



GLOBAL EXPANSION GUIDEBOOK CORPORATE

Austria



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INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Corporate*.

GLOBAL EXPANSION GUIDEBOOK SERIES

To compete and be successful today, companies need to develop and scale their businesses globally. Each country presents its own set of unique laws, rules and regulations and business practices that companies must understand to be successful. In order to help clients meet the opportunities and challenges of expanding internationally, we have created a handy set of global guides that cover the basics companies need to know when going into and doing business in new countries. The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, intellectual property and technology, executive compensation, and tax laws in key jurisdictions around the world.

CORPORATE

The *Global Expansion Guidebook – Corporate* has been created based on our research, our experience and feedback we have received from clients in both established and emerging businesses that have expanded internationally. We hope it will be a helpful resource for you.

The *Global Expansion Guidebook – Corporate* covers corporate basics in 54 key jurisdictions across the Americas, Asia Pacific, Europe and the Middle East. We touch on a wide range of corporate issues for companies expanding internationally, including establishing a corporate presence and choice of entity, liability considerations, tax presence and tax filings, capital requirements, the formation process, director, officer and shareholder requirements, registration processes, office lease processes and possible exit strategies.

With more than 600 lawyers, DLA Piper's global Corporate group is one of the largest in the world, with one of the widest geographical footprints of any global law firm and experience across the legal areas companies need as they expand internationally. With both global experience and local knowledge, we partner with our clients wherever they do business to find solutions and manage their risk in relation to their challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to seek advice regarding the specific matters that concern you. If you wish to speak to any of our contributors, you may find their contact details at the end of the guide.

We hope you find this guide valuable, and we welcome your feedback.

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

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AUSTRIA



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FORM OF ENTITY

General Partnership (*Offene Gesellschaft, OG*)

An entity performing trading activities, the partners of which are fully liable for its debts with their entire assets. At the same time, all partners are managers of the business. Individuals or entities who are not partners must not be involved in the partnership's management.

Limited Partnership (*Kommanditgesellschaft, KG*)

An entity performing trading activities, with 1 or more general partners who have unlimited joint and several liability for all debts of the partnership, and 1 or more limited partners who restrict their liability for its debts to a certain amount which they pay to the entity. Those whose liability is restricted are excluded from the management of the limited partnership. External managers must not be appointed.

Limited Liability Company (*Gesellschaft mit beschränkter Haftung, GmbH*)

Separate and distinct legal entity. Managed by its managers (may be shareholders or external individuals) who are responsible for making business decisions and the operations of the company. Managers may be elected by the shareholders of the company or may be appointed in the articles of association. Managers may be shareholders of the company.

Flexible Company (*Flexible Kapitalgesellschaft, FlexKapG*)

Separate and distinct legal entity. Managed by its managers (may be shareholders or external individuals) who are responsible for making business decisions and the operations of the company. Managers may be elected by the shareholders of the company or may be appointed in the articles of association. Managers may be shareholders of the company.

Stock Corporation (*Aktiengesellschaft, AG*)

Separate and distinct legal entity. Managed by its management board (comprising of at least 1 individual) which is responsible for making major business decisions and overseeing general affairs of a corporation. The management board is elected by the supervisory board of a corporation. The supervisory board (mandatory for stock corporations) must comprise at least 3 individuals and is responsible for the supervision of the management board.

ENTITY SET UP

Stock corporation (Aktiengesellschaft or AG)

- In theory, unlimited number of shareholders (limited only by the number of shares as 1 share must correspond to at least EUR1).
- Generally, there is no personal liability of the shareholders.
- Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends.
- Minimum stated capital: EUR70,000; 1 share must at least correspond to EUR1.
- Two-tier board system: the management board is responsible for the day-to-day management, the supervisory board supervises management and grants its consent (in some cases mandatory) to certain business and transactions.
- Typical charter documents include: articles of incorporation, standing orders and organizational resolutions by the management board, the supervisory board and the AGM/EGM. Shares must be registered shares (except for listed entities which must (in nearly all instances) have bearer shares); therefore, a share register is required.
- Shareholders typically purchase stock in the corporation. Usually common stock but rarely preferred stock.
- Annual financial statements must be audited by an auditor and filed with Austrian companies registry.

Flexible Company (Flexible Kapitalgesellschaft, FlexKapG)

Unlimited number of shareholders allowed (limited only by the number of shares since 1 share must at least correspond to EUR1).

Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends. Minimum stated capital is EUR10,000; 1 share must at least correspond to EUR1. In addition to shares in the company, corporate participation value certificates may be issued which allow for a participation in the balance sheet profits.

1-tier management or 2-tier board system, depending on the size of the company. The management is responsible for the day-to-day management. The supervisory board, if established, supervises management and grants its consent (in some cases mandatory) to certain business and transactions.

Typical charter documents include:

- Articles of incorporation
- Standing orders and
- Organizational resolutions by the management board (if applicable), the supervisory board and the AGM /EGM.

The shares of each shareholder is registered with the Austrian companies registry. Holders of corporate participation value certificates are not registered with the Austrian companies register.

Depending on the size (established by the balance sheet total, turnover and number of employees), annual financial statements must be audited by an auditor and filed with the Austrian companies registry. Holders of corporate participation value certificates have no voting right in the AGM/EGM.

Limited liability company (*Gesellschaft mit beschränkter Haftung, GmbH*)

Unlimited number of shareholders allowed (limited only by the number of shares since one share must at least correspond to EUR70).

Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends Minimum stated capital: EUR35,000; 1 share must at least correspond to EUR70.

One-tier management or two-tier board system, depending on the size of the company: the management is responsible for the day-to-day management; the supervisory board, if established, supervises management and grants its consent (in some cases mandatory) to certain business and transactions.

Typical charter documents include:

Articles of incorporation

Standing orders and

Organizational resolutions by the management board, if applicable, the supervisory board and the AGM/EGM. The shares of each shareholder is registered with the Austrian companies registry.

Depending on the size (established by the balance sheet total, turnover and number of employees), annual financial statements must be audited by an auditor and filed with the Austrian companies registry.

MINIMUM CAPITAL REQUIREMENT

General Partnership and Limited Partnership

No minimum capital requirement.

Limited Liability Company

- EUR 10,000 minimum share capital, with at least EUR500 paid up in cash
- A GmbH privileged at foundation may be established: the minimum share capital is EUR 10,000, with at least EUR5,000 paid up in cash. The status as a GmbH privileged at foundation ends after 10 years after registration at the latest.
- Formation by contribution in kind is possible.

Stock Corporation

- EUR70,000 is the minimum share capital, with 25 percent of the minimum issue amount fully paid up in cash.
- Formation by contribution in kind is possible.

LEGAL LIABILITY

Limited Liability Company and Stock Corporation

Generally no personal liability of the shareholders (except for payment of minimum share contributions).

General Partnership and Limited Partnership

Partners of an OG are fully liable for its debts and liabilities with their entire assets.

Partners of a KG include 1 or more general partners who have unlimited joint and several liability for all debts of the KG and 1 or more limited partners with restricted liability for its debts to a certain amount.

TAX PRESENCE

Limited Liability Company and Stock Corporation

AG, FlexKapG and GmbH are taxed at 2 levels. First, the company/corporation pays a corporate income tax on its corporate income; then, the company/corporation distributes profits to stockholders, who are then taxed with income tax (withholding tax).

General Partnership and Limited Partnership

OG and KG are treated as being transparent for income tax purposes as there is only 1 level of taxation. The corporate profits "pass through" to the owners, who pay taxes on the profits at their individual tax rates.

INCORPORATION PROCESS

Stock corporation (AG)

Filing an application with the local court (companies registry) for registration, together with articles of association in the form of a notarial deed, notarized resolutions on the appointment of the management board and the supervisory board, and a written confirmation by the founders (ie, the future shareholder), the members of the management board and the supervisory board that the AG has been properly set up, as well as a confirmation by a local bank that the stated capital has been paid.

Limited liability company (GmbH)

Filing an application with the local court (companies registry) for registration, together with the articles of association in the form of a notarial deed, notarized resolutions on the appointment of the managing directors, and a confirmation by a local bank that the stated capital has been paid.

BUSINESS RECOGNITION

OG, KG, GmbH and AG are well regarded and widely used. GmbH is the most used form of a corporate entity in Austria. The legal form of the FlexKapG has only been possible since January 1, 2024, and therefore, there is not yet any market experience with that legal form.

SHAREHOLDER MEETING REQUIREMENTS

An ordinary shareholders' meeting must be held within the first 8 months of a business year.

A shareholders' meeting must also be held if requested by minority shareholders who hold in aggregate 5 percent of the corporation's entire share capital by providing the proposed agenda and a proposal for shareholders' resolutions to each item on the agenda.

Minutes of all shareholders' meetings must be taken in front of an Austrian notary public. A certified copy of the minutes must be filed with the companies register.

Limited liability company (GmbH) and Flexible Company (FlexKapG)

An ordinary general meeting must be held annually at the seat of the company if the resolution by circular consent is not permitted.

Minutes of general meetings must be taken and kept with the company's records. The same applies to written shareholders' resolutions; certain resolutions require minutes in the form of a notarial deed or notarization.

Extraordinary meetings must be held whenever required in the interest of a company and, in particular, in the event that either:

- More than half the share capital has been used or
- The company's equity ratio falls below 8 percent and its fictitious debt repayment term exceeds 15 years. In the latter cases, the commercial register must be notified of the shareholders' resolutions that have been passed.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Stock corporation (AG)

Any time a management decision is required.

Limited liability company (GmbH) and Flexible Company (FlexKapG)

Any time a management decision is required; however, it can be (and usually is) quite informal.

ANNUAL COMPANY TAX RETURNS

General Partnership and Limited Partnership

Profits "pass through" to the shareholders, who pay taxes at their individual level. However, the OG or KG may be required to file an annual tax declaration for calculation of profits which are passed through.

Limited Liability Company and Stock Corporation

Annually file corporate income tax returns.

BUSINESS REGISTRATION FILING REQUIREMENTS

Stock corporation (AG)

Initial registration as well as annual filings are required.

Limited liability company (GmbH) and Flexible Company (FlexKapG)

Initial registration as well as annual filings are required.

BUSINESS EXPANSION

Stock corporation (AG)

No need to change as business expands, unless any such expansion is not covered by the articles of association – in that case, approval by the shareholders' meeting with a 75-percent majority of the votes cast is necessary.

Limited liability company (GmbH) and Flexible Company (FlexKapG)

No need to change as business expands, unless any such expansion is not covered by the articles of association – in that case, approval by the shareholders' meeting with a 75 percent majority of the votes cast is necessary (unless the articles of association provide for a different majority, but in no case less than 50 percent of the votes cast).

EXIT STRATEGY

Stock corporation (AG)

Sell shares or a resolution on dissolution which is passed by the shareholders' meeting.

Limited liability company (GmbH)

Sell shares or a resolution on dissolution which is passed by the shareholders' meeting.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Stock corporation (AG)

Annual shareholders' meeting and at least 4 meetings of the supervisory board (at least each calendar quarter).

Limited liability company (GmbH) and Flexible Company (FlexKapG)

Annual shareholders' meeting and, if any, at least 4 meetings of the supervisory board (at least each calendar quarter).

DIRECTOR / OFFICER REQUIREMENTS

Stock corporation (AG)

At least 1 member of the management board is required and at least 3 members of the supervisory board (individuals only).

Limited liability company (GmbH) and Flexible Company (FlexKapG)

At least 1 managing director is required and, if at all, at least 3 members of the supervisory board are required.

For more information on directors' duties, see our [Global Guide to Directors' Duties](#).

LOCAL CORPORATE SECRETARY REQUIREMENT

Stock corporation (AG)

Not applicable for this jurisdiction.

Limited liability company (GmbH) and Flexible Company (FlexKapG)

Not applicable for this jurisdiction.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Stock corporation (AG)

Not applicable for this jurisdiction.

Limited liability company (GmbH) and Flexible Company (FlexKapG)

Not applicable for this jurisdiction.

LOCAL OFFICE LEASE REQUIREMENT

Stock corporation (AG)

None required for incorporation; however, an address must be filed with the companies registry (can be the address of a law firm).

Limited liability company (GmbH) and Flexible Company (FlexKapG)

None required for incorporation; however, an address must be filed with the commercial registry (can be the address of a law firm).

OTHER PHYSICAL PRESENCE REQUIREMENTS

Stock corporation (AG)

Not applicable for this jurisdiction.

Limited liability company (GmbH) and Flexible Company (FlexKapG)

Not applicable for this jurisdiction.

SUFFICIENCY OF VIRTUAL OFFICE

Stock corporation (AG)

An address for must be filed with the companies registry (can be the address of a law firm).

Limited liability company (GmbH) and Flexible Company (FlexKapG)

An address for service of documents must be filed with the companies registry (can be the address of a law firm).

PROVISION OF LOCAL REGISTERED ADDRESS BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Stock corporation (AG)

Allowed for incorporation.

Limited liability company (GmbH) and Flexible Company (FlexKapG)

Allowed for incorporation.

PROVISION OF LOCAL DIRECTOR OR CORPORATE SECRETARY BY LAW FIRM OR THIRD-PARTY SERVICE PROVIDER

Stock corporation (AG)

In theory, yes. In practice, hardly ever seen.

Limited liability company (GmbH) and Flexible Company (FlexKapG)

In theory, yes. In practice, hardly ever seen.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Stock corporation (AG)

In most cases, no, except for certain areas of business (eg, airline businesses, where at least 50 percent of the shares must be held by European shareholders).

Limited liability company (GmbH) and Flexible Company (FlexKapG)

In most cases, no, except for certain areas of business (eg, airline businesses, where at least 50 percent of the shares must be held by European shareholders).

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Stock corporation (AG)

No. However, please note that any member of the management board or the supervisory board is fully liable, whether acting as nominee or not.

Limited liability company (GmbH) and Flexible Company (FlexKapG)

No. However, please note that any managing director or the supervisory board is fully liable, whether acting as nominee or not.

SUMMARY OF DIRECTOR'S, OFFICER'S AND SHAREHOLDER'S AUTHORITY AND LIMITATIONS THEREOF

Stock corporation (AG)

Members of the management board are elected by the supervisory board and are the highest authority in the management of the corporation. Members of the management board may only be dismissed for certain reasons – for example, inability to manage or a vote against a member of the management board by the shareholders' meeting. Members of the management board must not be given orders by shareholders, and, in case such orders are given, they must be ignored.

Limited liability company (GmbH) and Flexible Company (FlexKapG)

Managing directors are elected by the shareholders' meeting and are the highest authority in the management of the corporation. Managing directors may be dismissed at any time, without stating any reasons (irrespective of any employment agreement). Managing directors can be given orders, and they are required to obey such orders (unless in conflict with the law).

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Stock corporation (AG)

Identity of members of the management board and the supervisory board is publicly disclosed; identity of shareholders of private, non-listed companies is not publicly disclosed (unless there is only 1 single shareholder; in that case, the identity of that single shareholder is to be disclosed in the companies registry).

Limited liability company (GmbH) and Flexible Company (FlexKapG)

Identity of managing directors (and the members of the supervisory board, if any) is publicly disclosed; identity of shareholders is also disclosed in the companies registry.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Stock corporation (AG)

There must be a minimum of 1 shareholder, and there is no maximum number. For members of the management board, the minimum number is 1, and there is no maximum number.

Limited liability company (GmbH) and Flexible Company (FlexKapG)

There must be a minimum of 1 shareholder, and there is no maximum number. For members of the supervisory board, the minimum number is 3; there must be at least 1 managing director.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Stock corporation (AG)

One shareholder is sufficient.

Limited liability company (GmbH) and Flexible Company (FlexKapG)

One shareholder is sufficient.

REMOVAL OF DIRECTORS OR OFFICERS

Stock corporation (AG)

Removal of the members of the supervisory board requires a vote by the shareholders' meeting (usually 75 percent of the votes cast, unless lowered by the articles of association; however, in no case less than 50 percent of the votes cast). Removal of the members of the management board requires a vote by the supervisory board, limited to important reasons.

Limited liability company (GmbH) and Flexible Company (FlexKapG)

Removal of the members of the supervisory board, as well as managing directors, requires a vote by the shareholders' meeting (usually 75 percent of the votes cast).

REQUIRED AND OPTIONAL OFFICERS

Stock corporation (AG)

A management board and supervisory board are required; in addition, a holder of special power of representation (called a *Prokurist*) may be appointed by the management board with the approval of the supervisory board.

Limited liability company (GmbH) and Flexible Company (FlexKapG)

Managing directors and, as the case may be, a supervisory board, are required; in addition, a holder of special power of representation (called a *Prokurist*) may be appointed by the managing directors.

BOARD MEETING REQUIREMENTS

Stock corporation (AG)

An annual shareholders' meeting and at least 4 supervisory board meetings (at least each calendar quarter) are required.

Limited liability company (GmbH) and Flexible Company (FlexKapG)

An annual shareholders' meeting and, if at all, at least 4 meetings of the supervisory board (at least each calendar quarter) are required.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Stock corporation (AG)

For a shareholders' meeting, the presence of 1 single shareholder is sufficient. Resolutions are passed with the simple majority of the votes cast, except for important decisions – for example, change of articles. A 75 percent majority vote is required.

Limited liability company (GmbH) and Flexible Company (FlexKapG)

For a shareholders' meeting, the presence of at least 10 percent of the shareholders (shareholders holding 10 percent of the shares) is required. Resolutions are passed with the simple majority of the votes cast, except for important decisions – for example, change of articles. A 75 percent majority vote is required.

MUST A BANK ACCOUNT BE OPENED PRIOR TO INCORPORATION, AND MUST THE BANK ACCOUNT BE LOCAL?

Stock corporation (AG)

No, either an Austrian bank account or a bank account with a CRR credit institution is required for incorporation. Alternatively, the payment can be made to a trust account of the involved notary public. The stated capital must be paid to that bank account, and the bank must provide a confirmation that the stated capital is available. Without such confirmation, the companies registry will not register the stock corporation. (But registration, no local bank account is required for the operation of the business).

Limited liability company (GmbH) and Flexible Company (FlexKapG)

No, either an Austrian bank account or a bank account with a CRR credit institution is required for incorporation. Alternatively, the payment can be made to a trust account of the involved notary public. The stated capital must be paid to that bank account, and the bank must provide a confirmation that the stated capital is available. Without such confirmation, the companies registry will not register the stock corporation. (But registration, no local bank account is required for the operation of the business).

AUDITING OF LOCAL FINANCIALS. IF SO, MUST THE AUDITOR BE LOCATED IN LOCAL JURISDICTION, AND MUST THE COMPANY'S BOOKS BE KEPT LOCALLY?

Stock corporation (AG)

Yes.

Limited liability company (GmbH) and Flexible Company (FlexKapG)

Yes; only very small companies with limited liability (ie, a balance sheet total of less than EUR4.84 million, annual turnover of less than EUR9.68 million and not more than 50 employees) are exempt from the mandatory audit.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Stock corporation (AG)

The statutory minimum par value of stock is EUR1.

Limited liability company (GmbH)

The statutory minimum par value per share is EUR70.

Flexible Company (FlexKapG)

The statutory minimum par value per share is EUR1.

INCREASING OF CAPITALIZATION IF NEEDED

Stock corporation (AG)

Effectuated by amending the articles of association, which requires a 75-percent majority of the shareholders (unless the articles of association provide for a different majority, but in no case less than 50 percent of the votes cast).

Limited liability company (GmbH) and Flexible Company (FlexKapG).

Effectuated by amending the articles of association, which requires a 75-percent majority of the shareholders.

SUMMARY OF HOW FUNDS CAN BE REPATRIATED FROM YOUR JURISDICTION (IE DIVIDENDS OR REDEMPTION)

Stock corporation (AG)

Funds can be repatriated abroad from Austria via dividends or redemption.

Limited liability company (GmbH) and Flexible Company (FlexKapG)

Funds can be repatriated abroad from Austria via dividends or redemption.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Stock corporation (AG)

Shares can generally be transferred between shareholders via a written agreement. *Vis-à-vis* the stock corporation, only those are deemed to be shareholders who are registered in the share register. In case of a listed company, shares are usually made out as bearer shares, so no share register is required.

Limited liability company (GmbH)

Shares can generally be transferred between shareholders via a written agreement, where such agreement must be made in the form of a notarial deed.

Flexible Company (FlexKapG)

Shares can generally be transferred between shareholders via a written agreement, where such agreement must be made in the presence of an Austrian notary public or an Austrian attorney-at-law. Corporate participation value certificates may be transferred by way of written agreement only.

OBTAINING A NAME AND NAMING REQUIREMENTS

Stock corporation (AG)

The name must not be misleading and must not cause confusion. The name must include a reference to the legal entity of a stock corporation in German; therefore, either "Aktiengesellschaft" or an abbreviated form, such as "AG," must be included.

Limited liability company (GmbH)

The name must not be misleading and must not cause confusion. The name must include a reference to the legal entity of a limited liability company in German; therefore, either "Gesellschaft mit beschränkter Haftung" or an abbreviated form, such as "GmbH," must be included.

Flexible Company (FlexKapG)

The name must not be misleading and must not cause confusion. The name must include a reference to the legal entity of a flexible company; therefore, either "Flexible Kapitalgesellschaft" or "Flexible Company" an abbreviated form, such as "FlexKapG," or "FlexCo" must be included.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Stock corporation (AG)

The stock corporation is not subject to any KYC rules.

Limited liability company (GmbH) and Flexible Company (FlexKapG)

The company is not subject to any KYC rules.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Stock corporation (AG)

Any amendment requires the consent of the majority of the shareholders' meeting – usually 75 percent of the votes cast.

Limited liability company (GmbH) and Flexible Company (FlexKapG)

Any amendment requires the consent of the majority of the shareholders' meeting – usually 75 percent of the votes cast.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Stock corporation (AG), and Flexible Company (FlexKapG) and Limited liability company (GmbH)

A business license is required to conduct business. The type of license necessary depends on the type of business which will be run. The license can be obtained after registration of the company with the companies register.

Depending on the type of business – free (eg, trade of simple goods), regulated (eg, crafts) or sensible (eg, production of explosives) – and the trader (individual or company), the requirements for registering a business vary. Stock corporations and limited liability companies must appoint a managing director under trade law (ie, an individual who fulfills the respective requirements for a certain type of business).

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Stock corporation (AG)

Shelf companies can be purchased from third-party service providers, but aren't widely used in Austria.

Limited liability company (GmbH) and Flexible Company (FlexKapG)

Shelf companies can be purchased from third-party service providers.

KEY CONTACTS



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