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 **market research, purchasing, advertising,** and liaison activities on behalf of the 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 for 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. Corporate Tax is 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, the 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." Still, 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**] (Joint-stock corporation) {Kabushiki Joto Seigen Kaisha – (If No Committee is Established)}

(b) **Godo-Kaisha** [**GK]** 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 participants' burden is absolute rather than a 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 has a bank account with a branch of a Japanese bank in the home country;
2) The investor shareholder is temporarily using a "Resident of Japan bank account." 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.

The features of Kabushiki-Kaisha [KK] and Godo-Kaisha [GK] at a glance:

- **Capital**: 1(one) yen or more. [Establishment with zero yen capital is theoretically possible but in practice, incorporating without paying capital is impossible.]
- **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 the 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 it is 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.
- **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

Limited Liability Partnership (LLP)

This format also allows doing business by using a **Yugen Sekinin Jigyo Kumiai**. It is **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 Co**mpany (**Kabushiki-Kaisha** or **Godo-Kaisha**)."

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 regarding the range of business activities allowed. But regardless of whether the firm is 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 considered an independent legal entity, but it acts 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. In contrast, 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 the case of GK co.

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	One or more	One 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 have the right to 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	Two 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 a joint-stock corporation (*3)	N/A	Possible
Distribution of profits and losses	C/o Parent Co.	Allocated according to equity participation ratio	It May be allocated at a different ratio from the 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 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 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.
The 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 have the right to 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	Two 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 a shareholder /member.	Not necessarily	In principle, all members are executive officers but may be 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	It May be allocated at a different ratio from the equity participation ratio if specified in the Articles of Association.

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Comparison of different types of legal business entities 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)}	**Godo-Kaisha (GK Co.)** Limited Liability Co **(LLC)**	**Limited Liability Partnership (LLP)**
Restrictions on equity participation	Notification not required with the Bank of Japan (Except for 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 for 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	One or more	One or more	Two 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
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 have the right to 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 may be stipulated otherwise in "Articles of Association."	Not applicable
Legally stipulated term of office for executives	No legally stipulated term	**Two 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 the 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**

(*1) The Establishment with zero yen capital is theoretically possible but 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 has been resident in Japan for more than one year or a Japanese corporation.

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