

## Opening a Subsidiary Company (Kabushiki-Kaisha or Godo-Kaisha) in Japan

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

- (a) **Kabushiki-Kaisha [KK Co.]** (Joint-stock corporation) {Kabushiki Joto Seigen Kaisha – (If No Committee is Established)}
- (b) **Godo-Kaisha [GK 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. Still, they are rarely chosen in practice because equity participant's burden is unlimited rather than 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 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:** Effective Mar'2015 Japanese govt has allowed foreign companies to register a local subsidiary co in Japan without a "Resident of Japan."

**Paid-up Capital procedure:** Any of the following options are available.

- 1) The investor shareholder having a bank account with a branch of a Japanese bank in the home country;
- 2) The investor shareholder is temporarily using a bank account of a "Resident of Japan." However, in this case, the below-mentioned steps need to be followed:
  - Japan resident's personal 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 time of registration 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.

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

- ❖ Re-opening Co. Bank a/c: The procedures to open a company/corporate bank account in Japan have become stringent for several years. Please note that with these changes in the banking system for a new company (KK Co. or GK Co.), opening a company Bank account after the registration screening process and procedure varies from bank to bank. The screening of bank account applications may take two to four weeks, and the final decision is at the bank's discretion.
- ❖ Our observation: Foreign-owned small & medium size subsidiary co. registered without a "Resident in Japan" under the new regulation face a challenging situation opening a new Co. Bank a/c. It appears that local banks are not on the same page with the Japanese govt when it

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comes to the new regulation effective March'15! However, these companies can consider operating business in Japan through an overseas/off-shore co. Bank a/c opened in the name of the subsidiary co. in Japan!

- ❖ The foreign company can contact the three Japanese Mega Banks i.e. Sumitomo Mitsui Banking Corporation (SMBC), The Bank of Tokyo-Mitsubishi UFJ, Ltd. & Mizuho Bank's International Business Department for direct inquiries.
- ❖ The above points are for reference only.

## The features of KK Co. and GK 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 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 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 approval 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. However, for completing the procedure of paid-up capital/equity, a 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 and structure of investors, directors (executive officers), etc. Upon applying to Legal Affairs Bureau for registration, it takes about 2(two) weeks to obtain a company registration certificate. For further details, please refer to registration procedural steps and flowchart of [KK Co.](#) and [GK Co.](#)

## Comparison between Japanese Kabushiki Kaisha & Godo-Kaisha

	<b>KK Co.</b> <b>(Kabushiki Joto Seigen Kaisha)</b> <b>[If No Committee is Established]</b>	<b>GK Co.</b> <b>(Godo-Kaisha)</b> <b>[Limited Liability Co] LLC</b>
<b>Transfer of equity participation share</b>	Maybe transferred freely in principle. Maybe stipulated in articles of incorporation so that approval of the Board of Directors is needed for the transfer of shares.	Unanimous approval of equity participants (members) required.
<b>Number of executives required</b>	Appointment of one (1) or more required. 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 minimum. In principle, all members are executive officers, but a representative member may be appointed.
<b>Legally stipulated term of office for executives</b>	2 years in principle. Expandable up to 10 years	No legally stipulated term
<b>Possibility of a Company to be a Director</b>	Not possible	Possible. However, the co should nominate an individual staff from the co.
<b>Director must be from shareholder /member</b>	Not necessarily	In principle, all members are executive officers, but maybe stipulated otherwise in "Articles of Association"
<b>Regular general meeting of shareholders/members</b>	In principle, must be held every year	Not required
<b>Possibility of the public offer of stock</b>	Possible	Not possible
<b>Possibility of reorganization</b>	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)
<b>Distribution of profits and losses</b>	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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