



GLOBAL EXPANSION GUIDEBOOK CORPORATE

Thailand



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INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Corporate*.

GLOBAL EXPANSION GUIDEBOOK SERIES

To compete and be successful today, companies need to develop and scale their businesses globally. Each country presents its own set of unique laws, rules and regulations and business practices that companies must understand to be successful. In order to help clients meet the opportunities and challenges of expanding internationally, we have created a handy set of global guides that cover the basics companies need to know when going into and doing business in new countries. The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, intellectual property and technology, executive compensation, and tax laws in key jurisdictions around the world.

CORPORATE

The *Global Expansion Guidebook – Corporate* has been created based on our research, our experience and feedback we have received from clients in both established and emerging businesses that have expanded internationally. We hope it will be a helpful resource for you.

The *Global Expansion Guidebook – Corporate* covers corporate basics in 54 key jurisdictions across the Americas, Asia Pacific, Europe and the Middle East. We touch on a wide range of corporate issues for companies expanding internationally, including establishing a corporate presence and choice of entity, liability considerations, tax presence and tax filings, capital requirements, the formation process, director, officer and shareholder requirements, registration processes, office lease processes and possible exit strategies.

With more than 600 lawyers, DLA Piper's global Corporate group is one of the largest in the world, with one of the widest geographical footprints of any global law firm and experience across the legal areas companies need as they expand internationally. With both global experience and local knowledge, we partner with our clients wherever they do business to find solutions and manage their risk in relation to their challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to seek advice regarding the specific matters that concern you. If you wish to speak to any of our contributors, you may find their contact details at the end of the guide.

We hope you find this guide valuable, and we welcome your feedback.

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

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THAILAND



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FORM OF ENTITY

Private limited company

Separate and distinct legal entity. Managed by a board of directors, which is responsible for making major business decisions and overseeing the general affairs of a company. Directors are elected by the shareholders of a company.

Public limited company

Separate and distinct legal entity. Managed by a board of directors, which is responsible for making major business decisions and overseeing the general affairs of a company. Directors are elected by the shareholders of a company. Public limited company can be newly incorporated or converted from, or amalgamated with, an existing private limited company. Usually a purpose of using a public limited company is to obtain investment from the public at large, for example, by making a public offering of its shares.

Partnerships

There are 3 types of partnerships:

- Unregistered ordinary partnership (all partners are jointly and severally liable).
- Registered ordinary partnership (a partnership becomes a legal entity, separate and distinct from individual partners; all partners are jointly and severally liable for all obligations of a partnership).
- Limited partnership (partnership becomes a legal entity, separate and distinct from individual partners). Limited partnerships are comprised of 2 types of partners:
 - Partner(s) whose liability is limited to the amount of their capital contribution and
 - Partner(s) who are jointly and unlimitedly liable for all obligations of a partnership.

ENTITY SET UP

Private limited company

- At least 2 shareholders are required.
- Unlimited number of shareholders.
- No personal liability of shareholders.
- Taxed on its earnings at a corporate level, and shareholders are taxed on any distributed dividends.
- Typical charter documents include:
 - Certificate of incorporation
 - Memorandum of association and articles of association
 - Company's affidavit
 - List of shareholders and share certificates and
 - Share register book.
- Board of directors has overall management responsibility.
- No invitation to subscribe for shares can be made to the public.
- 2 classes of shares may be issued concurrently (*ie*, common shares and preference shares).
- Private limited company may not own its own shares (*ie*, treasury shares are not allowed).
- A share is indivisible, but a share par value could be amended.
- A shareholder cannot avail himself or herself of a set-off against the company as to payments on shares (*ie*, debt to equity conversions in a private limited company are generally not permissible).

Public limited company

- At least 15 shareholders are required.
- Unlimited number of shareholders.
- No personal liability of shareholders.
- Taxed on its earnings at a corporate level, and shareholders are taxed on any distributed dividends.
- Typical charter documents include:
 - Certificate of incorporation

- Memorandum of associations and articles of association;
- Company's affidavit
- List of shareholders and share certificates and
- Share register
- Board of directors has overall management responsibility.
- Stock offerings can be categorized into 2 types: public offering and private placement. Public limited company may make a private placement of its shares without prior approval. If a public limited company intends to make a public offering, it must obtain prior approval from the Securities and Exchange Commission of Thailand. Shares of public limited company may or may not be traded on the Stock Exchange of Thailand.

Partnerships

Unregistered ordinary partnership

- 2 or more partners join together for a common undertaking to share profits by virtue of a contractual relationship between member partners.
- Not legally recognized as a legal person which exists separately from the partners.
- All partners are jointly and unlimitedly liable for acts made by any partner in the ordinary course of business of a partnership. Even if partners agree to restrict the powers of certain partners, such restriction will not have effect on third persons. Creditors can directly seek performance from any individual partner without first claiming against the assets of the partnership.

Registered ordinary partnership

- 2 or more partners join together for a common undertaking to share profits by virtue of a contractual relationship between member partners.
- A legal entity separate from the partners themselves.
- Personal liabilities of each partner are generally. Creditors may demand performance under an obligation from the partnership itself or any of its partners.

Limited partnership

- 2 or more partners join together for a common undertaking to share profits by virtue of a contractual relationship between member partners.
- A legal entity separate from the partners themselves.

- There are 1 or more partners who are limited in their liability to the extent of their contributions; there must be at least 1 partner who is unlimitedly liable for all obligations of a partnership and eligible to act as Managing Partner.

MINIMUM CAPITAL REQUIREMENT

Private limited company

As the amount of a share must not be less than THB5 and the minimum number of shareholders is 2, theoretically, the minimum registered capital amount required to incorporate a private limited company is THB10. However, this is generally not the case in practice, as private limited companies usually have a minimum registered capital in the amount sufficient to operate their business (ie, more than THB10).

Public limited company

No minimum capital requirement.

Partnerships

No minimum capital requirement.

LEGAL LIABILITY

Private limited company

Risk borne by shareholders is generally limited to shares they subscribed to or acquired. In other words, liability of shareholders is limited to unpaid amount (if any) on the shares respectively held by them.

Public limited company

Risk borne by shareholders is generally limited to shares they subscribed to or acquired. In other words, liability of shareholders is limited to unpaid amount (if any) on the shares respectively held by them.

Partnerships

Unregistered ordinary partnership

The personal liabilities of each partner are generally unlimited.

Registered ordinary partnership

The personal liabilities of each partner are generally unlimited.

Limited partnership

A limited partner is liable in the amount of their own contribution to the capital; an unlimited partner is liable for all obligations of a partnership.

TAX PRESENCE

Private limited company

A private limited company is subject to corporate income tax. The shareholders are subject to income tax on the dividends paid to them.

Public limited company

A public limited company is subject to corporate income tax. The shareholders are subject to income tax on the dividends paid to them.

Partnerships

Unregistered ordinary partnership

Partners of an unregistered ordinary partnership must pay personal income tax at a progressive rate.

Registered ordinary partnership

A registered ordinary partnership is subject to corporate income tax. The partners are subject to income tax on the profit distributions from the registered ordinary partnership.

Limited partnership

A limited partnership is subject to corporate income tax. The partners are subject to income tax on the profit distributions from the registered limited partnership.

INCORPORATION PROCESS

Private limited company

Reserve the company's name and file the application form with its supporting documents to the Department of Business Development (DBD).

Public limited company

Reserve the company's name and file the application form with its supporting documents to the DBD.

Partnerships

Unregistered ordinary partnership

No registration is required.

Registered ordinary partnership

Reserve the name and file the application form with its supporting documents to the DBD.

Limited partnership

Reserve the name and file the application form with its supporting documents to the DBD.

BUSINESS RECOGNITION

Private limited company

Well regarded and widely used.

Public limited company

Well regarded and widely used.

Partnerships

Unregistered ordinary partnership

Well regarded and widely used, in particular for local business operators.

Registered ordinary partnership

Well regarded, but not widely used.

Limited partnership

Well regarded and widely used, in particular for local business operators.

SHAREHOLDER MEETING REQUIREMENTS

Private limited company

At least once a year to vote on certain matters, such as approval of financial statements or election of directors in place of those retired by rotation.

Public limited company

At least once a year to vote on certain matters, such as approval of financial statements or election of directors in place of those retired by rotation.

Partnerships

Annual meeting of partners is not required.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Private limited company

No requirements for board of directors' meetings. However, the board of directors must at least hold a meeting to call an annual general meeting of shareholders.

Public limited company

Board of directors must hold a meeting at least once every 3 months.

Partnerships

Not applicable for this jurisdiction.

ANNUAL COMPANY TAX RETURNS

An entity (ie, a registered ordinary partnership, a limited partnership, a private limited company or a public limited company) is obliged to file corporate income tax returns twice a year:

- Mid-year tax return – within 2 months after the end of the 1st 6 months of any accounting year (subject to the type of entity, the calculation for the mid-year tax return can be made based on either (i) an estimated income and expense of the full year or (ii) the actual income and expense of the first 6-month period in such year) and
- Year-end tax – within 150 days after the end of accounting period.

Entities must file mid-year tax return within 2 months after the end of the 1st 6 months of any accounting year and file year-end tax return within 150 days after the end of accounting period.

BUSINESS REGISTRATION FILING REQUIREMENTS

Any registration related to an entity must be filed with the DBD. Financial statements must also be filed annually.

BUSINESS EXPANSION

Not applicable for this jurisdiction.

EXIT STRATEGY

File dissolution documents with the DBD.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Not applicable for this jurisdiction.

DIRECTOR / OFFICER REQUIREMENTS

Private limited

No minimum number requirement; therefore, a sole director is allowed.

Public limited company

A board of directors must consist of at least 5 directors of which not less than 1/2 shall reside in Thailand.

LOCAL CORPORATE SECRETARY REQUIREMENT

There is no legal requirements for private companies, public companies or partnerships (registered or unregistered) to appoint a corporate secretary. However, companies listed on the Stock Exchange of Thailand are encouraged to appoint a company secretary to oversee the activities of the board of directors pursuant to the Policy Statement on Code of Best Practices of Directors of Listed Companies prescribed by the Stock Exchange of Thailand.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Not applicable for this jurisdiction.

LOCAL OFFICE LEASE REQUIREMENT

Not applicable for this jurisdiction.

OTHER PHYSICAL PRESENCE REQUIREMENTS

According to interpretation of relevant law by the company's registrar, circular resolutions and proxies/powers of attorney are not acceptable for board meetings, and directors must attend the meetings in person or via electronic meeting.

Electronic meetings are allowed, provided that the conditions specified in the Emergency Decree for Electronic Meetings are complied with and the electronic meetings are transacted via certified teleconference or video conference platforms. For example, attendees must be able to identify themselves before the start of the meeting, the minutes of the meetings must be documented in writing and all electronic data (of every attendee) must be collected.

SUFFICIENCY OF VIRTUAL OFFICE

Applicable to certain extent (ie, not applicable for the entity's value-added tax registration).

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

Applicable subject to internal policy of such law firm or third-party service provider.

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

Director

Applicable subject to internal policy of such law firm or third-party service provider.

Corporate secretary

Applicable and widely used.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Private limited company

Unless the company's business is subject to certain specific laws, no nationality or residency requirements for shareholders or directors of the company.

Public limited company

Unless the company's business is subject to certain specific laws, no nationality or residency requirements for shareholders of the company. Board of directors must consist of at least 5 directors to conduct business of a company, not less than 1/2 of directors must reside within Thailand.

Partnerships

No nationality or residency requirements for partners or managing partners of the partnership.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Nominee arrangement for avoiding the requirements under the Foreign Business Act is prohibited.

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

Private limited company

No minimum and maximum number of directors is required; therefore, a sole director is allowed. Maximum number of shareholders is unlimited, but minimum number of shareholders required by law is 2.

Public limited company

Minimum number of directors required by law is 5. Maximum number of shareholders is unlimited, but minimum number required by law is 15.

Partnerships

Not applicable for this jurisdiction.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Private limited company

Minimum number of shareholders required by law is 2.

Public limited company

Minimum number of shareholders required by law is 15.

Partnerships

Not applicable for this jurisdiction.

REMOVAL OF DIRECTORS OR OFFICERS

Private limited company

A resolution of shareholders' meeting for the removal of a director, and the change of authorized signatory power, if any, as well as the registration with the DBD for change of directors and the authorized signatory power is required.

Public limited company

A resolution of shareholders' meeting for the removal of a director, and the change of authorized signatory power, if any, as well as the registration with the DBD for change of directors and the authorized signatory power is required.

Partnerships

Not applicable for this jurisdiction.

REQUIRED AND OPTIONAL OFFICERS

Not applicable for this jurisdiction.

BOARD MEETING REQUIREMENTS

Private limited company

No requirements for board of directors' meetings. However, the board of directors must at least hold a meeting to call an annual general meeting of shareholders.

Public limited company

The board of directors must hold a meeting at least once every 3 months.

Partnerships

Not applicable for this jurisdiction.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Private limited company

Unless otherwise specified by the company's articles of association, quorum for a board of directors' meeting is 3 members (when total number of directors exceeds 3). A quorum for a shareholders' meeting is at least 2 shareholders representing at least 1/4 of the company's capital.

Public limited company

For a board of directors' meeting, at least 1/2 of the total number of directors is required to constitute a quorum. For a shareholders' meeting, number of shareholders and proxies (if any) attending the meeting must not be fewer than 25 persons or no fewer than 1/2 of the total number of shareholders and, in either case, such shareholders must hold shares in the amount no fewer than 1/3 of the total number of shares needed to constitute a quorum.

Partnerships

Not applicable for this jurisdiction.

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

Private limited company

If a registered capital of a company exceeds THB5 million, a bank certificate issued under the company's name showing the amount not less than the amount of capital to be registered from a bank is required to be filed with the DBD within 15 days after the incorporation date of the company. A local bank account can be opened after an incorporation of a company.

Public limited company

Not applicable for this jurisdiction.

Partnerships

If a registered capital of a registered ordinary partnership or limited partnership exceeds THB5 million, a bank certificate issued under the name of the registered ordinary partnership or limited partnership showing the amount not less than the amount of capital to be registered from a bank is required to be filed with the DBD within 15 days after the incorporation date of the registered ordinary partnership or the limited partnership. A local bank account can be opened after an incorporation of a registered ordinary partnership or limited partnership.

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

Financial statements must be audited by qualified Certified Public Accountants of Thailand. Generally, a company's account must be kept at the place of business.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Private limited company

Minimum par value of each share is THB5.

Public limited company

Minimum par value of each share is not specified. However, each share must be equal in value.

INCREASING OF CAPITALIZATION IF NEEDED

Not applicable for this jurisdiction.

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

Dividends or capital returns can be repatriated from Thailand via wire transfer through a commercial bank.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Private limited company

Transfer of shares under a name certificate is void unless made in writing and signed by the transferor and the transferee whose signatures shall be certified by at least by 1 witness.

Such transfer is invalid as against the company and 3rd persons until the name and address of the transferee are recorded in the share register book.

Public limited company

Promoters cannot transfer shares purchased during the incorporation process prior to the lapse of 2 years from the date of incorporation, unless approval is obtained at the meeting of shareholders. A transfer of shares is only valid upon the transferor's endorsement of the share certificate by way of indicating the name of the transferee and having it signed by both the transferor and the transferee upon delivery of share certificates to the transferee.

The transfer of shares can be claimed against the company only when the company has received a request to register the transfer of the shares, but it may be set up against a 3rd person only after the company has recorded the transfer of the shares in the share register book.

Partnerships

Not applicable for this jurisdiction.

OBTAINING A NAME AND NAMING REQUIREMENTS

Entity's name must comply with regulation of, and be approved by, the DBD.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

May be required if a company operates a regulated business such as commercial banks or other types of financial institutions.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Private limited company

A shareholders' resolution to amend the charter document and filing of application with supporting documents for such amendment to the DBD are required.

Public limited company

A shareholders' resolution to amend the charter document and filing of application with supporting documents for such amendment to the DBD are required.

Partnerships

Not applicable for this jurisdiction.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

May be required if the entity is wholly/majority owned by foreigners or its business is restricted and governed by certain specific laws.

Unless a foreign business license or a foreign business certificate is obtained, a foreigner is prohibited from conducting restricted businesses prescribed under the Foreign Business Act.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

MERGER AND AMALGAMATION

Private limited company

2 or more private limited companies can be combined by way of (i) merger or (ii) amalgamation. In the case of merger, there will be 1 company that continues to exist after the merger while other merging companies would no longer exist. Such surviving entity will acquire all the assets, debts, rights, duties and responsibilities inherent to the companies being merged. However, an amalgamation is a combination of 2 or more companies into an entirely new entity. The new amalgamated company will acquire all the assets, debts, rights, duties and responsibilities inherent to the companies being amalgamated.

A special resolution of the shareholders of the companies to be combined are pre-requisite for the merger and amalgamation process. The establishment of the merged or the amalgamated company also requires the registration with the DBD.

Public limited company

Unlike the private limited company, the combination of (i) 2 or more public limited companies or (ii) a public limited company and a private limited company, can only be done by way of amalgamation. The new amalgamated public limited company will acquire all the assets, debts, rights, duties and responsibilities inherent to the companies being amalgamated.

A special resolution of the shareholders of the companies to be combined are pre-requisite for the amalgamation process. The establishment of the amalgamated company also requires the registration with the DBD.

Partnerships

A registered ordinary partnership can be combined with another registered ordinary partnership by way of amalgamation. The consent of all partners, unless agreed otherwise, is pre-requisite for the amalgamation process. The new amalgamated registered ordinary partnership acquires all the rights and liabilities inherent to the registered ordinary partnerships being amalgamated. The establishment of the amalgamated registered ordinary partnership also requires the registration with the DBD.

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