



GLOBAL EXPANSION GUIDEBOOK CORPORATE

Taiwan, China



Downloaded: 02 May 2025

INTRODUCTION

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

GLOBAL EXPANSION GUIDEBOOK SERIES

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

CORPORATE

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

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

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

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

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

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

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TAIWAN, CHINA



Last modified 01 July 2024

FORM OF ENTITY

Company limited by shares

A company limited by shares must carry on a profit-seeking business and is a separate and distinct legal entity whereby its capital is divided into shares. A foreign investor must file a foreign investment application (FIA) with the Investment Commission and upon approval incorporate an FIA company in Taiwan.

Closely-held company limited by shares

On June 15, 2015, a special section entitled "Closely-Held Company" (CHC) was added to Chapter 5 (Company Limited by Shares) as a result of the amendments to the Company Act. Its purpose is to encourage the growth of startups and small and medium enterprises and to accommodate the unique needs of tech startups. The amendments aim to create more autonomy for those small or medium companies and to increase the flexibility in share ownership arrangement and business operations of CHC.

Limited company

A limited company is owned by members whose respective ownerships are stated in terms of the amount of the members' capital contributions. A foreign investor must file an FIA with the Investment Commission and upon approval incorporate a limited company in Taiwan. A limited company has fewer corporate formalities than a company limited by shares. For example, a limited company does not have shareholders' meetings.

Branch office of a foreign company

A foreign company may register a branch office to carry on profit-seeking activities in Taiwan. A branch office is exempt from almost all of the corporate formality requirements of a company limited by shares.

ENTITY SET UP

- Company limited by shares
- Closely-held company limited by shares

- Limited company
- Branch office of a foreign company

MINIMUM CAPITAL REQUIREMENT

Company limited by shares

None, unless the company is engaged in a business/industry that is required by the competent authority to have a minimum amount of capital or if it employs a foreigner to work in Taiwan.

Closely-held company limited by shares

None, unless the CHC is engaged in a business/industry that is required by the competent authority to have a minimum amount of capital or if it employs a foreigner to work in Taiwan.

Limited company

None, unless the company is engaged in a business/industry that is required by the competent authority to have a minimum amount of capital or if it employs a foreigner to work in Taiwan.

Branch office of a foreign company

None, unless the branch office is engaged in a business/industry that is required by the competent authority to have a minimum amount of working capital or if it employs a foreigner to work in Taiwan.

LEGAL LIABILITY

Limited company

Members are not liable for the debts of the company aside from their capital contributions to the company.

Branch office of a foreign company

A branch office is considered as a part of its foreign head office, which will be liable for any activities or debts of the branch office.

Branch office of a foreign company

A branch office is considered as a part of its foreign company, which will be liable for any activities or debts of the branch office.

TAX PRESENCE

Company limited by shares

A company (including an FIA company) is taxed on its worldwide net income.

Closely-held company limited by shares

A CHC (including an FIA company) is taxed on its worldwide net income.

Limited company

A company (including an FIA company) is taxed on its worldwide net income.

Branch office of a foreign company

A branch office is taxed on its own (exclusive of its foreign head office's) net income.

INCORPORATION PROCESS

Company limited by shares

File for company registration (and FIA if any shareholder is a foreign national/entity) with the Ministry of Economic Affairs (MOEA).

Closely-held company limited by shares

File for company registration (and FIA if any shareholder is a foreign national/entity) with the MOEA.

Limited company

File for company registration (and FIA, if any member is a foreign national/entity) with the MOEA.

Branch office of a foreign company

File for registration of the branch office with the MOEA.

BUSINESS RECOGNITION

Company limited by shares

Well regarded and widely used.

Closely-held company limited by shares

Well regarded.

Limited company

Typically an individual or family-owned company.

Branch office of a foreign company

Widely used by foreign companies because of certain tax advantages.

SHAREHOLDER MEETING REQUIREMENTS

Company limited by shares

If there is more than 1 shareholder, shareholders' meetings must be held physically to approve certain important corporate matters, such as the company's annual financial statements. For a non-public status company, its shareholders' meeting may be conducted through video conferencing if its articles of incorporation so permit. Where there is only 1 shareholder, then all functions of the shareholders' meeting are exercised by the board meetings.

Closely-held company limited by shares

If there is more than 1 shareholder, shareholders' meetings must be held to approve certain important corporate matters, such as the CHC's annual financial statements. If there is only 1 shareholder, then all functions of the shareholders' meeting are exercised by the board meetings. The shareholders' meeting of a CHC may be conducted through video conferencing, and a resolution can be approved by all shareholders in writing without convening a meeting.

Limited company

Not applicable for this jurisdiction. Members are not required to meet annually. Rather, important corporate matters must be approved by all members in writing.

Branch office of a foreign company

Not applicable for this jurisdiction.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Company limited by shares

An annual board meeting is required to convene the annual shareholders' meeting.

Closely-held company limited by shares

An annual board meeting is required.

Limited company

Not applicable for this jurisdiction.

Branch office of a foreign company

Not applicable for this jurisdiction.

ANNUAL COMPANY TAX RETURNS

Company limited by shares

The company must file annual tax returns.

Closely-held company limited by shares

The CHC must file annual tax returns.

Limited company

The company must file annual tax returns.

Branch office of a foreign company

The branch office must file annual tax returns.

BUSINESS REGISTRATION FILING REQUIREMENTS

Company limited by shares

The company must apply for business registration with the tax authority after incorporation.

Closely-held company limited by shares

The CHC must apply for business registration with the tax authority after incorporation.

Limited company

The company must apply for business registration with the tax authority after establishment.

Branch office of a foreign company

The branch office must apply for business registration with the tax authority after registration with the MOEA.

BUSINESS EXPANSION

Company limited by shares

Generally, an application to the MOEA for amending its company registration to expand its scope of business is required.

Closely-held company limited by shares

Generally, an application to the MOEA for amending its company registration to expand its scope of business is required.

Limited company

Generally, an application to the MOEA for amending its company registration to expand its scope of business is required.

Branch office of a foreign company

Generally, an application to the MOEA for amending the branch registration to expand its scope of business is required.

EXIT STRATEGY

File dissolution documents with the MOEA and complete the liquidation process.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Company limited by shares

Annual board meeting and shareholders' meeting.

Closely-held company limited by shares

Annual board meeting and shareholders' meeting.

Limited company

None.

Branch office of a foreign company

None.

DIRECTOR / OFFICER REQUIREMENTS

Company limited by shares

At least 3 directors, 1 supervisor and a chairman of the board are required. If its articles of incorporation so permit, a non-public status company may have only 1 director (acting as the chairman of the company and exercising all functions of the board of directors) and 1 supervisor. Furthermore, if there is only 1 corporate shareholder and its articles of incorporation so permit, then the company is exempt from the requirement to appoint a supervisor.

Closely-held company limited by shares

At least 3 directors, 1 supervisor and a chairman of the board are required. If its articles of incorporation so permit, a CHC may have only 1 director acting as the chairman of the company and exercising all functions of the board of directors. Furthermore, if there is only 1 corporate shareholder and its articles of incorporation so permit, then the CHC is exempt from the requirement to appoint a supervisor.

Limited company

The company must have at least 1 director, who must be a member or a representative designated by a corporate member.

Branch office of a foreign company

Not applicable for this jurisdiction.

LOCAL CORPORATE SECRETARY REQUIREMENT

None.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Company limited by shares

Not applicable for this jurisdiction.

Closely-held company limited by shares

Not applicable for this jurisdiction.

Limited company

Not applicable for this jurisdiction.

Branch office of a foreign company

The foreign head office of the Taiwan branch office must designate a representative who can concurrently act as the branch manager.

LOCAL OFFICE LEASE REQUIREMENT

A local registered office address is required.

OTHER PHYSICAL PRESENCE REQUIREMENTS

None for incorporation.

SUFFICIENCY OF VIRTUAL OFFICE

No.

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

Permitted but subject to certain restrictions.

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

Permitted but seldom used – there is no need to have a corporate secretary.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Company limited by shares

The nationality and residency requirements of an FIA company are exempt, provided that a Mainland Chinese (PRC) national is not permitted to act as the director or supervisor.

Closely-held company limited by shares

The nationality and residency requirements of an FIA company are exempt; provided that a PRC national is not permitted to act as the director or supervisor.

Limited company

The nationality and residency requirements of an FIA company are exempt, provided that a PRC national is not permitted to act as the director.

Branch office of a foreign company

The nationality and residency requirements are exempt, provided that a PRC national is not permitted to act as the designated representative of the foreign head office or branch manager.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Company limited by shares

None, except that, for FIA purposes, it is necessary to disclose the ultimate beneficiaries of a foreign corporate shareholder.

Closely-held company limited by shares

None, except that, for FIA purposes, it is necessary to disclose the ultimate beneficiaries of a foreign corporate shareholder.

Limited company

None, except that, for FIA purposes, it is necessary to disclose the ultimate beneficiaries of a foreign corporate shareholder.

Branch office of a foreign company

None.

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

Company limited by shares

The chairman, directors and supervisor are the "responsible persons" of the company and required to conduct the business of the company in good faith and exercise the due care of a good administrator. Officers are appointed by the board to oversee the day-to-day operations of the company.

Closely-held company limited by shares

The chairman, directors and supervisor are the "responsible persons" of the CHC and required to conduct the business of the CHC in good faith and exercise the due care of a good administrator. Officers are appointed by the board to oversee the day-to-day operations of the company.

Limited company

The director(s) is the "responsible person" of the company and is required to conduct the business of the company in good faith and exercise the due care of a good administrator.

Branch office of a foreign company

The branch manager is the "responsible person" of the branch office and is required to conduct the business of the branch office in good faith and exercise the due care of a good administrator.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Company limited by shares

The identities of the directors and supervisor are publicly disclosed. The identities of the shareholders are not publicly disclosed, except that the public would know the identity of a shareholder who acts as a director or supervisor or of a corporate shareholder who appoints a director or supervisor.

Closely-held company limited by shares

The identities of the directors and supervisor of the CHC are publicly disclosed. The identities of the shareholders are not publicly disclosed, except that the public would know the identity of a shareholder who acts as a director or supervisor or of a corporate shareholder who appoints a director or supervisor.

Limited company

The identity(ies) of the director(s) is publicly disclosed. The identity(ies) of the member(s) is not publicly disclosed, except that the public would know the identity of a member who acts as the director or of a corporate member who appoints the director.

Branch office of a foreign company

The identity of the branch manager is publicly disclosed. The name of the foreign company is also publicly disclosed.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

Company limited by shares

Must have at least 3 directors, provided that a non-public status company which has only 1 corporate shareholder may have only 1 director if its articles of incorporation so permit. There is no maximum number of directors.

Closely-held company limited by shares

Must have at least 3 directors, provided that a CHC which has only 1 corporate shareholder may have only 1 director if its articles of incorporation so permit. There is no maximum number of directors.

Limited company

Must have at least 1, but not more than 3 directors.

Branch office of a foreign company

Not applicable for this jurisdiction.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Company limited by shares

Must have at least 2 shareholders but may have a sole shareholder if such sole shareholder is a company. There is no maximum number of shareholders.

Closely-held company limited by shares

1 shareholder is sufficient. The maximum number of shareholders is 50.

Limited company

1 member is sufficient.

Branch office of a foreign company

Not applicable for this jurisdiction.

REMOVAL OF DIRECTORS OR OFFICERS

Company limited by shares

Removal of directors can be effectuated by the shareholders' meeting or the shareholder designating such director (without a shareholders' meeting). Officers can be removed by the board.

Closely-held company limited by shares

Removal of directors can be effectuated by the shareholders' meeting or the shareholder designating such director (without a shareholders' meeting). Officers can be removed by the board.

Limited company

All members must consent to remove or replace the director(s).

Branch office of a foreign company

Manager of the branch office can be removed by the board of the foreign company.

REQUIRED AND OPTIONAL OFFICERS

No required officers.

BOARD MEETING REQUIREMENTS

Company limited by shares

Generally, 1 regular board meeting is required, which can either be a physical meeting or held through video conferencing. For a non-public status company, a unanimous written resolution in lieu of a board meeting is allowed if its articles of incorporation so permit. A board meeting held by telephone conference is not permitted.

Closely-held company limited by shares

Generally, 1 regular board meeting is required, which can either be a physical meeting or held through video conferencing. A unanimous written resolution in lieu of a board meeting is allowed if its articles of incorporation permit. A board meeting held by telephone conference is not permitted.

Limited company

Not applicable for this jurisdiction.

Branch office of a foreign company

Not applicable for this jurisdiction.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Company limited by shares

Other than for certain important matters stated in the Company Act and/or its articles of incorporation, a simple majority must be present for both board (directors) and shareholders' (voting shares) meetings.

Closely-held company limited by shares

Other than for certain important matters stated in the Company Act and/or its articles of incorporation, a simple majority must be present for both board (directors) and shareholders' (voting shares) meetings.

Limited company

Not applicable for this jurisdiction.

Branch office of a foreign company

Not applicable for this jurisdiction.

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

Before incorporation of the entity, a preparatory bank account must be opened at a local bank to receive the paid-in capital/working capital of such entity. After the company/branch office registration and business registration are completed, the entity may opt to open a permanent account at a local bank.

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

Company limited by shares

A company with capital over NTD30 million (approximately USD1 million) or a company with capital less than NTD30 million but with (1) annual sales revenue exceeding NTD100 million (approximately USD3.3 million), or (2) more than 100 local employees, must have its annual financial statements audited by a local CPA. Except for the annual financial statements approved by the board/shareholders' meeting (in respect of which the company must keep at least a copy thereof at the company's place of business), other company's books and records need not be kept locally.

Closely-held company limited by shares

A CHC with capital over NTD30 million (approximately USD1 million) or a company with capital less than NTD30 million but with (1) annual sales revenue exceeding NTD100 million (approximately USD3.3 million), or (2) more than 100 local employees, must have its annual financial statements audited by a local CPA. Except for the annual financial statements approved by the board/shareholders' meeting (in respect of which the CHC must keep at least a copy thereof at the CHC's place of business), other CHC's books and records need not be kept locally.

Limited company

A company with capital contributions over NTD30 million (approximately USD1 million) or a company with capital contributions less than NTD30 million but with (1) annual sales revenue exceeding NTD100 million (approximately USD3.3 million), or (2) more than 100 local employees, must have its annual financial statements audited by a local CPA. The company's books and records need not be kept locally.

Branch office of a foreign company

A branch office must keep separate accounting books. A branch office with working capital over NTD30 million (approximately USD1 million) or a branch office with working capital less than NTD30 million but with (1) annual sales revenue exceeding NTD100 million (approximately USD3.3 million), or (2) more than 100 local employees, must have its annual financial statements audited by a local CPA. The branch office's books and records need not be kept locally.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Company limited by shares

A company may issue either par value shares or no-par value shares.

Closely-held company limited by shares

A CHC may issue either par value shares or no-par value shares.

Limited company

Not applicable for this jurisdiction.

Branch office of a foreign company

Not applicable for this jurisdiction.

INCREASING OF CAPITALIZATION IF NEEDED

Company limited by shares

An increase in the company's authorized capital will result in a Capital Tax of NTD1 for every NTD4,000 increase.

Closely-held company limited by shares

An increase in the company's authorized capital will result in a Capital Tax of NTD1 for every NTD4,000 increase.

Limited company

An increase in the company's capital contributions will result in a Capital Tax of NTD1 for every NTD4,000 increase.

Branch office of a foreign company

Not applicable for this jurisdiction.

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

Company limited by shares

The company may repatriate all its after-tax profits (minus 10-percent legal reserve) as dividends after the annual shareholders' meeting has accepted the annual financial statements. In addition, the company may distribute dividends after the end of each quarter or half fiscal year after its board meeting has accepted the quarterly/semi-annual financial statements if its articles of incorporation so permit. In order to repatriate the company's invested capital, the company would have to either reduce its capital or liquidate.

Closely-held company limited by shares

A CHC may repatriate all its after-tax profits (minus 10-percent legal reserve) as dividends after the annual shareholders' meeting has accepted the annual financial statements and, if its articles of incorporation so permit, may also distribute dividends after the end of each quarter or half fiscal year after its board meeting has accepted the quarterly/semi-annual financial statements. In order to repatriate the CHC's invested capital, the CHC would have to either reduce its capital or liquidate.

Limited company

The company may repatriate all its after-tax profits (minus 10-percent legal reserve) after the members have accepted the annual financial statements and, if its articles of incorporation so permit, may also distribute profits after the end of each quarter or half fiscal year after its members have accepted the quarterly/semi-annual financial statements. In order to repatriate the company's capital contributions, the company would have to either reduce its capital or liquidate.

Branch office of a foreign company

After-tax profits of a branch office can be repatriated to its foreign company free from dividend tax. In order to repatriate the branch office's working capital, the foreign company would have to pass resolutions to reduce the branch office's working capital or liquidate the branch office.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Company limited by shares

Except to the extent the articles of incorporation of the company prohibit or restrict the transfer of preferred shares, the transfer of shares may not be prohibited or restricted by a company's articles of incorporation. Transfers by or to foreign investors require FIA approval.

Closely-held company limited by shares

In order to maintain the "closely-held" feature of a CHC, restrictions on share transfer shall be specified in the articles of incorporation and the share certificates of the CHC (and, if the CHC does not issue share certificates, the private agreements among the shareholders).

Limited company

Transfer of a member's capital contribution requires the approval of 51 percent of the other members. Transfer of a director's capital contribution requires the consent of all other members.

Branch office of a foreign company

Not applicable for this jurisdiction.

OBTAINING A NAME AND NAMING REQUIREMENTS

A Chinese name reservation must be made before filing for incorporation of a company or registration of a branch office by a foreign company.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Generally not required. Entities in the financial sector will typically impose their own KYC requirements in accordance with Taiwan Anti-Money Laundering Act (AMLA).

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Company limited by shares

Any amendment to the company's articles of incorporation generally requires shareholders' meeting approvals.

Closely-held company limited by shares

Any amendment to the CHC's articles of incorporation generally requires shareholders' meeting approvals.

Limited company

Any amendment to the company's articles of incorporation requires approval of all members.

Branch office of a foreign company

Not applicable for this jurisdiction.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Company limited by shares

Special licenses/permits are required for certain business activities (eg, banking, securities, telecommunications or manufacturing). Aside from this, the company may carry on its business after completion of the incorporation process and business registration.

Closely-held company limited by shares

Special licenses/permits are required for certain business activities.

Limited company

Special licenses/permits are required for certain business activities.

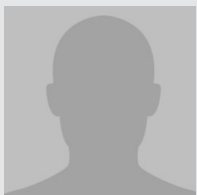
Branch office of a foreign company

Special licenses/permits are required for certain business activities.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

Shelf companies are not available in Taiwan.

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