GLOBAL EXPANSION GUIDEBOOK

CORPORATE

New Zealand

DLA PIPER

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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.

DLA Piper and any contributing law firms accept no liability for errors or omissions appearing in this publication and, in addition, DLA Piper accepts no liability at all for the content provided by the other contributing law firms. Please note that corporate law is dynamic, and the legal regime in the countries surveyed could change.

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NEW ZEALAND

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FORM OF ENTITY

Limited liability companies

Limited liability companies incorporated in accordance with the Companies Act 1993 (**Companies Act**) are the most common corporate structure used in New Zealand. Limited liability companies generally limit the liability of shareholders, except: 1) to the extent of any amount unpaid on a share held by a shareholder, 2) as provided for under that company's constitution and 3) for other specific exceptions as set out in the Companies Act. The board of directors (Board) generally manages and supervises the conduct of business and the general affairs of companies (which, subject to certain limitations, may be delegated to a committee). Directors are generally appointed by way of ordinary resolution of a company's shareholders but can also be appointed by the Board, where the constitution or other governing document (as may be applicable) expressly provides a power of appointment.

Limited liability companies with 50 or more shareholders (and 50 or more share parcels) and assets of at least NZD30 million (including the assets of their respective subsidiaries) or revenue of at least NZD15 million (including the revenue of their subsidiaries) are "code companies" for the purposes of the Takeover Regulations 2000 and the Takeovers Code. Code companies are subject to the provisions of the Takeovers Code and are subject to strict requirements when shareholders (including their respective associates) wish to hold 20 percent or more of the shares on issue or wish to increase their shareholding beyond 20 percent in the code company.

Limited liability companies that wish to list on a licensed market operated by NZX Limited, including the NZX, will be subject to the relevant listing rules and other legislative requirements (including the Companies Act and the NZX listing rules) and will also be considered code companies under the Takeovers Code. There is no limit on public companies' ability to raise funds from the public (either through an initial public offer – or IPO – or through a post-listing capital raise or rights issue), provided that the various disclosure requirements and other statutory rules are complied with, including those set out in the Financial Markets Conduct Act 2013 (FMCA).

Branch

Overseas companies "carrying on business" in New Zealand must register as a branch of an overseas company with the New Zealand Companies Office (Companies Office). The Companies Office is a government agency in New Zealand that provides business registry services in relation to corporate entities, personal property and capital market securities. The term "carrying on business" is not comprehensively defined under New Zealand

law, although it generally captures businesses that have employees in New Zealand, have an office or business premises in New Zealand or that regularly transact business in New Zealand. For this reason, it is advisable that foreign companies seek professional advice before commencing business in New Zealand to ensure compliance with New Zealand law.

Note: In addition to the above, there are other forms of legal entity that can be established under New Zealand law, including a general partnership, limited partnership and trust. However, these are less commonly used in New Zealand for business purposes and are not considered further.

ENTITY SET UP

Limited liability company

Limited liability companies must have 1) a registered office and an address for service at a physical address in New Zealand; 2) at least 1 shareholder appointed and 1 share issued to a shareholder; 3) at least 1 director appointed who either lives in New Zealand or lives in Australia and is also a director of a company incorporated in Australia. In addition, limited liability companies must provide to the Registrar of Companies the details of the relevant ultimate holding company (to the extent applicable).

Limited liability companies are taxed on their earnings at the corporate tax rate and can attach imputation credits to their distributions to shareholders.

Limited liability companies can elect to adopt a constitution that sets out the operational procedures and other matters applying to their operations and governance. However, there is no mandatory requirement for companies to adopt a constitution. If a constitution is not adopted, the default provisions of the Companies Act will apply.

Directors are subject to a number of legislative and common law duties that are generally owed to the company to which they are appointed.

Companies can issue shares to shareholders and to 3rd parties in accordance with the requirements set out in the Companies Act and their constitutions (as may be applicable and to the extent that they have adopted a constitution). The Board is generally responsible for determining the issue price per share, which must be fair and reasonable to the company and all existing shareholders.

Companies may issue different classes of shares that have different rights and interest attaching to them, but this right is subject to the provisions of the Companies Act and/or their constitution.

Capital raisings must be done in accordance with the requirements of the FMCA and other applicable law.

Branch

To establish branches, overseas companies must be registered with the Companies Office and be assigned a New Zealand Company Number.

Branches are not separate legal entities, and overseas companies have the full legal responsibility and liability for the actions of their New Zealand branch operations in New Zealand.

Branches must appoint 1 person who is authorized to accept service of documents in New Zealand.

Branches must also notify the Companies Office of the date that they begin to carry on business in New Zealand as well as their "principal place of business in New Zealand". Branches are taxed as separate entities in New Zealand and are taxed on all their New Zealand taxable profits, which include income sourced from New Zealand less any attributable expenses. A foreign company with a branch in New Zealand may be required to provide its financial statements (or specifically prepared financial statements) to the Companies Office and/or Inland Revenue.

As with limited liability companies, Overseas Investment Office approval under the Overseas Investment Act 2005 may be required before a branch of an overseas company can acquire shares and assets of a certain value, or to purchase certain land that is considered "sensitive land" (which is a term defined in the Overseas Investment Act 2005).

Branches are not required to display the identity of their shareholders on the Companies Office.

MINIMUM CAPITAL REQUIREMENT

Limited liability company

Limited liability companies have no specified minimum capital requirements. However, the Board must be satisfied that the relevant company satisfies the solvency test set out in the Companies Act immediately after making a distribution. The solvency test will be satisfied if: (1) the company is able to pay its debts as they become due in the normal course of business; and (2) the value of the company's assets is greater than the value of its liabilities (including contingent liabilities).

Branch

No specified minimum capital requirement.

LEGAL LIABILITY

Limited liability company

Shareholders' liability of limited liability companies is generally limited to the extent of their initial investment and the amount, if any, of the issue price of their shares which is unpaid. Additionally, certain provisions of the Companies Act may place liability on shareholders in connection with the relevant company. This includes where that liability is expressly provided in a company's constitution, where a shareholder's actions place it in the position of a director (*ie*, a deemed director) and director liability arises, or where a shareholder is liable to repay a distribution if that the distribution is recoverable under the Companies Act. Companies can also elect to become an "unlimited" liability company where the shareholders' liability will be unlimited, which can enable a company to check-the-box for US tax purposes.

Branch

Foreign companies have full legal responsibility for the actions of their New Zealand branches and can sue and be sued in New Zealand.

TAX PRESENCE

Limited liability company

Limited liability companies are subject to tax on their taxable profits. Profits are usually distributed by way of dividend authorized by the directors. Limited liability companies can attach imputation credits to a dividend that allows New Zealand tax resident shareholders to benefit from the tax paid by a company. In some circumstances, if imputation credits are attached, then it is not necessary to withhold tax from dividends.

Goods and Services Tax (GST)

Limited liability companies will generally be required to register for GST.

Branch

Overseas companies are taxed on their taxable profits as a separate entity in New Zealand, which will include all income derived from New Zealand less attributable expenses.

Goods and Services Tax (GST)

Overseas companies carrying on business in New Zealand through a branch may also be required to register for GST.

INCORPORATION PROCESS

Limited liability company

A company will need to reserve its proposed name with the Companies Office. Once this name is approved, an application to register a limited liability company, including the payment of the prescribed fee, is required to be lodged with the Companies Office. The application requires at least 1 director (subject to New Zealand residency rules, or an Australian resident who is also a director of an Australian company), 1 shareholder, 1 share issued and a registered office. The registered office must be a physical address (not being a post office box) in New Zealand. In addition, the directors and shareholders will be required to sign and file with the Companies Office consents under which the directors agree to be appointed directors and the shareholders agree to hold shares.

Upon incorporation, the Companies Office will issue to the company a certificate of incorporation and a New Zealand Company Number. It is also possible to register for tax as part of the registration process.

Branch

Overseas companies' registration with the Companies Office establishes branch offices.

Overseas companies wishing to apply for registration as a branch must do so within 10 working days of commencing to carry on business in New Zealand. The overseas company should reserve the proposed name with the Companies Office to ensure that it is available. Registering as the branch of an overseas company will require the relevant overseas company to file certified copies of its certificate of incorporation (or evidence of

incorporation in its originating jurisdiction), its constitutional documents (with English translations if necessary), the details of its directors and the name of a person in New Zealand who is authorized to accept process notices on its behalf.

Registration can take up to a few days to complete. Once registered, it will have on-going statutory filing obligations with the Companies Office, including the obligation to file annual returns. 'Large' overseas companies must file audited financial statements. If the branch is also 'large' in its own right, then audited financial statements in respect of the branch must also be filed.

BUSINESS RECOGNITION

Limited liability company

Well regarded and widely used.

Branch

Less common (and thus less well known to 3rd parties) than a subsidiary.

SHAREHOLDER MEETING REQUIREMENTS

Limited liability company

Limited liability companies are generally required to hold an annual general meeting within 18 months of registration and within six months of their balance date. However, companies will not be required to hold an annual general meeting if there is nothing to be done at the meeting, the Board has resolved that it is in the best interests of the relevant company to not hold that meeting and the constitution does not require one to be held.

Except as required under the Companies Act or constitution (as applicable), actions requiring shareholder approval require a resolution to be passed by the shareholders holding the majority of voting shares at a shareholders' meeting or approved by at least 75 percent of shareholders by way of a written resolution in lieu of a meeting. The requisite majority is most commonly a simple majority, but can be 75 percent (or higher percent) for certain reserved matters (including the adoption of a new constitution).

Branch

Meeting requirements are subject to the overseas company's home jurisdiction requirements.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Limited liability company

There are no prescribed minimum requirements relating to any minimum or maximum number of Board meetings to be held under the Companies Act. However, it is advisable to hold at least 1 board meeting each year to approve accounts or to confirm solvency (with other meetings determined by the governance needs of the business).

Branch

Meeting requirements are subject to the overseas companies' home jurisdiction requirements.

ANNUAL COMPANY TAX RETURNS

Limited liability company and Branch

Must file a company tax return each year, even if the business does not expect to pay any income tax. Other tax filings may also be required.

BUSINESS REGISTRATION FILING REQUIREMENTS

Limited liability company

A limited liability company must confirm its corporate details and must pay an annual return fee to the Companies Office annually. See also the section headed Annual corporate maintenance requirements.

Depending on the size and shareholder make-up of the relevant company, that company may be required to lodge audited financial statements with the Companies Office within five months of its balance date (*ie*, the financial year end).

Branch

If the branch of overseas companies meets the 'large' thresholds set out in the Companies Act and the Financial Reporting Act 2013, they will be required to lodge audited financial statements with the Companies Office within five months of their balance date. Branches are also required to file an annual return each year.

BUSINESS EXPANSION

Limited liability company

There is no need to change from a limited liability company structure as its business expands, but please see our comments above if a company becomes a code company under the Takeovers Code (*ie*, it has 50 shareholders and 50 share parcels and has assets of at least NZD30 million or revenue of at least NZD15 million, or it is listed on a licensed market operated by NZX Limited).

Branch

No need to change as business expands.

EXIT STRATEGY

Limited liability company

Removal from the register: If limited liability companies have no liabilities, no assets, and there are no outstanding filings due to the Inland Revenue, it is possible to apply for the company to be removed from the Companies Office register. The application must be accompanied by a letter from the Inland Revenue confirming that it has no objection to that removal.

Liquidation: There is a formal process involving the appointment of a liquidator if the company is unable to pay its debts. The role of the liquidators includes providing proof of debts, realizing assets, paying creditors and distributing any surplus to shareholders.

Branch

If a branch intends to cease to carry on business in New Zealand, it must give public notice in a local paper and in the Gazette 3 months before it can apply to be deregistered from the Companies Office.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Limited liability company

A limited liability company must confirm its corporate details and pay an annual return fee to the Companies Office each year. Depending on whether it qualifies as a 'large' company (determined by reference to revenue, gross assets and identity of shareholders), audited financial statements may need to be filed each year. Unless granted relief from the Companies Office, large companies that are required to prepare an annual financial report must appoint an auditor. The threshold for 'large' varies depending on where the shareholders of the company reside. A New Zealand company is classified as a 'large' company for a particular financial year if 1 of the following 2 tests applies:

- as at the balance date of each of the 2 preceding accounting periods, the total assets of the entity and its subsidiaries (if any) exceed NZD66 million or
- in each of the 2 preceding accounting periods, the total revenue of the entity and its subsidiaries (if any) exceeds NZD33 million.

A New Zealand company that is a subsidiary of an overseas company is classified as 'large' for a particular financial year if 1 of the following 2 tests applies:

- as at the balance date of each of the 2 preceding accounting periods, the total assets of the entity and its subsidiaries (if any) exceed NZD22 million or
- in each of the 2 preceding accounting periods, the total revenue of the entity and its subsidiaries (if any) exceeds NZD11 million.

Branch

Once the overseas company is registered as a New Zealand branch, it is required to lodge the following with the Companies Office:

- Audited financial statements (if it is 'large')

- Annual return along with annual return fee
- An overseas company will be considered 'large' for a particular financial year if either of the following 2 tests applies:
    - As at the balance date of each of the 2 preceding accounting periods, the total assets of the entity and its subsidiaries (if any) exceed NZD22 million; or
    - In each of the 2 preceding accounting periods, the total revenue of the entity and its subsidiaries (if any) exceeds NZD11 million.

Audited financial statements will also need to be filed in respect of the branch if it is considered 'large.' The branch will be considered 'large' in its own right for a particular financial year if either of the following 2 tests applies:

- as at the balance date of each of the 2 preceding accounting periods, the total assets of the branch exceed USD22million:
- in each of the 2 preceding accounting periods, the total revenue of the branch exceeds USD11 million.

DIRECTOR / OFFICER REQUIREMENTS

Limited liability company

Limited liability companies must have at least 1 director appointed, and at least 1 director must be a New Zealand resident or a person who is a resident of Australia and is also a director of a company registered in Australia.

Companies listed on a licensed market operated by NZX Limited must have at least 3 directors. There must be at least 2 directors who are residents in New Zealand and 2 directors who are independent.

If a change in directors of a company occurs, the Board must notify the Companies Office within 20 working days of:

- the change occurring, in the case of the appointment or resignation of a director, or
- the company first becoming aware of the change, in the case of the death of a director or a change in the name or residential address of a director.

Branch

Not required to have a local director. The Companies Office must be notified of any change in directors of an overseas company.

LOCAL CORPORATE SECRETARY REQUIREMENT

Limited liability company

Limited liability companies are not required to have a secretary.

Branch

Branches of overseas companies are not required to have a secretary.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Limited liability company

None beyond the required director. Listed and 'large' companies must appoint an auditor.

Branch

None beyond having someone who is authorized to accept service on behalf of the branch.

LOCAL OFFICE LEASE REQUIREMENT

Limited liability company

Must have a registered office and an address for service in New Zealand. This does not have to be owned or leased, but the person who owns or leases that property must consent to it being the registered office. Corporate records (including the share register) must be kept and maintained at the registered office, subject to specific exceptions as set out in the Companies Act.

Branch

Must have a principal place of business in New Zealand. This does not have to be owned or leased by the overseas company.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Limited liability company

Not applicable for New Zealand.

Branch

Not applicable for New Zealand.

SUFFICIENCY OF VIRTUAL OFFICE

Limited liability company

Limited liability companies must have registered offices in New Zealand. On registration, the address specified in the application for registration becomes the address of the registered office. The registered office can be changed by resolution of directors, and any change must be notified to the Companies Office.

Branch

No requirements. A virtual office is sufficient.

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

Limited liability company

Allowed, but subject to completion of AML/KYC requirements.

Branch

Allowed, but subject to completion of AML/KYC requirements.

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

Limited liability company

Allowed (but internal rules/insurance limitations may restrict law firm professionals from taking on this role).

Branch

Provision of a local agent by a 3rd-party service provider is allowed (but internal rules/insurance limitations may restrict law firm professionals from taking on this role).

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Limited liability company

Must have at least 1 director who is resident in New Zealand, or who is resident in Australia and is also a director of an Australian registered company.

There are no nationality requirements for shareholders. However, if a company has more than 25 percent of its shares owned by overseas persons, the company will be considered an "overseas person" and may be subject to the Overseas Investment Act 2005. This could restrict its ability to acquire additional businesses, shares, or an interest in “sensitive land”.

Branch

A branch must have a person authorized to accept service on the branch's behalf in New Zealand. This is often a business professional.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Limited liability company

No restrictions apply to the appointment of a nominee shareholder or director. However, the terms of the Overseas Investment Act 2005 may apply if an overseas person nominates a New Zealand resident to hold the beneficial interest in shares on their behalf.

Branch

Not applicable; this is subject to the requirements of the overseas company's place of incorporation.

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

Limited liability company

The Board has overall management responsibility. Shareholders have no direct management rights but can appoint and remove directors and may be required to approve certain corporate actions (including major transactions, the issue of shares where shareholders have pre-emptive rights, share buy-backs and the revocation/adoption of a constitution). If a non-director shareholder is involved in the management and governance, they could be deemed a director. Additionally, directors have obligations under the Companies Act with which they must comply when exercising their power and authority as directors. Any failure to comply with these obligations could lead to personal liability for those directors.

Branch

No liability in New Zealand for a person who is authorized to accept service on behalf of a branch.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Limited liability company

Director and shareholders' details are made publicly available by the Companies Office, including all directors' full names, residential addresses and date of appointment.

Branch

Details of the overseas company's directors and person authorized to accept service in New Zealand are publicly available at the Companies Office. Shareholder details are not publicly available.

In relation to companies listed on the NZX, the register of shareholders is also available to be searched.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Limited liability company

There must be a minimum of 1 shareholder and 1 director. There is no maximum number of directors or shareholders. However, the constitution may limit the maximum number of directors that can be appointed to the Board from time to time.

Branch

Not applicable, this is subject to the requirements of the overseas company's place of incorporation.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Limited liability company

1 shareholder is sufficient.

Branch

Not applicable; this is subject to the requirements of the overseas company's place of incorporation.

REMOVAL OF DIRECTORS OR OFFICERS

Limited liability company

Generally, directors may be removed by shareholders by ordinary resolution except to the extent provided otherwise in the applicable company's constitution.

Branch

The removal of directors is subject to the laws in the jurisdiction where the overseas company is incorporated.

REQUIRED AND OPTIONAL OFFICERS

Limited liability company

Not applicable for New Zealand.

Branch

Not applicable for New Zealand.

BOARD MEETING REQUIREMENTS

Limited liability company

There are no formally required Board meetings, but there is usually at least 1 Board meeting per year. Board decisions can be effected by way of a written resolution in lieu of a meeting signed by all directors entitled to receive notice of that meeting. However, a company's constitution can change the requirement for a unanimous resolution.

Branch

Not applicable, this is subject to the requirements of the overseas company's place of incorporation.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Limited liability company

Unless otherwise specified in the company's constitution, a quorum is present if shareholders, or their proxies, are present or have cast postal votes who are enough between them able to exercise a majority of the votes of the business. A company may pass a resolution without a general meeting if a written resolution is passed signed by not less than the greater of 1) 75 percent or 2) such other percentage, as a company's constitution may require, of those shareholders entitled to vote and voting on that resolution. Shareholders sign a document containing a statement that they are in favor of the resolution set out in the document.

Unless otherwise specified in the company's constitution, the quorum for a Board meeting is a majority of directors. The directors of a company may pass a resolution without a Board meeting if all the directors entitled to vote on the resolution sign a document containing a statement that they are in favor of the resolution set out in the document.

Branch

Not applicable, this is subject to the requirements of the overseas company's place of incorporation.

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

Limited liability company

It is not necessary to have a bank account opened before a company may be incorporated.

Branch

Not necessary to register an overseas company.

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

Limited liability company

Companies must keep accounting records and these must generally be kept at their registered office.

A company's accounting records will only need to be audited if the company is 'large' (see "Annual Corporate

Maintenance" section of this guide). A 'large' company is required to file its audited financial statements with the Companies Office.

If the company is required to appoint an auditor, the auditor does not have to be registered in New Zealand but is subject to various qualification criteria.

In general, for tax purposes a limited liability company is required to maintain business records for a period of seven years after the end of the income year to which they relate. Those records should support the New Zealand tax positions taken during that period.

Branch

If it is 'large', an overseas company must lodge its audited financial statements with the Companies Office annually.

If the branch is 'large', audited financial statements in respect of the branch must also be filed.

In general, for tax purposes, any New Zealand taxpayer (including a branch) is required to maintain business records for a period of 7 years after the end of the income year to which they relate. Those records should support the New Zealand tax positions taken during that period.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Limited liability company

Shares of limited liability companies are not permitted to have shares issued at par value. The 'issue price' is determined by the Board at the time of issue, and it must be fair and reasonable to the company and the existing shareholders except where all entitled persons agree otherwise. Whether a share is issued fully or partly paid is determined by reference to the amount of the issue price paid by the subscribing shareholder to the company.

Branch

Not applicable, this is subject to the requirements of the overseas company's place of incorporation.

INCREASING OF CAPITALIZATION IF NEEDED

Limited liability company

There is no concept of authorized or maximum capital. Increased capitalization can occur at any time and must be authorized by the Board of directors, unless the constitution provides otherwise. The Board must ensure that the requirements under the Companies Act and the FMCA are fully complied with when raising funds by way of a capitalization (including the issue of the applicable financial product).

Branch

Not applicable, this is subject to the requirements of the overseas company's place of incorporation.

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

Limited liability company

Funds can be repatriated by dividends or return of capital if the directors are satisfied that the company can satisfy the solvency test immediately following the payment of any dividend. A dividend, or in some cases a return of capital by a limited liability company, can be subject to withholding tax.

Branch

Repatriation of funds may generally be undertaken at any time. There is no withholding tax on a distribution by a foreign company with a New Zealand branch.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Limited liability company

A signed share transfer form and entry of the details of the share transfer into the company's share register is required to transfer shares. Stamp duty is not applicable, and there is no general capital gains tax in New Zealand.

The constitution or other governing document (including a shareholders' agreement) of many private limited liability companies contain pre-emptive rights which require that a transferor offers shares for transfer to other shareholders before those shares can be offered to 3rd parties. Frequently, the governing documents give the directors the right to refuse to register a share transfer without the directors necessarily being required to give a reason for a refusal to register.

Generally, companies that are listed on the NZX are not permitted to have restrictions on the transfer of shares. There are very few listed companies that have placed restrictions on the free transferability of shares.

Branch

Not applicable, this is subject to the requirements of the overseas company's place of incorporation.

OBTAINING A NAME AND NAMING REQUIREMENTS

Limited liability company

New companies must have a name that is different from the name of any other company that is already registered (*ie*, the reserved name cannot be identical to, or almost identical to, the name of any existing registered company or reserved name). A limited liability company must have “Limited” or “Tapui Limited” as part of its name. Additionally, certain names are expressly protected or restricted and may not be used (for example, the use of 'royal' in a company name).

Branch

The branch of an overseas company must be identical to the name used to register the overseas company in its home country.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Limited liability company

Financial institutions, professionals working within the financial sector, bullion and gambling sectors as well as other regulated entities (*ie*, reporting entities) are required to satisfy their respective KYC obligations. Legal service providers are now subject to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (**AML/CFT**) due diligence compliance requirements, in addition to their own internal KYC requirements. In general, this requires identity verification of the ultimate beneficial owners of an entity but can vary depending on the nature of the business conducted by the entity.

Branch

Financial institutions, professionals working within the financial sector, bullion and gambling sectors as well as other regulated entities (*ie*, reporting entities) are required to satisfy their respective KYC obligations. Legal service providers are now subject to AML/CFT due diligence compliance requirements in addition to their own internal KYC requirements.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Limited liability company

Any changes to a constitution must be approved by a special resolution (*ie*, passed by shareholders holding at least 75 percent of the voting shares being voted on the issue in person or by proxy or other such higher percentage as set out in the applicable constitution).

Branch

Not applicable, this is subject to the requirements of the overseas company's place of incorporation.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Limited liability company

At a minimum, a limited liability company will require a New Zealand Company Number. Some must also be registered for tax. Many businesses also choose to register for a New Zealand Business Number.

Any business providing financial services in New Zealand is required to register on the Register of Financial Service Providers. Certain types of financial service providers (such as fund managers, financial advisers and derivatives issuers) also require licenses issued by the Financial Markets Authority under the FMCA.

There are no other general registrations, licenses or permits that are required to establish a company or conduct business in New Zealand which depends on the nature of the business conducted and the products and/or services suppled in connection with that business.

Branch

An overseas company doing business in New Zealand is required to register with the Companies Office and may be required to register for tax.

Any business providing financial services in New Zealand is required to register on the Register of Financial Service Providers. Certain types of financial service providers (such as financial advisers and derivatives issuers) also require licenses issued by the Financial Markets Authority under the FMCA.

There are no other general registrations, licenses or permits that are required to conduct business in New Zealand.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Branch

Not applicable in New Zealand.

Proprietary company

A "shelf" company may be purchased from 3rd-party suppliers, but, given the speed and ease of incorporation, this is rarely used.

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