
Establishing a Subsidiary Co in Japan

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”**.]

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.

*Please see **“Note”** below 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 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!

- ❖ 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 thought that these companies even can 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.

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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