

1.2 Comparison of types of business operation

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

<Table 1-1>

	Branch office	Subsidiary company	
		Kabushiki-Kaisha (joint-stock corporation)	Godo-Kaisha (limited liability company (LLC))
Capital	No capital	1 yen or more* ¹	1 yen or more* ¹
Number of investors	---	1 or more	1 or more
Liability of equity participants/parent company toward creditors	Unlimited	Limited to amount of equity participation	Limited to amount of equity participation
Transfer of equity participation share	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
Number of executives required	Representative in Japan. 1 or more* ²	See Tables 1-2, 1-3	No legally stipulated minimum. 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	See Tables 1-2, 1-3	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 (equity participation share)	No equity participation share	Possible	Not possible
Possibility of reorganization into joint-stock corporation	Not possible. Need to separately close branch office and register resignation of all representatives in Japan, and establish joint-stock corporation* ³	--- (A joint-stock corporation may be reorganized into a limited liability company.)	Possible
Distribution of profits and losses	---	Allocated according to equity participation ratio	May be allocated at a different rate from equity participation rate if specified in articles of association
Taxation of profits	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

(Note) Regardless of the type of operation, prior notification must be filed with the Bank of Japan if establishing an operation in an industry in which the Foreign Exchange and Foreign Trade Act requires that such notification be filed when making an inward direct investment.

*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 When a branch office is to be established in Japan, at least one representative must have an address in and be a resident in Japan. Said address requirement does not apply to a representative member (a person performing duties of such member, if such representative is a corporation) of a Godo-Kaisha on and after March 16, 2015.

*3 See 1.7.1 "Closure of a branch office and resignation of all representatives in Japan".

SECTION 1 Incorporating Your Business

Comparison regarding directors of Kabushiki-Kaisha (joint-stock corporations) (if no nominating committee, etc. or committee of audit, etc. *1 is established)

<Table 1-2>

		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)
Directors	No.	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 *2	Appointment of 3 or more 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 *2	Appointment of 3 or more required*3
	Term	1 to 10 years. Extendable up to 10 years	2 years	1 to 10 years. 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 *2	Appointment of 1 or more required. Executive officer with right of representation*2	Appointment possible if 2 or more directors appointed. Executive officer with right of representation *2	Appointment of 1 or more required. Executive officer with right of representation *2
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*4	Appointment	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 A "company with audit and supervisory committee" was newly established due to the revisions to the Companies Act (enforced on May 1, 2015). A "company with nominating committee, etc." used to be called a "company with committees" before the said revisions.

*2 The requirement that at least one representative director must be domiciled in Japan is no longer applied to Kabushiki-Kaisha on and after March 16, 2015.

*3 If a company subject to the Financial Instruments and Exchange Act has not appointed an outside director by the last day of every business year, it must explain the reason why appointing an outside director would not be appropriate at its annual shareholders meeting.

*4 An accounting councilor 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.

**Comparison regarding directors of Kabushiki-Kaisha (joint-stock corporations)
(if a nominating committee, etc. are established *¹)**

<Table 1-3>

		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)
Directors	No.	Appointment of 3 or more required		
	Term	1 year		
Board of directors (3 or more directors)		Establishment required		
Representative director		Appointment not possible		
Executive	No.	Appointment of 1 or more required. Appointment of representative executive officer if 2 or more * ²		
	Term	1 year		
Auditors		Appointment not possible		
Board of auditors (3 or more auditors)		Appointment not possible		
Accounting auditor	Appointment	Required		
	Term	1 year		
Accounting councilor	Appointment	Possible		
	Term	1 year		
Auditors committee		Establishment required (for auditing, etc. of performance of duties by executive officers). Consists of 3 or more directors, of which a majority must be outside directors* ³		
Nominating committee		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 a majority must be outside directors* ³		
Benefit committee		Establishment required (to determine compensation of executive officers, etc.). Consists of 3 or more directors, of which a majority must be outside directors* ³		

*1 "Companies with nominating committees" used to be called "companies with committees" before the revisions to the Companies Act (enforced on May 1, 2015).

*2 The requirement that at least one representative executive officer must be domiciled in Japan is no longer applied to Kabushiki-Kaisha on and after March 16, 2015.

*3 Note that the requirements of outside directors will be altered by the enforcement of revisions to the Companies Act.

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Comparison regarding directors of joint-stock corporations (if an audit and supervisory committee*¹ is established)

<Table 1-4>

		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)
Directors (members of comm. of auditors, etc.)	No.	Appointment of 3 or more required ^{*2}		
	Term	2 year		
Directors (excl. members of comm. of auditors, etc.)	No.	Appointment of 1 or more required.		
	Term	1 year		
Board of directors		Establishment required		
Representative director		Appointment required ^{*3}		
Auditors		Appointment not possible		
Board of auditors		Appointment not possible		
Accounting auditor	Appointment	Required		
	Term	1 year		
Accounting councilor	Appointment	Possible		
	Term	1 year		
Auditors committee		Establishment required (for audit, etc. of performance of duties by directors). Consists of 3 or more directors, a majority of which must be outside directors ^{*2}		

*1 A "Company with audit and supervisory committee" was newly established due to the revisions to the Companies Act (enforced on May 1, 2015).

*2 A majority must be outside directors. They do not have to be full time.

*3 The requirement that at least one representative director must be domiciled in Japan is no longer applied to Kabushiki-Kaisha on and after March 16, 2015.