



GLOBAL EXPANSION GUIDEBOOK CORPORATE

China



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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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CHINA



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FORM OF ENTITY

Independent legal entity. In terms of companies set up by or with foreign investors, they need to follow the general company law (and partnership law as applicable) pursuant to the new Foreign Investment Law which took effect from January 1, 2020. Therefore, depending on the foreign shareholding ratio in a limited liability company (LLC) or a company limited by shares as discussed below, it would still work to make reference to a wholly foreign owned enterprise (WFOE) or a Sino-foreign joint venture enterprise in an economic sense. However, a WFOE or JV, including an equity joint venture (EJV) or contractual joint venture (CJV), would no longer exist as a legal form. All foreign invested enterprises (FIEs) in China will take the legal form of either a company (LLC or company listed by shares) or a partnership. Note that China just amended the general company law on December 29, 2023 with the revisions to take effect on July 1, 2024, we have discussed the relevant requirements in this guide in accordance with the revised PRC Company Law.

Limited liability company (LLC)

- Managed by board of directors or a sole director (usually adopted by LLCs with a limited number of shareholders or relatively small size of operation), responsible for making major business decisions and overseeing general operations of an LLC.
- The highest authority of an LLC is the shareholders' meeting or the sole shareholder.
- Director is appointed/elected by the shareholder(s) of an LLC.
- Senior management officers run the day-to-day operations of an LLC, as led by a general manager who usually is appointed by the board of directors or the sole director.

Company limited by shares

- Independent legal entity.
- Board of directors (or a single director if adopted by companies with a limited number of shareholders or relatively small size of operation) has overall management responsibility, making major business decisions and overseeing general operations of a company.

- The highest authority of a company listed by shares is the shareholders' assembly.
- Director is appointed/elected by shareholders of a company.
- Senior management officers run the day-to-day operations of a company limited by shares, as led by a general manager who usually is appointed by the board of directors or the sole director

Partnership enterprise

- NOT a separate legal person entity.
- Partnership agreement sets forth how the business is to be managed; 1 or several general partners can be designated to manage the business.

ENTITY SET UP

Limited liability company (LLC)

- Up to 50 shareholders.
- Generally no personal liability of shareholders.
- Taxed at 2 levels (commonly referred to as double taxation). First, an LLC pays an enterprise income tax on its corporate income; then, the LLC distributes its after-tax profits as dividends to shareholders who then pay income tax on those dividends.
- Typical charter documents include:
 - Articles of association, to be registered with the Administration for Market Regulation (AMR)
 - Business license
 - For foreign-invested LLCs, additional documents such as joint venture contract or shareholders' agreement, which are not required for registration with the AMR under the current company law, plus record on certain foreign investment information, such as the information on each investor and its ultimate actual controller, that has been reported to the Ministry of Commerce (MOFCOM).
- Shareholders typically subscribe and contribute to the registered capital of an LLC according to the articles of association.
- An annual report should be filed with the AMR through the AMR's online platform. For foreign-invested companies, a joint annual report should, in addition, be filed with various authorities through the same AMR's online platform for the annual report.

Company limited by shares

- There must be 2 to 200 promoters, of whom more than half must have domiciles in China.

- Generally no personal liability of shareholders.
- Taxed on its earnings at a corporate level, and shareholders are taxed on any distributed dividends.
- Typical charter documents include:
 - Promoters' agreement
 - Articles of association
 - Business license
 - For foreign-invested companies limited by shares, additional documents such as joint venture contract or shareholders' agreement, which are not required for registration with the AMR under the current company law, plus record on certain foreign investment information, such as the information on each investor and its ultimate actual controller, that has been reported to the MOFCOM.
- Shareholders typically purchase stock in company, but generally only 1 class of stock is allowed. The revised PRC Company Law allows companies limited by shares to issue preferred stock.
- An annual report must be filed with the AMR and MOFCOM.

Partnership enterprise

- At least 2 partners; up to 50 partners for limited partnership unless otherwise provided by law.
- General partners have unlimited joint and several liability for the debts of the partnership; limited partners have liability for the debts of the partnership to the extent of the capital contributions they have subscribed for.
- Not taxed on earnings at partnership level, and profits and losses are passed through to the partners who are subject to taxes.
- Typical charter documents include:
 - Partnership agreement
 - Business license.
- Partners typically contribute money, property, intellectual property, land use right or other property right to the partnership. General partners may contribute labor services to the partnership. Partners receive an interest in profits and losses.
- An annual report must be filed with the AMR

Note: Because the LLC is the most common investment vehicle used by foreign investors, we only discuss the LLC in detail in the following sections and can provide information on other forms of entities upon request.

MINIMUM CAPITAL REQUIREMENT

No minimum capital required unless otherwise provided under the relevant laws, regulations or decisions of the State Council. The revised PRC Company Law requires the registered capital of an LLC to be contributed within 5 years from the establishment of the LLC. Existing LLCs, which were established without such 5-year contribution deadline, would have to amend their articles of association to comply with the 5-year requirement, subject to implementation rules to be promulgated.

LEGAL LIABILITY

Shareholders of an LLC are generally not liable for the debts of a company aside from their capital contribution to the company.

TAX PRESENCE

An LLC is taxed at 2 levels (commonly referred to as double taxation). First, the LLC pays an enterprise income tax on its corporate income; then, the LLC distributes its after-tax profits as dividends to shareholders who then pay individual/enterprise income tax on those dividends.

INCORPORATION PROCESS

The incorporation of a foreign-invested LLC typically consists of the following steps:

1. File online application to register the name as well as for initial review by the AMR and information reporting to the MOFCOM through the AMR's online system
2. File paper application for registration of the establishment of an LLC with the AMR and
3. File post-registration applications with various authorities such as tax, foreign exchange and customs.

BUSINESS RECOGNITION

The LLC is the most popular legal form for foreign investors to conduct business in China.

SHAREHOLDER MEETING REQUIREMENTS

Not required to hold annual meeting of shareholders for foreign-invested LLCs.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Annual meeting of board of directors is not required for the LLCs, though it is quite common.

ANNUAL COMPANY TAX RETURNS

Must quarterly and annually file enterprise income tax returns with tax authorities. Other taxes such as value-added tax (VAT) require filings on monthly basis in general.

BUSINESS REGISTRATION FILING REQUIREMENTS

Registration with the AMR and information reporting to the MOFCOM are required for establishment of foreign-invested LLCs as well as subsequent changes of company particulars. In practice, filings to the MOFCOM are carried out through the same AMR online platform and become invisible in most cases.

BUSINESS EXPANSION

No need to change registration as business expands unless the expansion requires increase of registered capital of an LLC or expansion of its business scope.

EXIT STRATEGY

Foreign investors may liquidate/early terminate or transfer the equity in the LLC. In case of liquidation, the investor will need to go through a liquidation process including applying for deregistration with various government authorities as applicable and to complete a tax clearance before the LLC can be liquidated by cancelling its business license with the AMR.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Annual reports are required to be filed with the AMR and the MFOCOM.

DIRECTOR / OFFICER REQUIREMENTS

Directors (or a sole director), general manager, finance manager and supervisor(s) are normally required. LLCs with a limited number of shareholders or relatively small size of operation may adopt a single supervisor instead of a board of supervisors, or even no supervisor is acceptable upon unanimous consent of all shareholders.

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

LOCAL CORPORATE SECRETARY REQUIREMENT

Not required.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Legal representative is required, which must be either a director of the board of directors (or the sole director, as applicable) or a general manager pursuant to the articles of association of an LLC.

An LLC may also need to record 1 or 2 contact persons for purposes of liaison with the tax authorities and the AMR when an LLC is established. Such contact person(s) should be individuals who usually reside within China and speak Chinese.

LOCAL OFFICE LEASE REQUIREMENT

Required for incorporation and ongoing business operation, if an LLC does not itself own office premises.

OTHER PHYSICAL PRESENCE REQUIREMENTS

None.

SUFFICIENCY OF VIRTUAL OFFICE

Requirements and practice vary among different locations. In some cities, certain office premises approved by competent local authorities are allowed on a trial basis for "collective registration" of companies.

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

Generally not permitted unless in certain pilot trial areas. For example, certain approved domestic law firms in the Shanghai free trade zone are permitted to provide registered address subject to restrictions.

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

Generally not allowed for incorporation.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

None.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Appointment of nominee shareholders is generally not allowed, though a VIE (Variable Interest Enterprise) structure with nominee shareholders can be commonly seen in practice. However, certain recent changes of the policy may create questions about whether the VIE structure is still sustainable.

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

Directors are appointed by the sole shareholder or the shareholders' meeting and are responsible for the management of a company and govern the organization by establishing broad policies and objectives. In contrast, general manager is appointed by the board of directors (or the sole director, as applicable) to oversee day-to-day operations of a company.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Names of shareholders as well as directors and supervisor(s) are generally available for public search through the National Enterprise Credit Information Publicity System. Name of a general manager may also be available for search if a company has registered such information with the AMR.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

There must be a minimum of 1 shareholder and a maximum of 50 shareholders for an LLC. For directors of a board of an LLC, the minimum number is 3 and there is no restriction on the maximum number. Or, if a company has a sole director instead of the board of directors, only 1 director is allowed.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

An LLC may be established by a single shareholder.

REMOVAL OF DIRECTORS OR OFFICERS

Directors may be removed by the sole shareholder or the shareholders' meeting. General manager may be removed by the board of directors (or the sole director).

REQUIRED AND OPTIONAL OFFICERS

Typically a general manager and a finance manager are required; any other optional officer, such as the deputy general manager, is allowed.

BOARD MEETING REQUIREMENTS

Typically 1 annual board meeting is required, and resolutions may also be adopted via written consent if necessary.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

For foreign-invested LLCs, shareholders' meeting is only applicable when there are 2 or more shareholders. Usually, the matters must be approved by shareholders representing a majority of the voting rights. However, certain matters such as amendment to the articles of association must be approved by shareholders representing more than 2/3 of the voting rights. In practice, AMR may require certain matters be approved by all shareholders if a shareholders' resolution is required by AMR for change of registration of the company. For board meeting, a majority of all directors must be present during a board meeting, and a majority of all directors must approve the matters.

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

Not necessary in order to incorporate; however, a bank account must be opened after incorporation. A company may set up bank accounts within China, or outside of China in rare cases (which is subject to approval by the foreign exchange authority).

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

An annual audit is required. The auditor must be located in local jurisdiction. Generally, corporate books, such as the minute book, should be kept with the company.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Not applicable for the jurisdiction.

INCREASING OF CAPITALIZATION IF NEEDED

Effectuated by amending the articles of association and joint venture contract/shareholders' agreement (if applicable), which requires registration with the AMR. Among other application documents, the shareholder resolutions are required for application with the AMR.

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

Funds can be repatriated abroad via dividends, reduction of registered capital or liquidation of a company.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

For foreign-invested LLCs, any transfer of shares is subject to the registration with the AMR and information reporting to the MOFCOM. In the case of proposed transfer of shares by a shareholder to a third party, the other shareholders have the right of first refusal.

OBTAINING A NAME AND NAMING REQUIREMENTS

Proposed name must be reserved before incorporation or change of name.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

In connection with the information reporting to the MOFCOM, information about an ultimate actual controller of the company as well as that of all the investors must be disclosed to MOFCOM. The disclosed information should generally allow the MOFCOM to trace the investment all the way up to either natural person, publicly listed company, foreign government (including government fund) or international organization owning or controlling 50 percent or more of the interest of a foreign investor. Practice of the local counterpart of the MOFCOM varies, but it may be possible to list only the largest shareholder, and to group multiple smaller shareholders together without specifying their names. Banks may have separate and different "know your client" or anti-money laundering requirements.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

For foreign-invested LLCs, amending charter document is subject to the registration with the AMR and information reporting to the MOFCOM (if applicable). Shareholder resolutions will be required for the applications.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Typically, the only license required would be a business license. Depending on the underlying business and operation, certain special license may be required from the competent industrial ministry.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Not common.

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