GUIDE TO GOING GLOBAL
CORPORATE

China
INTRODUCTION


GUIDE TO GOING GLOBAL 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 Guide to Going Global series reviews business-relevant corporate, employment, intellectual property and technology, executive compensation, and tax laws in key jurisdictions around the world.

CORPORATE

The Guide to Going Global – 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 Guide to Going Global – 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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CHINA

Last modified 20 May 2020

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 an 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.

Limited liability company (LLC)

- Managed by a board of directors or a single executive director (usually adopted by LLCs with a limited number of shareholders and relatively small size of operation, but not applicable to a Sino-foreign joint venture), responsible for making major business decisions and overseeing general operations of an LLC

- The highest authority of a Sino-foreign joint venture is the board of directors. The highest authority of a WFOE is the shareholder(s)

- Director or the executive 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 executive director

Company limited by shares

- Independent legal entity

- Board of directors has overall management responsibility, making major business decisions and overseeing general operations of a company

- Director is appointed/elected by shareholders of a company
Senior management officers run the day-to-day operations of an company limited by shares, as led by a general manager who usually is appointed by the board of directors.

**Partnership enterprise**

- **NOT** a separate legal entity
- Partnership agreement sets forth how the business is to be managed; one 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 two levels (commonly referred to as double taxation). First an LLC pays an enterprise income tax on its corporate income; then an 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
  - Business license and
  - For foreign-invested LLCs, additional documents such as joint venture contract or shareholders agreement, which are not required for registration with AMR under the current company law, plus record on certain foreign investment information, such as the information on each investor and its 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 Administration for Market Regulation (AMR). For foreign-invested companies, a joint annual report should, in addition, be filed with various authorities

**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 and
- For foreign-invested companies listed by shares, additional documents such as joint venture contract or shareholders agreement, which are not required for registration with AMR under the current company law, plus record on certain foreign investment information, such as the information on each investor and its actual controller, that has been reported to the Ministry of Commerce (MOFCOM).

Shareholders typically purchase stock in company, but generally only one class of stock is allowed. China allows listed or non-listed public companies (with more than 200 shareholders) to issue preferred stock on a trial basis

An annual report must be filed with the AMR

**Partnership enterprise**

- At least two 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 and
  - 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.

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 two 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 application to register the name with the AMR
2. File application for establishment of an LLC with the commerce authority either for approval (if the underlying business falls within the so-called "negative-list" for foreign investment, which is publicized by the State Council on a periodical basis) or for recordal (if the underlying business is outside the so-called negative list for foreign investment)
3. File reporting of certain foreign investment information with MOFCOM and
4. File post-registration applications with various authorities such as tax, foreign exchange and customs.

BUSINESS RECOGNITION

Well regarded and widely used.

SHAREHOLDER MEETING REQUIREMENTS

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

BOARD OF DIRECTOR MEETING REQUIREMENTS

Annual meeting of directors is not required for the WFOEs, though it is quite common. Annual meeting of directors is required for Sino-foreign joint ventures.
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

Approval or recordal filing with the commerce authority and registration with AMR are required for establishment of foreign-invested LLCs as well as subsequent changes of company particulars.

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

File application for liquidation/early termination/equity transfer with the commerce authority for approval if the underlying business is on the negative list. Otherwise, a recordal with the commerce authority would suffice. Then apply for deregistration or registration with various government authorities as applicable.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Annual reports are required to be filed with the AMR online and joint annual reports are required to be filed with various authorities online.

DIRECTOR / OFFICER REQUIREMENTS

Directors (or an executive director), general manager and supervisor(s) are required.

LOCAL CORPORATE SECRETARY REQUIREMENT

Not required.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

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

An LLC may also need to record one or two 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.

**SUMMARY OF DIRECTOR’S, OFFICER’S AND SHAREHOLDER’S AUTHORITY AND LIMITATIONS THEREOF**
Directors are appointed by shareholders 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 directors 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 one shareholder and a maximum of 50 shareholders for an LLC. For directors of a board of an LLC, the minimum number is 3 and the maximum number is 13. Or, if a company has an executive director instead of the board of directors, only one executive director is allowed.

**MINIMUM NUMBER OF SHAREHOLDERS REQUIRED**

An LLC may be established by a single shareholder.

**REMOVAL OF DIRECTORS OR OFFICERS**

Directors (or executive director as applicable) may be removed by shareholders. General manager may be removed by the board of directors (or an executive director).

**REQUIRED AND OPTIONAL OFFICERS**

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

**BOARD MEETING REQUIREMENTS**

Typically one annual director 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, shareholder meeting is only applicable when there are two or more shareholders. Usually a majority of shareholders must be present during the shareholder meeting or sign a written consent. However, certain matters such as amendment to the Articles of Association must be approved by shareholders representing more than two-thirds 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
Directors, typically more than two-thirds of directors must be present during a board meeting; certain matters must be approved by all directors.

**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 a 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 (if applicable), which requires both approval from (or recordal with, as applicable) the commerce authority and registration with the AMR. Among other application documents, the shareholder resolutions for WFOEs or the board resolutions for Sino-foreign joint venture enterprises are required for application with the commerce authority and the AMR.

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

Funds can be repatriated abroad via dividends or liquidation of a company.

**RESTRICTIONS ON TRANSFERABILITY OF SHARES**

For foreign-invested LLCs, any transfer of shares is subject to approval by (or recordal with, as applicable) the commerce authority and registration with AMR. Proposed transfer of shares by a shareholder to a third party should be subject to the consent of more than half of other shareholders and such 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 recordal with the commerce authority, information about an ultimate actual controller of the company as well as that of all the investors must be disclosed to the commerce authority. The disclosed information should generally allow the commerce authority 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 commerce authorities vary, 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 approval by (or recordal with, as applicable) the commerce authority and registration with AMR. Shareholder resolutions or board 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.

**PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY**

Not common.

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