branch office in Japan thus there is no requirement to establish statutory officers/management bodies such as directors, auditors, but a branch office only needs an "A Representative in Japan. **A Branch office can register a maximum of 2 (two) "Representatives in Japan," but one must be a "Resident in Japan."**

Therefore, the branch office's foreign parent company is ultimately responsible for all debts and credits generated by its Japan branch office activities.

However, a branch office can open a company bank account(s) and lease real estate in its name and carry commercial activities as per corporate objectives derived from parent co, once it's registered in Japan.

There are no fundamental differences between a branch office and a domestic corporation in terms of the range of business activities allowed.

A branch office in Japan is obliged to submit a corporate tax return to the local authority within two months from the date of its closing of the fiscal year and fiscal year of the branch office is registered in Japan as per the parent company's fiscal year in the home country. The Tax applies to the net income generated in the Japan branch office as per local regulation, and the rates used are the same as a domestic company.

The procedures for closing a branch office must be completed when upgrading a branch office to a subsidiary company. Because a branch office cannot be directly reorganized into a joint-stock corporation (Kabushiki-Kaisha {KK}) or a limited liability company (Godo-Kaisha {LLC}), the branch office closure procedures and the subsidiary company establishment procedures must be carried out simultaneously. However, in such instances, the branch office's assets may be passed on to the subsidiary company through investment in kind.

Some Basic differences between Opening a Branch Office and Establishing a Domestic Corporation in Japan

There are no fundamental differences between the branch office and domestic corporation in terms of the range of business activities allowed. But regardless of the firm being foreign or not, some companies, depending on the category of business, are required to secure authorization of the supervisory ministries at the time of founding after the registration.

A Branch office is not regarded as an independent legal entity but as acting based on decisions and instructions from the parent company (head office) to provide services and carry out business activities, including purchasing, import, and sales. In transactions with other businesses, the branch office concludes contracts as its parent company's representative (head office).

Some major differences between a branch office and A domestic Japanese corporation

A branch office or a domestic corporation may enter into business activities by its name as an entity. Tax rates are also fundamentally the same for a branch office and a domestic corporation. However, the major differences are in the following areas:

- 1) A new management body need not be set up for a branch office, and there is no detailed statutory requirement for the management of a branch office. While a domestic corporation such as KK co must have statutory officers or a management body such as directors, auditors, the board of directors meetings, and shareholders meetings, a branch does not require to do so but only needs a Representative in Japan.
- 2) Dividends paid by a domestic corporation to a foreign shareholder are subject to withholding Tax, while remittance of branch profits after Tax to its head office is not subject to withholding Tax.
- 3) Expenses incurred by the head office for its branch may be allocated to its branch if it is spent for branch purposes.
- 4) Interest or royalty paid by the head office for its branch's activities may be deducted by its branch, although such interest or royalty is subject to withholding tax.
- 5) Local "Resident in Japan": Branch must have a "resident in Japan" out of the maximum of 2 (two) "Representative in Japan" that is allowed for registration. However, in the case of a local "subsidiary co." under the law effective Mar'2015, it is no more mandatory to have "a resident director" in the case of KK co. & "Member / Executive Officer" in case of GK co.

Establishing a Subsidiary Company in Japan

A foreign company willing to establish a subsidiary company in Japan may choose from the following options:

- (c) **Kabushiki-Kaisha [KK Co.] (Joint-stock corporation) {Kabushiki Joto Seigen Kaisha – (If No Committee is Established)}**
- (d) **Godo-Kaisha [GK Co.] Limited Liability Company (LLC) or similar entity stipulated by Japan's Companies Act.** *There are formats such as Gomei-Kaisha (unlimited partnerships) and Goshi-Kaisha (limited partnerships) under the Companies Act. Still, they are rarely chosen in practice because equity participant's burden is unlimited rather than limited liability.*

A subsidiary company is a separate legal entity from the parent company; therefore, a foreign parent company will bear the liability of an equity participant stipulated by law for all debts and credits generated by the subsidiary company's activities.

For incorporation of either a KK Co. or GK Co., the minimum standard criteria are as follows:

- A "Japan physical address" for the co.'s "Registered Office Address" (physical address and not a PO Box)

Note: A foreign company can register a Subsidiary Company [Godo-Kaisha(GK) or Kabushiki-Kaisha(KK)] in Japan without a "Local Resident in Japan" under the amendment in the Companies Act introduced in March-2015.

The features of KK Co. and GK Co. at a glance:

- **Capital:** 1(one) yen or more. [Establishment with zero yen capital is theoretically possible, but in practice, it is impossible to incorporate without paying capital.]
- **Investors:** 1(one) or more
- **Corporation as an Investor:** Possible (the process of registration is lengthy)
- **Liability of Investors:** Limited to the amount of investment/equity participation.
- **Directors / Executive officers:** 1(one) or more (In case of a GK. Co. in principle, all members are executive officers, but maybe stipulated otherwise in "Articles of Association")
- **Legally stipulated term of office of Directors / Executive officers:** In KK (with capital less than 500 million & without committee [Kabushiki Joto Seigen Kaisha]) 2 years in principle & extendable up to 10 years. In the case of GK no legally stipulated term.
- **Transfer of share/equity:** In the case of KK Co., it can be transferred freely in principle unless stipulated in "Articles of Association" that it requires the board of directors' approval. In the case of a GK Co., unanimous consent of members (equity holders) is required.
- **Resident in Japan:** Effective Mar '15 Japanese govt has allowed foreign co. to register a KK or GK without a resident in Japan. However, for completing the procedure of paid-up capital/equity, a resident is required temporarily.
- **Registered Office:** A local address in Japan is required. (physical address and not a PO Box)
- **Co. Secretary:** Not required
- **Yearly Auditing of accounts:** Not mandatory

Timeframe for registration: Depends on the type of entity and structure of investors, directors (executive officers), etc. Upon applying to Legal Affairs Bureau for registration, it takes about 2(two) weeks to obtain a company registration certificate. For further details, please refer to registration procedural steps and flowchart of [KK Co.](#) and [GK Co.](#)

Comparison between Japanese Kabushiki Kaisha & Godo-Kaisha

	KK Co. (Kabushiki Joto Seigen Kaisha) [If No Committee is Established]	GK Co. (Godo-Kaisha) [Limited Liability Co] LLC
Transfer of equity participation share	It may be transferred freely in principle. Maybe stipulated in articles of incorporation so that the board of directors' approval is needed for the transfer of shares.	Unanimous approval of equity participants (members) is required.
Number of executives required	Appointment of one (1) or more required. Representative director with the right to execute business. If no representative director is appointed, executive officers each have the right of representation.	No legally stipulated minimum. In principle, all members are executive officers, but a representative member may be appointed.
Legally stipulated term of office for executives	2 years in principle. Expandable up to 10 years	No legally stipulated term
Possibility of a Company to be a Director	Not possible	Possible. However, the co should nominate an individual staff from the co.
Director must be from shareholder /member	Not necessarily	In principle, all members are executive officers, but maybe stipulated otherwise in "Articles of Association"
Regular general meeting of shareholders/members	In principle, it must be held every year	Not required
Possibility of the public offer of stock	Possible	Not possible
Possibility of reorganization	A joint-stock corporation (KK) may be reorganized into a limited liability company (LLC) (GK).	A limited liability company (LLC) (GK) may be reorganized into a joint-stock corporation (KK)
Distribution of profits and losses	Allocated according to equity participation ratio	May be allocated at a different ratio from equity participation ratio if specified in Articles of Association

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Comparison between Japan "Branch Office" & "Subsidiary Co."

	Branch Office	Subsidiary Company	
		Kabushiki-Kaisha (KK Co.) {(Kabushiki Joto Seigen Kaisha) (If No Committee is Established)}	Godo-Kaisha (GK Co.) Limited Liability Co (LLC)
Capital	No capital (same as HO)	1 yen or more (*1)	1 yen or more (*1)
Number of investors	Not applicable	1 or more	1 or more
Liability of equity participants/parent co. toward creditors	Unlimited	Limited to the amount of equity participation	Limited to the amount of equity participation
Transfer of equity participation shares	Not applicable	Maybe transferred freely in principle. Maybe stipulated in articles of incorporation so that the board of directors' approval is needed for the transfer of shares.	Unanimous approval of equity participants (members) required
The Number of executives required	Representative in Japan - 1 or 2(*2)	Appointment of 1 or more (*2). Representative director with the right to execute business. If no representative director is appointed, executive officers each have the right of representation.	No legally stipulated min. In principle, all members are executive officers, but a representative member may be appointed (*2).
Legally stipulated term of office for executives	No legally stipulated term	2 years in principle. Extendable up to 10 years	No legally stipulated term
Regular general meeting of shareholders/members	Not required	In principle, it must be held every year	Not required
Possibility of the public offer of stock	Not applicable	Possible	Not possible
Possibility of reorganization into a joint-stock corporation	Not possible. Need to separately close branch office and establish joint-stock corporation (*3)	N/A	Possible
Distribution of profits and losses	C/o Parent Co.	Allocated according to equity participation ratio	May be allocated at a different ratio from equity participation ratio if specified in articles of association
Taxation of profits	Income arising within Japan is in principle taxed	Taxed on profits according to a KK Co and profits allocated to shareholders	Taxed on profits according to a GK Co and profits allocated to members

(*1) The Establishment with zero yen capital is theoretically possible, but it is impossible to incorporate without paying capital in practice.

(*2) At least one representative must be a "Resident of Japan." [Except for subsidiary company (KK co or GK co) under the regulation effective Mar' 2015]

(*3) Refer to "Closure of branch office" for details.

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Comparison of different types of legal business entity in Japan

Foreign companies or entrepreneurs generally engage in business operations by establishing a branch office, subsidiary company, or limited liability partnership. The legal differences between each of these are summarized in the following table.

	Branch Office	Subsidiary Company	Partnership Business	
	Branch Office	Kabushiki-Kaisha (KK Co.) (Joint-stock Corporation) {(Kabushiki Joto Seigen Kaisha) (If No Committee is Established)}	Godō-Kaisha (GK Co.) Limited Liability Co (LLC)	Limited Liability Partnership (LLP)
Restrictions on equity participation	Notification not required with the Bank of Japan (Except specific industries)	Notification must be filed to the Bank of Japan	Notification must be filed to the Bank of Japan	Notification not required with Bank of Japan (Except specific industries)
Capital	No capital (same as HO)	1 yen or more (*1)	1 yen or more (*1)	2 yen or more (if 2 Partners)
Number of investors	Not applicable	1 or more	1 or more	2 or more (*3)
Liability of equity participants/parent co. toward creditors	Unlimited	Limited to the amount of equity participation	Limited to the amount of equity participation	Limited to the amount of equity participation
Transfer of equity participation share	Not applicable	Maybe transferred freely in principle. Maybe stipulated in articles of incorporation so that the board of directors' approval is needed for the transfer of shares.	Unanimous approval of equity participants (members) required	Unanimous consent of partners required
Number of executives required	Representative in Japan - 1 or 2(*2)	Appointment of 1 or more (*2). Representative director with the right to execute business. If no representative director is appointed, executive officers each have the right of representation.	No legally stipulated min. In principle, all members are executive officers, but a representative member may be appointed (*2).	No legally stipulated min. All partners are executive officers (*3).
Possibility of a Company to be a Director	Not applicable	Not possible	Possible. However, the co must nominate one staff from the co. (*2)	Not applicable
Director/Executive must be from shareholder/member	Not applicable	Not necessarily	In principle, all members are executive officers, but maybe stipulated otherwise in "Articles of Association"	Not applicable
Legally stipulated term of office for executives	No legally stipulated term	2 years in principle. Expandable up to 10 years	No legally stipulated term	No legally stipulated term
Regular general meeting of shareholders (members)	Not required	In principle, it must be held every year	Not required	Not required
Possibility of the public offer of stock	Not applicable	Possible	Not possible	Not possible
Possibility of reorganization into a joint-stock corporation	Not possible. Need to separately close the branch office and establish a joint-stock corporation (*4)	N/A	Possible	Not possible. Need to dissolve the partnership and establish a joint-stock corporation separately
Possibility of reorganization	Not possible. Need to separately close branch office and establish KK or GK (*4)	A joint-stock corporation (KK) may be reorganized into a limited liability company (GK).	LLP (GK Co) may be reorganized into a KK	Not possible. Need to separately dissolve the partnership and establish a KK or GK Co.
Distribution of profits and losses	C/o Parent Co.	Allocated according to equity participation ratio	Maybe allocated at a different ratio from equity participation ratio if specified in articles of association	Maybe freely allocated with the unanimous approval of partners
Taxation of profits	Income arising within Japan is in principle taxed	Taxed on profits according to a KK Co and profits allocated to shareholders	Taxed on profits according to a GK Co. and profits allocated to members	No taxation on LLP. Taxation of profits allocated to partners



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(*1) The Establishment with zero yen capital is theoretically possible, but it is impossible to incorporate without paying capital in practice.

(*2) At least one representative must be a "Resident of Japan." [Except for subsidiary company (KK co or GK co) under the regulation effective Mar' 2015]

(*3) One or more partners must be an individual who has an address and is resident in Japan for more than 1 year or a Japanese corporation.

(*4) Refer to "Closure of branch office" for details.

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