



# GLOBAL EXPANSION GUIDEBOOK CORPORATE

*Philippines*



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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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## PHILIPPINES



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### FORM OF ENTITY

#### Subsidiary

A subsidiary is a domestic stock corporation, either wholly or partially owned (but controlled) by a foreign corporation. It has a separate and distinct legal entity from its parent. It is managed by its board of directors, which exercises all corporate powers, conducts all business and controls all property of the corporation.

Directors are elected by the stockholders themselves. Officers are elected by the directors, and they perform the duties imposed on them by law and the bylaws of the corporation.

#### Branch office

It is an extension of, and not a separate and distinct entity from, the foreign corporation. It carries out business activities of the head office and derives income from the Philippines. A resident agent is designated, to whom summons and other legal processes may be served on behalf of the foreign corporation.

#### Representative office

It is an extension of, and not a separate and distinct entity from, the foreign corporation. It deals directly with the clients of the head office in the Philippines but does not derive income from the country and is fully subsidized by its head office. A resident agent is designated, to whom summons and other legal processes may be served on behalf of the foreign corporation.

#### Regional or area headquarters

It is an administrative branch of a multinational company and, thus, not a separate and distinct legal entity. It is established to supervise, communicate and coordinate the multinational company's subsidiaries, affiliates and branches in the Asia-Pacific region. It is not allowed to do business or derive any income from sources within the Philippines. Its operations must be fully subsidized by way of inward remittances from its head office.

#### Regional operating headquarters

It is an administrative branch of a multinational company and, thus, not a separate and distinct legal entity. It is established to perform qualifying services to the multinational company's affiliates, subsidiaries or branches in the

Philippines, the Asia-Pacific region and other foreign markets. It is prohibited from offering its services to entities other than the foregoing. It is also prohibited, directly or indirectly, to solicit or market goods and services on behalf of the multinational company or any of its affiliates or subsidiaries. It is allowed to derive income from sources within the Philippines.

## Partnership

Partnership has a legal personality separate and distinct from its partners. Generally, each partner is considered an agent of the partnership and their acts are binding, unless otherwise provided in the articles of partnership. A foreign corporation may be a partner in a domestic partnership only after such foreign corporation obtained a license to transact business in the Philippines.

## One Person Corporation

The Revised Corporation Code (RCC) introduced the new concept of a One Person Corporation (OPC), which is defined as “a corporation with a single stockholder.” This corporation may only be formed by a natural person, trust or an estate. Banks and quasi-banks, preneed, trust, insurance, public and publicly listed companies, and non-chartered government-owned and -controlled corporations are not allowed to incorporate as OPCs. Further, a natural person who is licensed to exercise a profession is also generally not allowed to organize as OPC for the purpose of exercising such profession, except as otherwise provided under special laws. Similar to ordinary corporations, an OPC has no minimum capital stock requirement. Unlike an ordinary corporation, however, an OPC is not required to submit corporate bylaws.

The single stockholder serves as the sole director and president of the OPC. The OPC is required to appoint a treasurer, corporate secretary and other officers as necessary within 15 days from the issuance of its certificate of incorporation. However, the single stockholder is proscribed from being appointed as the corporate secretary.

The single stockholder is required to designate a nominee and an alternate nominee who shall take their place as director in the event of their death or incapacity. The extent and limitations of the authority of the nominee and alternate nominee shall be stated in the articles of incorporation. The nominee and alternate nominee may be changed at any time and without need of amendment of the articles of incorporation.

In case of death or permanent incapacity, the nominee shall sit as director only until the legal heirs of the single stockholder have been lawfully determined, and the heirs have designated 1 of them or have agreed that the estate shall be the single stockholder.

In lieu of meetings, a written resolution signed and dated by the single stockholder and recorded in the minutes book shall be sufficient when action is needed on any matter. Aside from the minutes book, the OPC shall also be required to submit reportorial requirements. Failure to submit such requirements 3 times within a period of 5 years may place the OPC under delinquent status. The reportorial requirements are as follows:

- Annual financial statements
- A report containing explanations or comments by the president on every qualification, reservation or adverse remark or disclaimer made by the auditor in the latter's report
- A disclosure of all self-dealings and related party transactions and



- Other reports required by the SEC.

The RCC allows the conversion from an ordinary corporation to an OPC and from an OPC to an ordinary stock corporation. An ordinary stock corporation may be converted to an OPC when the single stockholder acquires all the stocks of an ordinary stock corporation and files an application for conversion with the SEC. An OPC may be converted into an ordinary stock corporation after due notice to the SEC of such fact and of the circumstances leading to the conversion. One such circumstance provided by the law is the death of the single stockholder. In such a case, the legal heirs may decide to either wind up and dissolve the OPC or convert it into an ordinary stock corporation.

## ENTITY SET UP

### Subsidiary

- 2 or more persons (but not exceeding 15) must act as incorporators and sign the articles of incorporation of the subsidiary.
- Any person, partnership, association or corporation singly or jointly may organize a corporation for any lawful purpose. Previously, only natural persons may act as incorporators. The Revised Corporation Code has removed the minimum requirement of 5 incorporators, but has retained 15 as the maximum number of incorporators. The SEC rules, however, provide that the minimum number of incorporators is 2 (except for OPC which is one).
- No more than 15 natural persons should act as directors.
- There is no limitation on the number of shareholders. However, if the subsidiary would sell/issue shares of stock to more than 19 persons during a 12-month period, it must register its securities with the Philippines Securities and Exchange Commission (SEC). If the issuance would be to fewer than 20 persons (who are not existing shareholders) in a 12-month period, in lieu of registration, a notice of exemption may be filed with the SEC.
- Generally no personal liability of shareholders.
- Currently taxed at 25 percent of its taxable income from all sources within and without of the Philippines or, beginning on the 4th taxable year, immediately following the year in which such corporation commenced its business operations, 2 percent of its gross income from all sources within and without of the Philippines, whichever is higher. Dividends received by a nonresident foreign corporation from a Philippines subsidiary are subject to 25-percent withholding tax, subject to reduction pursuant to applicable tax treaties or to the dividends tax sparing rate of 15 percent under domestic law, subject to conditions.
- Typical charter documents: articles of incorporation and bylaws.
- Shares are either common (always voting) or preferred (voting or non-voting).
- Reportorial requirements to be submitted to the SEC annually, including audited financial statements (AFS).

## Branch office

- As an extension of its head office/foreign parent, the liabilities of the branch are deemed liabilities of the head office.
- May operate only with a resident agent, who may also be the general manager, as its officer.
- Taxed at 25 percent of its taxable income or, beginning on the 4th taxable year immediately following the year in which such corporation commenced its business operations, 2 percent of its gross income, whichever is higher, from Philippine sources only. There is also a 15-percent branch profit remittance (to head office) tax, except if the branch is registered with the Philippine Economic Zone Authority.
- Reportorial requirements to be submitted to the SEC annually, including AFS.

## Representative office

- As an extension of its head office/foreign parent, the liabilities of the representative office are deemed liabilities of the head office.
- May operate only with a resident agent.
- Not obligated to pay income tax, value added tax or local business taxes as it derives no income from the Philippines. Local government units, however, require the payment of fees for certain services provided to its constituents who conduct business within its jurisdiction.
- Reportorial requirements to be submitted to the SEC annually, including AFS.

## Regional or area headquarters

- As an administrative branch of its head office/foreign parent, the liabilities of the regional or area headquarters are deemed liabilities of the head office.
- Not allowed to participate in any manner in the management of any subsidiary or branch that it might have in the Philippines.
- Granted tax incentives and benefits such as exemption from corporate income tax, and local taxes, fees or charges except real property tax on land improvements and equipment. It is subject to value-added tax except when the regional or area headquarters were already enjoying VAT exemption as of January 1, 2018.
- Reportorial requirements to be submitted to the SEC annually, including AFS.

## Regional operating headquarters

- As an administrative branch of its head office/foreign parent, the liabilities of the regional operating headquarters are deemed liabilities of the head office.
- Regional operating headquarters are subject to regular corporate income tax.

- Reportorial requirements to be submitted to the SEC annually, including AFS.

## Partnership

- At least 2 persons binding themselves to contribute money, property or industry to a common fund, with the intention of dividing the profits between/among themselves. A foreign individual or foreign company may be a partner in a domestic partnership. A foreign company must obtain a license to transact business in the Philippines from the SEC to be a general partner. No such license is required for a limited partner (foreign partner entered the partnership for investment purposes only and in no case will it participate in the management and control of the business operation).
- Partners are liable pro rata with all their property and, after all the partnership assets have been exhausted, for contracts entered into in the name and for the account of the partnership.
- Generally, every partner is an agent of the partnership, and the act of every partner binds the partnership. The articles of partnership is the contract or agreement of the partnership.
- A partnership is taxed as a corporation and is thus subject to regular corporate income tax of 30 percent of its taxable income. Since a partnership is taxed as a corporation, the tax rate might be reduced in light of the pending tax reforms in the Philippines, as indicated above.

*Note: Under the Foreign Investment Act of 1991 (FIA), 100-percent foreign equity may be allowed in all areas of investment, except those reserved wholly or partially to Filipino citizens, by mandate of the Philippine Constitution and other existing laws. The Foreign Investment Negative List (FINL) indicates the industries where foreign equity is restricted.*

## MINIMUM CAPITAL REQUIREMENT

### Subsidiary

USD200,000 equity capital for domestic market enterprise, or USD100,000 paid-in capital, if:

- Involved in advanced technology as determined and certified by the Philippines' Department of Science and Technology (DOST);
- Endorsed as startup or startup enablers by DOST, Department of Trade and Industry (DTI), Department of Information and Communications Technology (DICT) or other lead host agencies pursuant to the Innovative Startup Act; or
- A majority of the direct employees are Filipinos, but in no case shall the number of Filipino employees be less than 15.

*Note: Under the rules and regulations of Republic Act No. 11647, amending Foreign Investment Act of 1991, startup means any person, natural or juridical, registered in the Philippines which aims to develop an innovative product, process or business model. Startup enabler means any person registered under the Philippine startup development program that provides goods, services or capital identified to be critical in supporting the operation and growth of startups by the DTI in consultation with DOST, DICT, and pertinent government and non-government organizations. Startup enablers include*



*startup accelerators, incubators, co-working spaces, investors, funders, event or meetup organizers catered to startups and other support organizations.*

- Above minimum capitalization requirement is not applicable if the subsidiary intends to export more than 60 percent of its products, in which case the company will be incorporated as an export market enterprise.

## Branch office

- USD200,000 equity capital for domestic market enterprise
- USD100,000 paid-in capital if:
  - Involved in advanced technology as determined and certified by the DOST;
  - Endorsed as startup or startup enablers by DOST, DTI, DICT or other lead host agencies pursuant to the Innovative Startup Act; or
  - A majority of the direct employees are Filipinos, but in no case shall the number of Filipino employees be less than 15.
- Above minimum capitalization requirement is not applicable if the subsidiary intends to export more than 60 percent of its products
- The Revised Corporation Code has removed the prescribed minimum paid-up capital requirement of PHP5,000. However, for certain corporations regulated by special laws which prescribe a minimum capitalization, such minimum capitalization will continue to apply. Further, if the branch will engage in business as a domestic market enterprise (ie, not for export) it is required to comply with the USD200,000 (or USD100,000) minimum capital discussed above.
- In addition to the minimum capital requirement, the branch must deposit with the SEC acceptable securities with market value of PHP500,000
- Within 6 months after each fiscal year, the branch must deposit additional securities equivalent in market value to 2 percent of its gross income in excess of PHP10 million

## Representative office

Initial remittance of at least USD30,000. This is a one-time remittance requirement, but the representative office is fully subsidized by the head office.

## Regional or area headquarters

Annual inward remittance of at least USD50,000.

## Regional operating headquarters

Initial remittance of USD200,000. This is a one-time remittance requirement.

## Partnership

- USD200,000 equity capital for domestic market enterprise
- USD100,000 paid-in capital if:
  - Involved in advanced technology as determined by the DOST or
  - Endorsed as startup or startup enablers by DOST, DTI, DICT or other lead host agencies pursuant to the Innovative Startup Act; or
  - A majority of the direct employees are Filipinos, but in no case shall the number of Filipino
- Above minimum capitalization requirement is not applicable if the partnership intends to export more than 60 percent of its products

## LEGAL LIABILITY

### Subsidiary

A corporation has a personality separate and distinct from its individual stockholders. Liability of stockholders is limited only to the extent of their capital contribution. However, the privilege of being considered as a separate and distinct entity is confined to limited uses. Should this be exercised for fraudulent, unfair or illegal purposes (e. g., to evade taxes, escape liabilities to third parties, confuse legitimate issues of employer-employee relationship, protect fraud), the veil of corporate entity may be pierced, and the stockholder may then be held personally liable.

### Partnership

Partners are liable pro rata with all their property and, after all the partnership assets have been exhausted, for contracts entered into in the name and for the account of the partnership.

### All other entity types

Liability of an entity type is deemed to be a liability of the head office.

## TAX PRESENCE

### Subsidiary

- Subject to corporate income tax for income from sources within and outside the Philippines.
- Also subject to value-added tax (VAT) for gross receipts derived from sale, barter or exchange of goods or properties/services rendered in the Philippines.
- Also subject to local business taxes.

- Dividends received by the foreign entity/head office from its subsidiary are subject to withholding tax without prejudice to applicable treaties and domestic law provision, allowing the dividends tax sparing rate of 15 percent subject to conditions.

## Branch office

- Subject to income tax from sources within the Philippines
- Subject to VAT and local business taxes
- Subject to branch profit remittance tax, except if the branch is registered with the Philippine Economic Zone Authority.

## Representative office

Not subject to income tax, VAT or local business taxes as it is not allowed to earn income from the Philippines.

## Regional or area headquarters

Not subject to corporate income tax or local business taxes, but subject to VAT.

## Regional operating headquarters

Subject to income tax and VAT but not subject to local business taxes except real property taxes on land improvements and equipment.

## Partnership

Subject to regular corporate income tax, VAT and local business taxes.

## INCORPORATION PROCESS

To apply for incorporation, the incorporators must access online <https://esparc.sec.gov.ph/application> and fill out an application form. The availability of the name is verified online by filing the application. The required documents are uploaded to the SEC system and, upon approval, an email is sent to the applicant. Upon payment of fees and presentation of proof of payment, the applicant then submits the original signed and notarized documents to the SEC onsite.

## Subsidiary

File the following with the SEC:

- Articles of incorporation and bylaws
- Name verification slip (reserving a corporation name) and
- Treasurer's Affidavit (please see note)

Note: Pursuant to the Revised Corporation Code, the corporation is now required to declare in its articles of incorporation that the treasurer-in-trust has certified that the information with respect to the capital structure of the corporation is correct and that the paid-up portion of the subscription in cash for the benefit and credit of the corporation has been duly received. This declaration removes the requirement of a Treasurer's Affidavit. We note, however, that the SEC has yet to issue guidelines on incorporation requirements pursuant to these changes brought about by the Revised Corporation Code.

Further to this, a certificate of deposit issued by a bank showing that the paid-up capital portion of the authorized capital stock is duly deposited in this bank is generally not required by the SEC. However, the deposit must be completed and available to be in compliance with applicable law. It is recommended to obtain the bank certificate for ease of processing of the incorporation.

Basic filing fee in the amount of 1/5 of 1 percent of the authorized capital stock of the proposed company or the subscription price of the subscribed capital stock, whichever is higher, plus an additional amount of 1 percent of the basic filing fee for legal research fund, which in no case should be less than PHP2,000.

## Branch office

File the following with the SEC:

- Application form
- Name verification slip
- Apostilled copy of the board resolution authorizing the establishment of a branch, designating the resident agent and stipulating that, in the absence of such agent or upon cessation of its operations in the Philippines, any summons or legal processes may be served to SEC as if the same is made upon the corporation at its home office.
- Apostilled copy of the financial statements as of a date not exceeding 1 year immediately prior to the application, certified by an independent Certified Public Accountant of the home country
- Apostilled copy of the articles of incorporation with an English translation if in a language other than English
- Proof of inward remittance, such as a bank certificate of inward remittance
- Resident agent's acceptance of appointment (not required if agent is the signatory in the application form)
- Affidavit executed by the resident agent stating that the applicant is solvent and in sound financial condition and
- Endorsement/clearance from other government agencies, if applicable.

The filing fee is 1 percent of the actual inward remittance of the corporation converted into Philippine currency, but not less than PHP3,000, plus 1 percent of the filing fee as Legal Research Fee.

## Representative office

Same requirements as for a branch office.

Filing fee is 1/10 of 1 percent of the actual inward remittance of the corporation into Philippine currency, but not less than PHP3,000, plus 1 percent of the filing fee as Legal Research Fee.

## Regional or area headquarters

File the following with the SEC:

- Application form
- Name verification slip
- Certification from the Philippine Consulate/Embassy or the Philippine Commercial Office or from the equivalent office of the Philippine Department of Trade and Industry in the applicant's home country that the said foreign firm is an entity engaged in international trade with affiliates, subsidiaries or branch offices in the Asia Pacific and other foreign markets
- Apostilled copy of the certification from the principal officer of the foreign entity that the said foreign entity has been authorized by its board of directors or governing body to establish its regional or area headquarters of regional operating headquarters in the Philippines
- Affidavit of undertaking to change corporate name (not required if already stated in the application form)
- Endorsement of the Board of Investments and
- Endorsement/clearance from appropriate government agencies, if applicable.

Filing fee is PHP5,000, plus 1 percent of the filing fee as Legal Research Fee.

## Regional operating headquarters

Same requirements as for a regional or area headquarters.

Filing fee is 1 percent of the actual remittance but not less than 1 percent of peso equivalent of PHP200,000 at the time of remittance.

## Partnership

File the following with the SEC:

- Name verification slip
- Articles of partnership
- Joint affidavit of 2 partners to change partnership name (not required if already stated in the articles of partnership)
- Endorsement/clearance from other government agencies, if applicable and



- Foreign Investment Act Form I05.

Filing fee of 1/5 of 1 percent of the partnership's capital but not less than PHP2,000 plus 1 percent of the amount as a Legal Research Fee.

## BUSINESS RECOGNITION

### Subsidiary

Being a separate and distinct legal entity from its parent company, it is an attractive investment option for foreign entities wishing to do business in the Philippines.

### Branch office

Appeals to entities that wish to maintain the decision making as being centralized with the foreign company's board of directors (or its equivalent) abroad.

### Representative office

Caters to entities that do not intend to engage in business or derive income from the Philippines. It is allowed to undertake limited activities, such as information dissemination, promotion of the home office/foreign company's products and quality control.

### Regional or area headquarters

Caters to entities that do not intend to engage in business or derive income from the Philippines. The purpose of a regional or area headquarters is limited to supervising, superintending, inspecting and/or coordination all subsidiaries, affiliates and branches in the Asia-Pacific region of the home office/foreign company. It is an administrative branch and is not allowed to participate in the management of any subsidiary/branch office the foreign company may have; it also cannot solicit or market goods and services.

### Regional operating headquarters

Caters to entities that wish to avail of certain tax incentives. Unlike a regional or area headquarters, it may derive income from the Philippines and perform qualifying services such as general administration and planning, business planning and coordination, sourcing/procurement of raw materials/components, marketing control and sales promotion, training and personnel management, logistic services and corporate finance advisory services.

### Partnership

Easier to form since it will no longer go through an incorporation process and only articles of partnership would be required. No need to obtain a license to do business in the Philippines if a foreign company intends to be a limited partner (as opposed to a general partner, which is required to secure such license).

Instead of having directors and officers elected/appointed to perform certain activities and exercise powers, its partners may perform acts which would bind the partnership.

## SHAREHOLDER MEETING REQUIREMENTS

Generally not applicable. Exception is a subsidiary where it is required to hold an annual stockholders' meeting to vote on certain matters, such as election of directors.

## BOARD OF DIRECTOR MEETING REQUIREMENTS

Generally not applicable. Exception is a subsidiary where regular meetings of the board of directors must be held monthly, unless bylaws provide otherwise.

## ANNUAL COMPANY TAX RETURNS

It is required to file an annual income tax return for subsidiaries, branch offices, regional operating headquarters and partnerships.

Representative offices and regional/area headquarters are also required to file an annual income tax return but, because they are not allowed to earn income within the Philippines, they can indicate that their income is zero.

## BUSINESS REGISTRATION FILING REQUIREMENTS

Must secure business permits from the local government unit where it is located and register with the Bureau of Internal Revenue (BIR), Social Security System (SSS), Philippine Health Insurance Corporation (PHIC) and Home Development Mutual Fund (HDMF).

## BUSINESS EXPANSION

Generally not applicable. Exception is a subsidiary where articles of incorporation must be amended and filed with the SEC when authorized capital stock is increased.

## EXIT STRATEGY

### Subsidiary

A voluntary dissolution may be effected by amending the articles of incorporation to shorten the corporate term or provide for a fixed corporate term. This requires a majority vote of the board of directors ratified by stockholders owning at least 2/3 of the outstanding capital stock. Company is deemed dissolved upon approval of the amended articles of incorporation by the SEC. Under the RCC, corporations have a perpetual existence unless the articles of incorporation provide otherwise.

A voluntary dissolution where no creditors are affected may be effected by a majority vote of the board of directors and by a resolution duly adopted by the affirmative vote of the stockholders owning at least 2/3 of the outstanding capital stock. A notice of stockholders' meeting is required to be published for 3 consecutive weeks in a newspaper published in a location where the principal office of a company is located. In case none is available, then in a newspaper of general circulation. The application for dissolution must be submitted to the SEC.

Voluntary dissolution where creditors are affected: file Petition for Dissolution with the SEC.

File necessary documents with other government agencies where the subsidiaries hold permits/registrations.

## Partnership

File Articles of Dissolution or Affidavit of Dissolution with the SEC, and cancellation of local business permit and BIR registration, including registrations with other applicable government agencies such as the Social Security System, Philippine Health Insurance Corporation and Home Development and Mutual Fund.

## All other entity types

File a Petition for Withdrawal of License with the SEC, cancellation of business permit from the local government and cancellation of BIR registration, including registrations with other applicable government agencies such as the SSS, PhilHealth and HDMF.

## ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

General Information Sheet (GIS) and AFS stamped "received" by the BIR to be submitted annually to the SEC. Effective January 22, 2024, the BIR will cease collecting the annual registration form/fee from business taxpayers. As a result, business taxpayers are exempt from filing BIR No. 0605 and paying the PHP500 annual registration fee on or before January 31 of each year. The mayor's permit (from LGUs) must be renewed before January 20 of each year.

Business taxpayers with existing BIR Certificate of Registration (COR) that includes the Registration Fee will retain its validity. These taxpayers may choose to update or replace their COR at their convenience. This can be done at the Revenue District Office, where they are registered on or before December 31, 2024, by surrendering their old COR.

## DIRECTOR / OFFICER REQUIREMENTS

Generally not applicable.

As an exception in subsidiary, there must be:

- No more than 15 directors, each of whom must own at least 1 share in the capital stock of the corporation registered in their name in the books of the company.
- At least 3 officers:
  - President, who must be a director
  - Treasurer, who must be a Philippine resident and
  - Secretary, who must be a resident and citizen of the Philippines.

Note: No person may be president and secretary, or president and treasurer, at the same time.

## LOCAL CORPORATE SECRETARY REQUIREMENT

Not applicable in general. Exception is a subsidiary that must have a secretary, who must be a resident and a citizen of the Philippines. The OPC is also required to have a secretary.

## LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Generally, a resident agent is required.

As an exception for a subsidiary, only the 3 officers mentioned above are mandatory. The OPC is also required to have a secretary. The single stockholder may also act as treasurer.

Not applicable for a partnership.

## LOCAL OFFICE LEASE REQUIREMENT

It is required to indicate a specific local principal office address. A lease contract/accommodation letter is a requirement when applying for a business permit.

## 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

Third party shared offices service providers are available.

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

Generally not applicable. Exception is a subsidiary and OPC where there is no prohibition.

## NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Not applicable in general.

There are some exceptions:

## Subsidiary

Not more than 15 incorporators. Number of foreigners allowed to be incorporators would depend on the restrictions under the FIA, Philippine Constitution and other relevant laws.

Not more than 15 directors. If business activity is partly nationalized, the number of seats for foreigners on the board of directors is measured by a proportion of their present foreign equity to the number of directors as stated in the articles of incorporation. Additionally, the number of their seats should not exceed the proportion of the allowable foreign equity to the number of directors in the articles of incorporation in accordance with the Anti-Dummy Law. The officers of entities engaged in nationalized activities are also required to be Filipinos.

Nationality of shareholders depends on the classification of the business entity (partly nationalized, 100 percent foreign or reserved for Filipinos).

## Partnership

Subject to allowable foreign partners' interest under the FINL.

## RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Not applicable in general. Exception is a subsidiary where a nominee shareholder should comply with nationality requirement (if the corporation is subject to foreign equity restrictions). Each director must own at least 1 share in the corporation to qualify as director. Nominees are required to disclose their principals to the Securities and Exchange Commission by submitting a Beneficial Ownership Transparency Declaration Form, among other required documents.

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

Generally not applicable.

Exception is a subsidiary where directors exercise all corporate powers, conduct all business and control all property of the corporation. Officers exercise powers granted to them by law and the corporation's bylaws. Their acts are limited by instances when approval and/or ratification of the stockholders is necessary as provided by the Revised Corporation Code of the Philippines (eg. to amend articles of incorporation and bylaws, extend /shorten corporate term, increase/decrease capital stock, declaration of stock dividends).

## PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS



Yes, because the names and nationalities of the directors, officers and top 20 stockholders must be indicated in the GIS, which is available to the public upon request. Further, pursuant to recent regulations by the SEC, the beneficial owners of the shares of a local corporation and beneficial owners of SEC registered foreign corporations are required to be disclosed in the GIS. The beneficial ownership page, however, is not accessible by the public. In relation to this, the SEC has also issued Guidelines in Preventing the Misuse of Corporation for Illicit Activities through Measures Designed to Promote Transparency of Beneficial Ownership (Guidelines). The Guidelines require incorporators/shareholders/directors or trustees to disclose their principals or persons on whose behalf the registration was applied for. The disclosure includes the full names, country of residence, nationality, tax identification numbers (TIN) or passport numbers of the nominators or principals. If the nominator or principal is a corporation, the disclosure must contain the registered name of the corporation, its country of registration, names of its incorporators and directors, its beneficial owners, and its TIN. This information is not accessible to the public.

Not applicable for partnerships.

## MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Generally not applicable.

Exception is a subsidiary where the requirement is as follows:

- Directors: minimum of 2 and maximum of 15.
- Shareholders: depending on nationality requirements.

## MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Not applicable in general.

## REMOVAL OF DIRECTORS OR OFFICERS

Generally not applicable.

Exception is a subsidiary where a director can be removed from office by a vote of the stockholders representing at least 2/3 of the outstanding capital stock. Removal of officers is governed by the bylaws.

## REQUIRED AND OPTIONAL OFFICERS

Subsidiary

Required: president, treasurer and secretary.

OPC

Required: treasurer and secretary. The single shareholder is the sole director and president of the OPC. They may also act as the treasurer, but they cannot be the secretary.

Branch office, representative office, regional or area headquarters and regional operating headquarters

Required: resident agent.

Partnership

Not applicable.

## BOARD MEETING REQUIREMENTS

Not applicable in general.

Exception is a subsidiary where a notice (date, time, place, agenda) and presence of a quorum is required.

## QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Generally not applicable.

Exception is a subsidiary:

- Majority of a board of directors as provided in the articles of incorporation, unless otherwise provided in bylaws and
- Stockholders representing a majority of the outstanding capital stock, unless otherwise provided in bylaws.

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

Yes.

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

Generally, AFS is required to be submitted annually to the BIR and the SEC.

Subsidiary

If paid-up capital is PHP600,000 or more, the auditor must be accredited by the Board of Accountancy. Books must be kept locally.

## Branch office

If assigned capital is PHP1 million or more, auditor must be accredited by the Board of Accountancy.

## Representative office

If assigned capital is PHP1 million or more, auditor must be accredited by the Board of Accountancy. Should not earn income in the Philippines.

## Regional or area headquarters

Auditor must be accredited by the Board of Accountancy. Should not earn income in the Philippines.

## Regional operating headquarters

If total revenue is PHP1 million or more, auditor must be accredited by the Board of Accountancy.

## Partnership

Books must be kept locally (principal office).

## REQUIREMENT REGARDING PAR VALUE OF STOCK

Generally not applicable.

Exception is a subsidiary where any or all of shares or series of shares may have a par value or have no par value as may be provided for in the articles of incorporation, except for banks, trust companies, insurance companies, public utilities and building and loan associations (not permitted to issue no-par value shares of stock).

## INCREASING OF CAPITALIZATION IF NEEDED

Generally not applicable.

Exception is a subsidiary where such increase requires approval by majority vote of the board of directors and shareholders representing 2/3 of the outstanding capital stock. Articles of incorporation must be amended and filed with the SEC.

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

### Subsidiary

Dividends paid by the subsidiary to the head office/parent foreign corporation, subject to presence of sufficient unrestricted retained earnings.

Capital can be repatriated after dissolution and liquidation of the subsidiary. The capital to be repatriated cannot be denominated in pesos. To be able to source foreign currency through the banking system, the foreign company

must secure a Bangko Sentral Registration Document (BSRD) to register its foreign equity investments with the Bangko Sentral ng Pilipinas (BSP). The registration is optional but must be done within 1 year from the date of inward remittance. Without a BSRD, foreign currency has to be sourced outside the banking system.

## Branch office

Branch profit remittance.

Remaining assigned capital may be repatriated after withdrawal of license has been issued by the SEC and upon proper liquidation.

To be able to repatriate capital through the banking system, the company must have a BSRD, as discussed above.

## Representative office

Remaining assigned capital may be repatriated after withdrawal of license has been issued by the SEC and upon proper liquidation.

To be able to repatriate capital through the banking system, the company must have a BSRD, as discussed above.

## Regional or area headquarters

Remaining assigned capital may be repatriated after withdrawal of license has been issued by the SEC and upon proper liquidation.

To be able to repatriate capital through the banking system, the company must have a BSRD, as discussed above.

## Regional operating headquarters

Dividends.

Remaining assigned capital may be repatriated after withdrawal of license has been issued by the SEC and upon proper liquidation.

To be able to repatriate capital through the banking system, the company must have a BSRD, as discussed above.

## Partnership

Dividends.

Remaining profits may be repatriated after dissolution and winding up of the partnership.

To be able to repatriate capital through the banking system, the company must have a BSRD, as discussed above.

## RESTRICTIONS ON TRANSFERABILITY OF SHARES

In subsidiaries, transfer of ownership of shares must comply with nationality requirements, if applicable. Other restrictions may be provided in the articles of incorporation and/or bylaws, such as right of first refusal, put and call option and tag along rights.

Such restriction is not applicable for all other entity types.

## OBTAINING A NAME AND NAMING REQUIREMENTS

Proposed name must be verified and reserved with the SEC to ensure that it is distinguishable from names which are already reserved or registered for use by another corporation, or from names already protected by law, or that its use is not contrary to existing law, rules and regulations. . The RCC now requires corporations to manifest its willingness to change its corporate name, immediately upon receipt of notice or directive from the SEC that another corporation, partnership or person has acquired a prior right to the use of such name or that the name has been declared as misleading, deceptive, confusingly similar to a registered name or contrary to public morals, good customs or public policy.

Entity's name must end with "Corporation," "Corp.," "Incorporated" or "Inc."

## SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

In compliance with the Anti-Money Laundering Act of 2001, a bank is covered by the "Know-Your-Customer" Rule of the BSP and is obligated to implement procedures that would properly identify/verify the existence of its clients. As such, the foreign company must comply with the bank's procedure/requirements to be able to open an account/remit the necessary funds to set up its business in the Philippines.

## APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

### Subsidiary

Amendment of articles of incorporation: majority vote of the board of directors and vote or written assent of stockholders representing at least 2/3 of the outstanding capital stock, unless a higher vote is required under the bylaws

Amendment of bylaws: majority vote of the board of directors and vote of stockholders representing at least a majority of the outstanding capital stock, unless a higher vote is required under the bylaws

In a partnership, it is governed by the articles of partnership.

For branch offices, representative offices, regional/area headquarters or regional operating headquarters, in case of amendment of their articles of incorporation or bylaws in their home countries, copies of such amended articles of incorporation and bylaws must be submitted to the Philippine SEC within 60 days after the amendment becomes effective. In case of change of name of the head office, the license to transact business in the Philippines must likewise be amended to reflect such change of name.

## LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

### Subsidiary



Certificate of incorporation issued by the SEC; registration/permits/licenses issued by the BIR, local government unit and other government agencies, as applicable.

## Partnership

Certificate of registration issued by the SEC; registration/permits/licenses issued by the BIR, local government unit and other government agencies, as applicable.

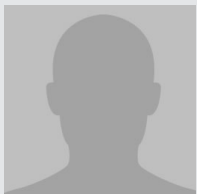
## All other entity types

License to Transact Business in the Philippines issued by the SEC; registration/permits/licenses issued by the BIR, local government unit and other government agencies, as applicable.

## PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Purchase of shares of a shelf company is subject to payment of applicable capital gains tax and documentary stamp tax, and application for a BIR Certificate Authorizing Registration. When a shelf company becomes 100-percent foreign-owned, it is subject to FIA registration and minimum capitalization requirements, as previously discussed.

### KEY CONTACTS



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