



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

Opening a Company in Japan

How a foreign company or entrepreneur sets up business presence in terms of 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 “**local Japanese subsidiary company**” such as **Kabushiki-Kaisha [K.K. Co.] (Joint-stock corporation)**, **Godo-Kaisha [G.K. Co.] Limited Liability Company (LLC)** and there are several other types of local company formations available. There is also a Japanese version of a **limited liability partnership (LLP)**, is not a corporation, but a partnership format.

Foreign companies doing some research will find that “administrative legal matters” re doing business in Japan post-registration may even sometimes easier compare to their own home-country!. With right professional assistance “Setting up a company & post-registration administrative operation” is quite simple and not that very difficult & complicated task, as many foreign companies or entrepreneur might have perceive it!

In recent past Japanese government has also taken efforts for attracting foreign businesses to Japan and made promises to solve inconvenience by removing language barriers in retail outlets, enhancing educational environment for expatriate children, further improving internet connectivity (Free Wi-Fi) etc.

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 following 4(four) formats:

- Representative Office
- Branch Office
- Subsidiary Company (Kabushiki-Kaisha or Godo-Kaisha)
- Limited Liability Partnership (LLP)

However to engage in commercial business activities in Japan the practical option is either to establish a “**branch office**” or a “**local subsidiary company**” as a legal entity.

Representative Office:

Representative office is generally established for carrying out market research & liaison activities on behalf of head office. It does not allow to conduct commercial business activities in Japan and **therefore no registration is required at the legal affairs bureau** nor be subjected to corporate tax under Japanese tax laws, except banking, security or similar businesses.

Branch Office

The simplest mode for a foreign company to establish a legal entity for commercial business operations in Japan is to set up a Branch Office. In terms of the range of business activities allowed, there are no basic differences between branch office and domestic corporations. Taxed on branch office income only and the rate is same as local co. For registration there is no requirement to establish statutory officers / management body, it only needs a **local physical address** (not a PO Box) & a **Representative in Japan** (must be a “**Resident in 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. Branch can register max. 2 (two) “Representative in Japan” but one must be a “**Resident in Japan**” & in addition a director / member of the parent co. with his / her personal overseas resident address.

Subsidiary Company

A foreign company willing to establish a subsidiary company may choose from the followings:

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

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

A subsidiary co. is a separate legal entity from the foreign parent co., therefore foreign company will bear the liability of an equity participant stipulated by law for all debts and credits generated by the activities of the subsidiary co. Minimum requirement for establishing a subsidiary co in Japan is to have a **local physical address** (not a PO Box) & a local **“Resident in Japan”**. [Please see the **“Note(a)”** below re a local **“Resident in Japan”**.]

*Please see **“Note”** below re exception allowed for “subsidiary co.” since the change of regulation effective Mar'15.*

Limited Liability Partnership (LLP)

This format also allows to do business by using a **Yugen Sekinin Jigyo Kumiai**. It is considered as 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 normally used for carrying out a time bound project. One partner must be a local **“Resident in Japan”**.

Option re 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. (Kabushiki-Kaisha or Godo-Kaisha)”**.

Note(a) re a local **“Resident in Japan”**: Either a Japanese or a foreign national, but in case of a foreign national the person must have an appropriate status of residence as per immigration law.

***“Note”** re exception allowed for “subsidiary co.” since the change of regulation effective Mar'15.*

Japanese govt. has allowed foreign co. to register a local **subsidiary co.** in Japan without a local “Resident in Japan”. [*In case of G.K. Co. the overseas investor must be a corporation*]

But in both cases it would require a temporarily a local **“Resident in Japan”** for the purpose of completing the procedure of paid-up capital for K.K. Co. & equity participation for G.K. Co. In case of a **K.K. Co.** a **“local resident shareholder”** & in case of a **G.K. Co.** a **“local resident member (equity holder)”**.

- Local resident’s personal bank account is used for paid-up capital / equity procedure for registration purpose.
- Once the registration is completed the local resident’s token share / equity is transferred back to the overseas investor through an internal co. document duly endorsed by both parties.

- However, in the “Notification to **Bank of Japan**” the share / equity participation at the time of registration shall be reflected & it cannot be amended post-registration.
- The reflection of 100% investment by the foreign investor shall reflect on the company tax-return document once the first company tax return is filed to the tax authorities.

Some other related matters for reference: [For subsidiary co. without a “local **“Resident in Japan”**”]

- ❖ Re opening Co. Bank a/c: For past several years opening an “ordinary bank a/c” (Futsu Koza) even for local co. owned by local citizen or resident has become stringent. Usually it takes about two(2) weeks for bank to check & evaluate the docs & to convey their final decision at their discretion. So far for a foreign owned small & medium size subsidiary co. with a “local resident in Japan” on board going through the same process with further scrutiny but with all required docs in place mostly received favorable decision!
- ❖ Our observation: However, for the subsidiary co. registered without a local **“Resident in Japan”** under the new regulation does not seem to be getting the same treatment as mentioned above. It appears that local banks are not on the same page with the Japanese govt. when it comes to the new co. regulation effective Mar’15. According to news article published in the past it seems that Japanese govt. wanted to make it more flexible for foreign co. to open a subsidiary co. in Japan. With regard to Co. Bank a/c perhaps these companies can consider to operate business in Japan by opening a overseas bank a/c in the name of the subsidiary co. in Japan!
- ❖ Re the perception of local business partner(s) and or client(s) in Japan doing business with a foreign owned subsidiary co. without any local resident director / executive officer is a matter to be kept in mind! This issue would going to vary case by case depending upon the new co.’s purpose, activities & their business contacts (including proposed business contacts) in Japan!
- ❖ The above points are for reference only.

Japan Representative Office

Representative office is generally established for carrying out preparatory and supporting tasks aimed at enabling foreign companies to engage in full-scale commercial business operations in Japan in future.

Representative office is generally established for carrying out market research & liaison activities on behalf of head office. It does not allow to conduct commercial business activities in Japan and **therefore no registration is required at the legal affairs bureau nor 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 basic research and other activities to support the undertakings of the foreign corporation.
- Purchasing & storing of goods on behalf of the head office (parent company in 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 representative offices do not conduct business in Japan, they are not regarded as a permanent establishment and are therefore not subject to corporate taxes.
- ❖ However, the advantage of no required reporting does not apply 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 who is a resident in Japan.
- ❖ It is possible for a representative office to 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.
- ❖ A representative office is not allowed to do business in Japan, whether it expects a profit or not.
- ❖ Foreign corporations intending to do commercial business activities in Japan may, however, not use the representative office format. Their choices are establishing a branch office or forming a subsidiary domestic corporation (Local Company 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 mode for a foreign company to establish a legal entity for commercial business operations in Japan is to set up a branch office. 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 is 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, but instead is deemed to be within the umbrella of corporate status of the parent company outside of Japan. At the time of registration of a branch office in Japan thus there is no requirement to establish statutory officers / management body such as directors, auditors, but a branch office only needs a **"A Representative in Japan"**. Branch office can register max. 2 (two) "Representative in Japan" but one must be a "Resident in Japan".

In general, therefore, the foreign parent co. of branch office is ultimately responsible for all debts and credits generated by the activities of its Japan branch office.

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

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

A branch office in Japan is obliged to submit corporate tax return to local authority within two months from the date of its closing of fiscal year and fiscal year of branch office is registered in Japan as per the



parent company's fiscal year in home country. Tax applies on the net income generated in Japan branch office as per local regulation and rates applied are same as of 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 {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 office 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 after the registration.

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

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

Either a branch office or a domestic corporation may enter into business activities by its own name as an entity. Tax rates are also fundamentally 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 must have statutory officers or a management body such as directors, auditors, 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 purpose.
- 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.
- 5) Local "Resident in Japan": Branch must have a "local resident in Japan" out of the max. two "Representative in Japan" that is allowed for registration. However, in case of a local "subsidiary co." under new law effective Mar'15 it is no more mandatory to have "a local "resident" director" in case of K.K. co. & "Member / Executive Officer" in case of G.K. co. But in case of a G.K. co. the investor must be an overseas corporation! (But subsidiary co. need a "Resident in Japan" temporarily for registration)

Establishing a Subsidiary Co in Japan

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

- (a) **Kabushiki-Kaisha** [K.K. Co.] (Joint-stock corporation) {Kabushiki Joto Seigen Kaisha – (If No Committee is Established)}
- (b) **Godō-Kaisha** [G.K. 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, but they are rarely chosen in practice because equity participants burden is unlimited rather than limited liability.

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

For incorporation of either a K.K. Co. or G.K. Co. the minimum common criteria is as follows:

- A **“local address in Japan”** for the co.’s “Registered Office Address” (physical address and not a P.O. Box)
- A local **“Resident in Japan”** (Japanese or foreigner) as a "Resident Director / Executive Officer" (*in case of a foreigner his / her “Visa status” need to be appropriate for said role as per immigration law*)

Note: Effective **Mar’15** Japanese govt. has allowed foreign co. to register a local **subsidiary co.** in Japan without a local **“Resident in Japan”**. [*In case of G.K. Co. the overseas investor must be a corporation*]

The features of K.K. Co. and G.K. Co. at a glance:

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

Timeframe for registration: Depends on the type of entity & structure of investors, directors (executive officers) etc. Upon applying at Legal Affairs Bureau for registration it takes about 2(two) weeks to obtain company registration certificate. For further details please refer to registration flowchart of K.K. Co. & G.K. Co.

Comparison between Japan K.K. Co. and G.K. Co.

	K.K. Co. (Kabushiki Joto Seigen Kaisha) [If No Committee is Established]	G.K. Co. (Godo-Kaisha) [Limited Liability Co] LLC
Transfer of equity participation share	May be transferred freely in principle. May be stipulated in articles of incorporation so that approval of Board of Directors is needed for transfer of shares.	Unanimous approval of equity participants (members) required
Number of executives required	Appointment of 1 or more required. Representative director with 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. Extendable 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 may be stipulated otherwise in "Articles of Association"
Regular general meeting of shareholders / members	In principle, must be held every year	Not required
Possibility of 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” and “Subsidiary Co.”

	Branch Office	Subsidiary Company	
		Kabushiki-Kaisha {(Kabushiki Joto Seigen Kaisha) (If No Committee is Established)}	Godo-Kaisha 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 amount of equity participation	Limited to amount of equity participation
Transfer of equity participation share	Not applicable	May be transferred freely in principle. May be stipulated in articles of incorporation so that approval of Board of Directors is needed for transfer of shares.	Unanimous approval of equity participants (members) required
Number of executives required	Representative in Japan - 1 or 2 (*2)	Appointment of 1 or more (*2) . Representative director with 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, must be held every year	Not required
Possibility of public offer of stock	Not applicable	Possible	Not possible
Possibility of reorganization into 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 K.K. Co and profits allocated to shareholders	Taxed on profits according to a G.K. Co and profits allocated to members

(*1) Establishment with zero yen capital is theoretically possible but in practice to incorporate without paying capital is not possible.

(*2) At least one representative must be a “Resident in Japan”. [Except for subsidiary company under new regulation effective Mar’15, however in case of a G.K. Co. in such case investor must be an overseas company]

(*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 individuals 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.

		Subsidiary Company		Partnership Business
	Branch Office	Kabushiki-Kaisha (K.K. Co.) (Joint-stock Corporation) {(Kabushiki Joto Seigen Kaisha) (If No Committee is Established)}	Godō-Kaisha (G.K. Co.) Limited Liability Co (LLC)	Limited Liability Partnership (LLP)
Restrictions on equity participation	Notification not required with the Bank of Japan (Except certain 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 certain 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 amount of equity participation	Limited to amount of equity participation	Limited to amount of equity participation
Transfer of equity participation share	Not applicable	May be transferred freely in principle. May be stipulated in articles of incorporation so that approval of Board of Directors is needed for transfer of shares.	Unanimous approval of equity participants (members) required	Unanimous approval of partners required
Number of executives required	Representative in Japan - 1 or 2(*2)	Appointment of 1 or more (*2). Representative director with 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 a 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	2 years in principle. Extendable up to 10 years	No legally stipulated term	No legally stipulated term
Regular general meeting of shareholders (members)	Not required	In principle, must be held every year	Not required	Not required
Possibility of public offer of stock	Not applicable	Possible	Not possible	Not possible
Possibility of reorganization into joint-stock corporation	Not possible. Need to separately close branch office and establish joint-stock corporation (*4)	N/A	Possible	Not possible. Need to separately dissolve partnership and establish joint-stock corporation
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 partnership and establish a KK or GK Co.
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	May be 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 K.K. Co and profits allocated to shareholders	Taxed on profits according to a G.K. Co. and profits allocated to members	No taxation on LLP. Taxation of profits allocated to partners



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(*1) Establishment with zero yen capital is theoretically possible but in practice to incorporate without paying capital is not possible.

(*2) At least one representative must be a "Resident in Japan". [Except for subsidiary company under new regulation effective Mar'15, however in case of a G.K. Co. in such case investor must be an overseas company]

(*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 to "Closure of branch office" for details.

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