



## A Brief Summary re Japan Business Establishment

### Opening a Company in Japan

Japan is still an enormous market and offers extensive business opportunities.

Japan is still the home of many World Top Companies and a very large number of Multi-national companies have their presence in Japan. Having a presence in Japan is a status itself for a company to doing business in the world market(s)! It gives a "Brand Image"!

Japanese sophisticated Consumers with High Purchasing Power and Discerning Tastes allows a company to improve further in their own product(s) or service(s) they have had been offering to the international consumers!

To cater to the Japanese consumers a presence in Japan is almost a must factor!

In the present competitive and borderless world Japan offers more than ever a level playing ground to foreign companies in comparison to the past!

Foreign companies doing a proper research will find that administrative matters re doing business in Japan is even sometimes easier compare to their own home-country (depending upon the nationality of the foreign company). With right professional assistance "Setting Up Company, Administrative Operation & Doing Business in Japan" is quite simple & not very difficult task, as foreign companies might perceive it!

### Setting up a Company in Japan

The following options are available for a foreign company to set up a business entity in Japan.

- [Representative Office](#)
- [Branch Office](#)
- [Domestic Corporation \(Japanese Local Co.\)](#)

### Representative office:

Do not allow to conduct business in Japan, it is mainly for conducting market research & liaison activities on behalf of head office and [No registration is required under the Commercial Code in principle.](#)

[Foreign corporations intending to do business in Japan may, however, not use the representative office format. Their choices are establishing a branch office or forming a domestic corporation \(Local Co\).](#)



## Branch office and or Japanese Local Co:

### Please note

In May'06 the Company Law had been changed and under current regulation the local corporation K.K. Company can be established with any amount as paid up capital amount (from 1 Yen) as the requirement of minimum capital of Yen 10M had been abolished.

Although there are several types of local companies which can be established however majority of foreigners and foreign corporations opt to establish either a Branch office or K.K. Company (especially after the change in rules & regulation since May'06). **At the same time incorporation of YK company incorporation had been abolished.**

In order to suggest the right type of entity formation depending on the specific requirement of the client we thus request to advise us on the following basic questionnaire:

- 1] Reason(s) to establish a legal entity in Japan? Brief info. re past or present business activities in Japan? Business objectives and activities to be conducted through New Japan company?
- 2] Proposed form of entity: incorporate branch or a local company? (in the event client has already gathered and studied preliminary information on the setting up a business in Japan)
- 3] In case of local company what will be shareholding structure, i.e. individual or your Foreign Company?
- 4] Who will become Representative in Japan (in case of branch) & Resident Director (in case of local company)? The registered office address? physical address is required.  
**One Representative in Japan (in case of branch) & Resident Director (in case of local company): should be a Japanese or Foreigner with proper visa status.**
- 5] What will be the main business activities of Japan branch or Japan local company?
- 6] In case of local Japanese KK co. what will be capitalization? In J. yen? (Paid-up-capital amount)

Furthermore, information on the following area would be helpful in preparing the cost estimation:

- Transfer of any foreigner to run the operation in Japan? Need of any support re immigration procedure? number & nationality of the foreigners to be stationed in Japan?
- Need monthly / yearly accounting and corporate and tax return support?
- Any other administrative business services and or daily operational support required?



## Re legal entity in Japan: (Brief Summary)

For Japan operation you can run your business either through forming a branch or forming a 100% owned local subsidiary (local Japanese co.).

However, as the capitalization process has become very complicated (after the co. registration regulation changed in mid 2006) in case of foreign owned subsidiary company (and costs & time factor is considerably higher compare to a normal formation by a foreigner who is living in Japan).

### Option re formation of a legal entity in Japan:

To establish a Japanese branch of a foreign company or a local subsidiary company (domestic corporation):

In terms of the range of business activities allowed, there are no basic differences between branch offices and domestic corporation. 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.

A Branch office is not regarded as an independent legal entity, but as acting on the basis of decisions and instructions from the head office (Parent Foreign Corporation) to provide services and carry out business activities, including purchasing, importing, sales and etc.. In transactions with other businesses, the branch office concludes contracts as the representative of its head office.

**A new management body need not be set up for a branch and there is no detailed statutory requirement for the management of a branch.**

While a local corporation (subsidiary of a foreign corporation) must have statutory officers or a management body such as directors, [auditors (optional)], board of directors meetings and shareholders meetings, a branch needs a local Representative only.

The Representative of Branch should be a Japanese or Foreign national with proper status of residence (with proper visa) with an address in Japan and maximum number of representatives allowed for branch is 2(two) with other could be a Director of Parent company with foreign address.

With regard to local Japanese company at least 1 Director of a domestic corporation should be a Japanese or Foreign national with proper status of residence (with proper visa) with an address in Japan.

**Dividends paid by a 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.**

**Expenses incurred by the head office for its branch may also be allocated to its branch with proper proof & evidence.**

Interest or royalty paid by the head office for activities of its branch, may be deducted by its branch although such interest or royalty is subject to withholding tax.



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Although there are various types of local companies which can be established however majority of foreigners and foreign corporations opt to establish either K.K. Company or a Branch (especially after the change in rules & regulation since May'06).

Other relevant information at a glance is as follows: -

For Branch

1. Max Number of Representative in Japan: 2(two) (But one must be resident of Japan)

For KK

1. Minimum Number of Directors: 1(one) (But in case of one or several one must be resident of Japan)
2. Resident Director Required: Yes, at least one must be resident.
3. Minimum Number of Shareholders: 1(one)
4. Corporate Shareholder Allowed: Yes; but in such case cost of incorporation will be increased due to lengthy complicated procedure
5. Resident Shareholder Required: No, but in order to establish without too much hurdle a nominal shareholding by resident director helps in establishment procedure
6. Company Secretary Required: No
7. Registered Office Required: Yes, physical address, No P.O. Box address allowed.
8. Minimum Registered Capital: 1 (one) J. yen
9. Time frame for registration: Depends on the type of entity, the way the client wants to form the legal business establishment, i.e. Shareholding, Directors, forming structure, etc. Once all documents are ready / prepared and applied at the registration office it takes about 10~15 working days; however to prepare all documents and get the required docs from the client the time factor varies, thus total timing can be indicated once the client decide on the type of legal entity.
10. Yearly Auditing of accounts: Not mandatory

We provide tailor made services as per client's requirement including support of day to business activities (depending on the exact requirement & our initial assesement).

Re Fees and Cost Estimation: Please note we prefer to provide firm quotation based on client's exact requirement. However, general cost estimation can be provided upon request.



## Representative Office

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 business in Japan but expect to carry out the activities such as:

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

### 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.
- [Since representative offices do not conduct business in Japan, they are not regarded as permanent establishments and are therefore not subject to corporate taxes.](#)
- The advantage of no required reporting does not apply, however, in the case of 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, even to establish a representative office.
- The lease for a representative office's office space may be signed between the head office in the home country and the Japanese building owner. In many cases, however, the owner will require that the representative office have a guarantor resident in Japan.
- [It is possible for a representative office to open an ordinary savings account 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.](#)
- A representative office may not do business in Japan, whether it expects a profit or not.
- [Foreign corporations intending to do business in Japan may, however, not use the representative office format. Their choices are establishing a branch office or forming a domestic corporation \(Local Co\).](#)



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## Japan Branch

Foreign companies wishing to engage in business operations in Japan must establish a branch office or a subsidiary company.

The simplest means for a foreign company to establish a base for business operations in Japan is to set up a branch office. The branch office can begin business operations as soon as an office location is secured, the branch office representative determined, and the necessary information registered with the local authority and all mandatory reportings are completed.

A Japanese branch office is a business location that provides services in Japan decided upon by an organization authorized by the foreign company, and ordinarily is not expected to engage in independent decision making.

A branch office does not have its own independent local legal corporate status, but instead is deemed to be within the umbrella of corporate status of the foreign parent company.

In general, therefore, the foreign parent company is ultimately responsible for all debts and credits generated by the activities of its Japanese branch office. A Japanese branch office, however, may open bank accounts and lease real estate in its own name once its registered in Japan.

The procedures for closing a branch office must also 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 (K.K.) or a limited liability company (Godo-Kaisha (LLC)), the branch office closure procedures and the subsidiary company establishment procedures must be carried out simultaneously. In such instances, however, the branch office's assets may be passed on to the subsidiary through investment in kind.



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

In terms of the range of business activities allowed, there are no basic differences between branch offices and domestic corporations. But regardless of the firm being foreign or not, some companies, depending on the category of business, are required to secure authorisation of the supervisory ministries at the time of founding.

A Branch office is not regarded as an independent legal entity, but as acting on the basis of decisions and instructions from the head office to provide services and carry out business activities, including purchasing, importing, and sales. In transactions with other businesses, the branch office concludes contracts as the representative of its head office.

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

Either a branch office or a corporation may enter into business activities by its own name as an entity. Tax rates are also fundamentally the same for a branch office or a corporation.

- 1) A new management body need not be set up for a branch and there is no detailed statutory requirement for the management of a branch. While a corporation must have statutory officers or a management body such as directors, auditors, board of directors meetings and shareholders meetings, a branch needs a representative only.
- 2) Dividends paid by a 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.
- 4) Interest or royalty paid by the head office for activities of its branch, may be deducted by its branch although such interest or royalty is subject to withholding tax.

## Comparison of types of business operation in Japan

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

	Branch office	Subsidiary company		
		Kabushiki-Kaisha (joint-stock corporation)	Godo-Kaisha (limited liability company (LLC))	Limited liability partnership (LLP)
<b>Restrictions on equity participation</b>	Notification not required with the Bank of Japan	Notification must be filed with the Bank of Japan	Notification must be filed with the Bank of Japan	Notification need not be filed with the Bank of Japan
<b>Capital</b>	No capital	1 yen or more(*1)	1 yen or more(*1)	2 yen or more (if 2 partners)
<b>Number of investors</b>	-	1 or more	1 or more	2 or more(*3)
<b>Liability of equity participants/parent company toward creditors</b>	Unlimited	Limited to amount of equity participation	Limited to amount of equity participation	Limited to amount of equity participation
<b>Transfer of equity participation share</b>	No equity participation share	May be transferred freely in principle. May be stipulated in articles of incorporation that approval of Board of Directors is needed for transfer of shares.	Unanimous approval of equity participants (members) required	Unanimous approval of partners required
<b>Number of executives required</b>	Representative in Japan. 1 or more(*2)	See page 2,3	No legally stipulated minimum. In principle, all members are executive officers, but a representative member may be appointed(*2).	No legally stipulated minimum. All partners are executive officers(*3).
<b>Legally stipulated term of office for executives</b>	No legally stipulated term	See page 2,3	No legally stipulated term	No legally stipulated term
<b>Regular general meeting of shareholders (members)</b>	Not required	In principle, must be held every year	Not required	Not required
<b>Possibility of public offer of stock (equity participation share)</b>	No equity participation share	Possible	Not possible	Not possible
<b>Possibility of reorganization into joint-stock corporation</b>	Not possible. Need to separately close branch office and establish joint-stock corporation(*4)	-	Possible	Not possible. Need to separately dissolve partnership and establish joint-stock corporation(*5)
<b>Distribution of profits and losses</b>	-	Allocated according to equity participation ratio	May be allocated at a different rate from equity participation rate if specified in articles of association	May be freely allocated with the unanimous approval of partners
<b>Taxation of profits</b>	Income arising within Japan is in principle taxed	Taxed according to profits of joint-stock corporation and profits allocated to shareholders	Taxed according to profits of Godo Kaisha and profits allocated to participants	No taxation of partnerships themselves. Taxation of profits allocated to partners

(\*1) Although establishment with capital of zero yen is theoretically possible, approval is granted ex post facto, and it is not in practice possible to incorporate a company without paying in capital.

(\*2) At least one representative must have an address in and be resident in Japan.

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

(\*4) Refer "Closure of branch offices".

(\*5) Refer "Dissolution and liquidation of limited liability partnerships".

[Source: Government Agency]

## Comparison regarding directors of Kabushiki-Kaisha (joint-stock corporations) (if no committee is established)

		Small and medium companies (joint-stock corporations with capital of less than 500 million yen and total liabilities of less than 20 billion yen)		Large companies (joint stock corporations with capital of 500 million yen or more or total liabilities of 20 billion yen or more)		
		Kabushiki Joto Seigen Kaisha (joint-stock corporations subject to restrictions on the transfer of issued shares)	Kokai Kaisha (publicly traded joint-stock corporations that are not Kabushiki Joto Seigen Kaisha)	Kabushiki Joto Seigen Kaisha (joint-stock corporations subject to restrictions on the transfer of issued shares)	Kokai Kaisha (publicly traded joint-stock corporations that are not Kabushiki Joto Seigen Kaisha)	
No committee established	Directors	No.	Appointment of 1 or more required. Executive officer with right of representation if no representative director is appointed(*1).	Appointment of 3 or more required	Appointment of 1 or more required. Executive officer with right of representation if no representative director is appointed(*1).	Appointment of 3 or more required
		Term	2 years in principle. Extendable up to 10 years.	2 years	2 years in principle. Extendable up to 10 years.	2 years
	Board of directors (3 directors or more)	Establishment optional. Establishment required if board of auditors is established.	Establishment required	Establishment optional. Establishment required if board of auditors is established.	Establishment required	
	Representative director(s)	Appointment possible if 2 or more directors appointed. Executive officer with right of representation(*1).	Appointment of 1 or more required. Executive officer with right of representation(*1).	Appointment possible if 2 or more directors appointed. Executive officer with right of representation(*1).	Appointment of 1 or more required. Executive officer with right of representation(*1).	
	Executive officers	Appointment not possible				
	Auditors	No.	1 or more may be appointed. However, appointment of 1 or more is required if a board of directors is established and no accounting counselor is appointed	Appointment of 1 or more required		Appointment of 3 or more required
		Term	4 years in principle. Extendable up to 10 years.	4 years	4 years in principle. Extendable up to 10 years.	4 years
	Board of auditors (3 or more auditors)	Establishment possible			Establishment required	
	Accounting auditor	Appointment	Appointment possible		Appointment necessary	
		Term	1 year			
Accounting councilor(*2)	Appointment possible	Appointment possible. However, 1 or more must be appointed if a board of directors is established and no auditor is appointed.	Appointment possible			
	Term	2 years in principle. Extendable up to 10 years.	2 years	2 years in principle. Extendable up to 10 years.	2 years	

(\*1) At least one director with the right of representation must have an address in and reside in Japan.

(\*2) An agent of a company newly established under the Corporate Law who must be a certified public tax attorney or certified public accountant. An auditing councilor prepares financial documents in association with the directors, and may not hold another position as well, such as director, auditor, or accounting auditor.

[Source: Government Agency]

## Comparison regarding directors of Kabushiki-Kaisha (joint-stock corporations) (if a committee is established)

		Small and medium companies (joint-stock corporations with capital of less than 500 million yen and total liabilities of less than 20 billion yen)		Large companies (joint stock corporations with capital of 500 million yen or more or total liabilities of 20 billion yen or more)		
		Kabushiki Joto Seigen Kaisha (joint-stock corporations subject to restrictions on the transfer of issued shares)	Kokai Kaisha (publicly traded joint-stock corporations that are not Kabushiki Joto Seigen Kaisha)	Kabushiki Joto Seigen Kaisha (joint-stock corporations subject to restrictions on the transfer of issued shares)	Kokai Kaisha (publicly traded joint-stock corporations that are not Kabushiki Joto Seigen Kaisha)	
Committee established	<b>Directors</b>	Appointment of 3 or more required				
	<b>Term</b>	1 year				
	<b>Board of directors (3 or more directors)</b>	Establishment required				
	<b>Representative director</b>	Appointment not possible				
	<b>Executive</b>	Appointment of 1 or more required. Appointment of representative executive officer if 2 or more(*)				
	<b>Term</b>	1 year				
	<b>Auditors</b>	Appointment not possible				
	<b>Board of auditors (3 or more auditors)</b>	Appointment not possible				
	<b>Accounting auditor</b>	<b>Appointment</b>	Required			
		<b>Term</b>	1 year			
	<b>Accounting councilor</b>	<b>Appointment</b>	Possible (prepares financial statements in collaboration with directors)			
		<b>Term</b>	1 year			
	<b>Auditors committee</b>	Establishment required (for auditing, etc. of performance of duties by executive officers). Consists of 3 or more directors, of which at least half must be outside directors.				
	<b>Nominating committee</b>	Establishment required (to decide on proposed appointment and dismissal of directors for submission to the general meeting of shareholders). Consists of 3 or more directors, of which at least half must be outside directors.				
	<b>Benefit committee</b>	Establishment required (to determine compensation of executive officers, etc.). Consists of 3 or more directors, of which at least half must be outside directors.				

(\*) At least 1 executive officer with the right of representation must have an address in and reside in Japan.

[Source: Government Agency]