



GLOBAL EXPANSION GUIDEBOOK CORPORATE

Malaysia



Downloaded: 02 May 2025

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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MALAYSIA



Last modified 26 June 2024

FORM OF ENTITY

To start a business in Malaysia, the 1st step is to set up a business entity with the Companies Commission of Malaysia. There are 2 types of business entities:

- The unincorporated entity and
- The incorporated separate legal entity.

The unincorporated entities are:

- Sole proprietorship and
- Partnership.

A sole proprietorship is an entity with 1 person, whereas a partnership is a business entity that is owned by at least 2 persons but not more than 20 persons. Both the sole proprietorship and partnership do not constitute separate legal entities, and the business partners can sue and be sued in their personal names. A business owner or partners are exposed to personal risks and liabilities.

The incorporated separate legal entities are:

- A company limited by shares or private limited company
- A company limited by guarantee
- Unlimited company and
- Limited liability partnership.

Private limited companies are the most established business entities as the shareholders of private limited companies are not exposed to personal risks and liabilities; their liabilities are limited to the number of shares that are owned by them.

ENTITY SET UP

Private Limited Company (*Sendirian Berhad*)

- Liability of shareholders is limited to the amount of shares held by the shareholder.
- The minimum number of shareholders is 1 and the maximum number of shareholders is 50. If the number of shareholders exceeds 50, a private limited company will have to convert its status to a public company, which is an unlimited public company.
- Director will be appointed by the shareholders of a private limited company to manage such company. A director may or may not be a shareholder of the company.
- A private limited company is restricted from offering any of its shares to the public.
- The Companies Act 2016, Malaysia, largely regulates the power and duties of a private limited company.

MINIMUM CAPITAL REQUIREMENT

The minimum capital requirement is 1 share.

LEGAL LIABILITY

Shareholders of a private limited company are generally not liable for the debts of the company, aside from their financial contribution to the company.

TAX PRESENCE

A private limited company pays a corporate tax on its profits. These profits may then be distributed to their shareholders as dividends.

INCORPORATION PROCESS

A private limited company must be registered with the Companies Commission of Malaysia, and the promoter of such company must file the necessary incorporation documents to the Companies Commission of Malaysia.

Digitalized process for company registration:

Instead of manually filling in the required forms downloaded from the SSM website, entrepreneurs can now register their Sdn Bhd online by filling in the Super Form on the [MyCoID 2016 portal](#).

BUSINESS RECOGNITION

A private limited company is a well-established and widely recognized business entity.

SHAREHOLDER MEETING REQUIREMENTS

A resolution of shareholders of a private limited company can be approved by way of written resolutions or shareholders' meeting.

BOARD OF DIRECTOR MEETING REQUIREMENTS

A resolution of directors of a private limited company can be approved by way of written resolutions, or directors may hold a board of directors' meeting as required.

ANNUAL COMPANY TAX RETURNS

A private limited company must annually file its annual tax returns with the relevant tax authorities.

BUSINESS REGISTRATION FILING REQUIREMENTS

A private limited company is required to file initial registration as well as annual filings.

BUSINESS EXPANSION

If number of shareholders of a private limited company exceeds 50, it must be converted to a public company.

EXIT STRATEGY

There are 4 types:

- Shareholders' voluntary winding up: the company is solvent, but the shareholders of the company decide to wind up the company
- Creditors' voluntary winding up: the company is insolvent, and the creditors choose to wind up the company to realize the company's assets
- Compulsory winding up by the court of Malaysia: the court finds that a particular company is unable to pay its debts and
- Striking off by the Companies Commission of Malaysia: the Companies Commission of Malaysia can strike off a company if such company is not carrying on a business, has contravened with the Companies Act 2016, is being used for unlawful purpose or has been wound up.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Annual return and financial statement of a private limited company are filed annually to the Companies Commission of Malaysia.

DIRECTOR / OFFICER REQUIREMENTS

- Must be a natural person and at least 18 years of age
- Must be of sound mind
- Must ordinarily reside in Malaysia by having a principal place of residence in Malaysia
- Not an undischarged bankrupt under the Insolvency Act 1967
- Not disqualified under the Companies Act 2016
- Has not been convicted, whether inside or outside of Malaysia, of any offense and
- Has not been imprisoned for any offenses prescribed under the Companies Act 2016 within 5 years immediately preceding their appointment.

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

LOCAL CORPORATE SECRETARY REQUIREMENT

- Must be a natural person and at least 18 years of age.
- Must be a citizen or permanent resident of Malaysia who ordinarily resides in Malaysia and has a principal place of residence in Malaysia.
- Must be a member of a body prescribed in the 4th Schedule of the Companies Act 2016 or a person licensed by the Companies Commission of Malaysia.
- Must be an undischarged bankrupt under the Insolvency Act 1967.
- Not convicted, whether in or outside Malaysia, of any offences prescribed under the Companies Act 2016.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Not applicable for this jurisdiction.

LOCAL OFFICE LEASE REQUIREMENT

Not applicable for this jurisdiction.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Not applicable for this jurisdiction.

SUFFICIENCY OF VIRTUAL OFFICE

Not applicable for this jurisdiction.

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

Local registered address with the corporate secretary is required.

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

Corporate secretary is required to be a resident of Malaysia and have a principal place of residence in Malaysia.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

At least 1 director of a private limited company is required to be a resident of Malaysia and have a principal place of residence in Malaysia.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Same requirements as for a director of a private limited company.

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

Not applicable for this jurisdiction.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Not applicable for this jurisdiction.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

A private limited company can have a minimum of 1 director. A private limited company can have a minimum of 1 shareholder and a maximum of 50 shareholders.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

A minimum of 1 shareholder.

REMOVAL OF DIRECTORS OR OFFICERS

Subject to a constitution of a private limited company, a director may be removed by ordinary resolution subject to a special notice prescribed under the Companies Act 2016. The ordinary resolution for the removal of a director must be passed at a physical shareholders' general meeting and cannot be passed by way of a written resolution.

REQUIRED AND OPTIONAL OFFICERS

Not applicable for this jurisdiction.

BOARD MEETING REQUIREMENTS

Not applicable for this jurisdiction.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Quorum for shareholders meeting is not fewer than 2 members for a company that has more than 1 shareholder.

Quorum for board of directors meeting is fixed to the total number of directors and, if not fixed, it is a majority of directors. Quorum for board meeting is not fewer than 2 directors for a company that has more than 1 director.

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

Not applicable for this jurisdiction.

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

Yes.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Not applicable for this jurisdiction.

INCREASING OF CAPITALIZATION IF NEEDED

A 100-percent foreign-owned private limited company must increase its paid-up capital to RM500,000 for advisory and consultancy businesses and RM1 million for import, export, restaurant, and trading businesses.

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

The common methods of profit repatriation in Malaysia are through dividends, interest, and royalties. Repatriation of profits may be done without restrictions, but withholding tax rates may be applied to dividends, interest, and royalties.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Shareholders of a private limited company is subject to pre-emptive rights.

OBTAINING A NAME AND NAMING REQUIREMENTS

The Companies Commission of Malaysia first approves the company name. A company name is unlikely to be approved if it is:

- Undesirable or unacceptable
- Identical to an existing company, corporation or business
- Identical to a name that is being reserved under the Companies Act 2016 or
- A name that the Companies Commission of Malaysia is ordered not to accept for registration by the Minister of Malaysia.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Electronic Know-Your-Customer (e-KYC) is mandatory in the financial sector (banks and financial institutions) to verify the identities and suitability of customers as well as the risks involved in maintaining a business relationship with them. The policy document regarding the guidelines for e-KYC is published by the Central Bank of Malaysia (BNM).

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Any amendment is passed by a majority of not less than 3/4 of the shareholders at a general meeting.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Relevant licenses are required to conduct business depending on the nature of business.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

- The shelf company's existing board of directors shall resign as the company directors. Investor's nominated directors shall be appointed as the shelf company's new directors.
- The shares of the existing shareholder in the shelf company will be transferred to the investor.
- The local company secretary will lodge all essential filings to the Companies Commission of Malaysia once all applicable documents have been signed.
- A copy of the letter of indemnity signed by the shelf company's former directors, indicating that the shelf company was dormant, had no obligations and had not begun any operations, will be provided to the investor.
- Any further changes to the company name, corporate structure, director, and share capital will be lodged to Companies Commission of Malaysia.

KEY CONTACTS



Peter Ling
Partner
Peter Ling & Van Geyzel
peter.ling@plvg.my
T: +603 2282 3080

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