

Japan Branch Office vs Subsidiary Local Co. (KK Co. or GK Co.)

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 the 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 (KK Co. or GK Co.)

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 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 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 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 local resident director" in the case of KK co. & "Member / Executive Officer" in case of GK co.

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

- A "Japan physical address" for the co.'s "Registered Office Address" (physical address and not a P.O. 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.

Comparison between Japan "Branch Office" & "Subsidiary Company"

	Branch Office	Subsidiary Company	
		Kabushiki-Kaisha (KK) (Kabushiki Joto Seigen Kaisha) [If No Committee is Established]	Godo-Kaisha (GK) 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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