

Japanese Branch-Office Registration and Setup: Overview and Services

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1. Japanese Branch-Office

A foreign company's Japanese branch-office is an extension of its foreign head-office but generally treated as a regular domestic Japanese company.

A branch-office in Japan must register with the Japanese government, must have a registered office in Japan, and must have a representative manager resident in Japan.

A Japanese branch-office must file annual financial statements and an income tax-return within 30 days of its financial yearend (60 days if it files for an extension before the end of its financial year).

If a Japanese branch-office's foreign head-office has JPY10,000,000 or more paid-in capital, or the branch-office had more than JPY10,000,000 income in a previous financial year, it must also file a yearend consumption tax return.

1.1. Corporate Veil

A Japanese branch-office limits the liability of its representative manager but, because it is legally an extension of its foreign head-office, it does not create a corporate veil to shield the foreign head-office from litigation. Be aware that an unhappy branch-office employee or customer could sue the foreign head-office in its home jurisdiction and it would be liable in such an action.

1.2. Income Tax Treatment

A Japanese branch-office must file notifications with the National Tax Agency, the prefectural (or metropolitan if in Tokyo), and city (ward if in central Tokyo) tax offices within 60 days of registration. If the notification is not filed, the branch-office will not have "blue-form" status and will not be able to carry-forward losses from its first financial year to offset against future profits. A branch-office in Japan with blue-form status can carry-forward losses to offset against income taxes on future profits for up to ten years.

A branch-office can set its financial yearend to be any date within 12 months of its registration.

A branch-office must file annual financial statements (monthly profit and loss statement, and balance sheet) and income tax-returns (national and local), and pay income taxes, within 30 days of the financial yearend (60 days if it applied for a 30-day filing extension before its financial yearend). A branch-office must attach a copy of its head-office's nonconsolidated balance-sheet to its financial statements.

If a branch-office pays income tax on profits at the end of a financial year, then the Japanese tax office will automatically demand an interim income tax payment of 50% of such paid amount at the end of the next financial half-year.

If a branch-office's head-office has JPY100,000,000 or more paid-in capital, the Japanese tax-office considers the branch-office as a large enterprise for tax purposes, drastically increasing statutory minimum tax liabilities.

1.3. Consumption Tax (VAT, Sales Tax) Treatment

If a Japanese branch-office's foreign head-office has JPY10,000,000 or more paid-in capital, or the branch-office had more than JPY10,000,000 income in a previous financial year, it must file a yearend consumption tax return, and pay the consumption tax due, within 30 days of its financial yearend (60 days if it applied for a 30-day filing extension before a previous financial yearend).

If a branch-office pays consumption tax at the end of a financial year, then the Japanese tax office will automatically demand an interim consumption tax payment of 50% of such paid amount at the end of the next financial half-year.

1.4. Permanent Establishment

A Japanese branch-office creates a permanent establishment of its overseas head-office in Japan for tax purposes. If the foreign head-office also deals through other distributors or directly with customers in Japan, its income from those other distributors and customers must be declared and taxed as part of the branch-office's income. The branch-office must declare all the foreign head-office's Japanese income but only pays taxes on that part in which it was involved, so care is needed to properly separate the head-office's direct business and that of the branch-office.

1.5. Intercompany Management Fees

A foreign company can charge intercompany management fees to its Japanese branch-office. The amount of intercompany management fees must pass an arms-length test to prove the cost is no more expensive than if the services were purchased from an independent third-party supplier. All intercompany management fees must be fully documented and copies of such documents attached to the branch-office's tax-return when filed.

1.6. Intercompany Loans

Any interest a foreign head-office charges on loans to its Japanese branch-office is generally not tax-deductible as such loans are considered intra-company cash transfers.

1.7. Tax Audits

The National Tax Agency routinely audits branch-offices every 5 – 7 years, or more frequently if late in filing a tax-return or claiming a refund of taxes paid.

The National Tax Agency also has the right to audit the foreign head-office's accounts as part of auditing its branch-office's accounts. To ease the National Tax Agency's task, a Japanese branch-office must file a copy of its foreign head-office's most recent balance-sheet at each financial yearend.

1.8. Corporate Governance

A branch-office in Japan is managed by a single representative manager who has unlimited authority to bind the branch-office (and thereby the overseas head-office) to loans, purchases, and other commitments.

There is no simple way to limit the authority of the representative manager of a branch-office except using a law-office or independent third-party service provider to manage access to the registered representative seal, the seal ID card, and bank-accounts. For this reason, it may be best not to elect an employee to become the representative manager of a Japanese branch-office until that person's character is fully known.

Shareholders must also note that any employee with access to a branch-office's registered representative seal and seal ID card can irrevocably bind the entity to a commitment. For this

reason, it is best to securely store the registered representative seal and its ID card and implement an approval system for applying it to documents.

1.9. Inventory

A branch-office in Japan must be careful how it manages inventory in its accounts. The Japanese tax-office can demand proof of where the branch-office buys inventory and proof it buys it on an arms-length basis. In general, the tax-office assumes inventory is owned by the branch-office and will expect the inventory to be recorded on its balance-sheet and P&L for income tax calculation purposes.

2. Branch-Office Registration Services

This section describes the process to register a foreign company's branch-office in Tokyo. The branch-office must have a representative manager who is a qualified resident of Japan (where "qualified" means a Japanese national, or a foreigner with resident status not limited to a specific employment or company and which allows him or her to register a personal seal).

2.1. Motion of the Board of Directors

We will need an authorized copy of the minutes of the meeting of the foreign company's Board of Directors, or the Consent to Action of its authorized officer, authorizing the opening of the branch-office in Japan.

2.2. Representative Manager's Affidavit

We will create a Representative's Affidavit in English and Japanese, although only the Japanese text will have official meaning.

To create the Representative's Affidavit, we will need the information below.

a. Articles of Incorporation and By-Laws.

We will need a notarized copy of the foreign company's current Articles of Incorporation and By-Laws (or equivalent).

b. Certificate of Incorporation.

We will need a notarized copy of the foreign company's current Certificate of Incorporation.

c. Authorized Shares and Issued Shares

We will need details of the numbers of the foreign company's authorized shares and issued shares.

d. Directors

We will need details of the foreign company's directors.

e. Details of Other Branch-Offices

We will need details of all other branch-offices the foreign company has registered elsewhere.

f. Scope of Business

We will need details of the branch-office's proposed business. A branch-office can only do the specific business described in the Representative's Affidavit and the business must also appear in foreign company's Articles of Incorporation or By-Laws. The branch-office can later change its scope of business by filing a revised notarized Representative's Affidavit.

g. **Registered Office Address**

We will need the address of the branch-office's registered office in Japan where it can receive official documents. If needed, we can arrange an "address only" service in a prestigious central Tokyo area for a monthly fee.

h. **Representative**

We will need the name and address of the branch-office's representative in Japan and a copy of his or her Japanese registered seal certificate. If needed, we can provide a "name only" representative service for a monthly fee. The representative's name and address are public record and we recommend the representative takes legal advice about the liabilities of the representative of a branch-office in Japan.

i. **Date of Establishment**

We will need to know the date the branch-office started business in Japan, which must be no more than 21 days before the date of filing the Representative's Affidavit.

j. **Financial Year**

We will need to know the start and end dates of the branch-office's financial year.

2.3. Notarization of the Affidavit

The representative must sign the affidavit in the presence of the notary public of the embassy in Japan of the country in which the foreign company is registered.

2.4. Representative Seal

We will order and register a wood seal for the branch-office. The representative seal is registered in the representative manager's name and only he or she can legally apply the seal to documents.

2.5. Application for Registration of Corporate Seal

The representative must apply his or her registered personal seal to the application for registration of the representative seal.

2.6. Filing

We will file the notarized Representative's Affidavit and the Application for Registration of Representative Seal, with the Bureau of Legal Affairs in the area where the branch-office has its registered office.

At this point the branch-office will legally exist but its name will not appear on the official register of companies for 7 – 10 days.

2.7. Receipt of Certificate of Registration and Representative Seal ID Card

7 – 10 days after filing, we will collect an official copy of the branch-office's Certificate of Registration, and the Representative Seal ID Card, from the Bureau of Legal Affairs in the area where the branch-office has its registered office.

2.8. Branch-Office Registration Fee

Our standard fee for registering a branch-office in Tokyo is Japanese Yen 283,000 plus 8% sales tax and any expenses such as Fedex.

This fee includes all government filing fees and legal expenses for initial registration with the Ministry of Justice, but excludes any provision of representative, registered office address, or business support services.

The fee assumes a standard registration. We will charge extra fees for any added consulting services (such as understanding industry-specific compliance or regulatory needs), or for any non-standard matters. This fee assumes the branch-office is of a company controlled by shareholders: for LLCs or other companies controlled by multiple members, additional fees will apply if all members must sign documents.