



GLOBAL EXPANSION GUIDEBOOK CORPORATE

United States



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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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UNITED STATES



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FORM OF ENTITY

C corporation

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 the corporation. Directors are elected by the stockholders of the corporation. Officers, who run the day-to-day operations of the corporation, are appointed by the directors.

S corporation

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 the corporation. Directors are elected by the stockholders of the corporation. Officers, who run the day-to-day operations of the corporation, are appointed by the directors.

Limited liability company (LLC)

Separate and distinct legal entity. Managed by either the members of the LLC or a manager appointed by the members. Members of the LLC have flexibility in structuring the company, including the ability to divide ownership and voting rights in multiple ways.

Note: Additional forms of entity structures also exist and could be useful in some instances but are not covered in this guide either because they are less commonly used types of entity structures or not as likely to be relevant to the reader.

ENTITY SET UP

C corporation

- Unlimited number of shareholders
- Generally no personal liability of the shareholders

- Taxed on its earnings at a corporate level and shareholders are taxed on any distributed dividends
- Typical charter documents include: articles/certificate of incorporation; bylaws; organizational board resolutions; stock certificates; and stock ledger
- Board of directors has overall management responsibility; officers have day-to-day responsibility
- Shareholders typically purchase stock in the corporation, either common or preferred, and
- Most states require an annual report to be filed with the Secretary of State, typically reporting the name identity of the officers and directors of the corporation

S corporation

- Up to 100 shareholders; only 1 class of stock allowed
- Generally no personal liability of the shareholders
- With the filing of an IRS Form 2553, a C corporation becomes a S corporation, whereby the profits and losses are passed through to the shareholders
- Typical charter documents include: articles/certificate of incorporation; bylaws; organizational board resolutions; stock certificates; stock ledger; IRS S corporation election form and any applicable state filings
- Board of directors has overall management responsibility; officers have day-to-day responsibility and
- Shareholders typically purchase stock in the corporation, but only 1 class of stock is allowed

Limited liability company (LLC)

Unlimited number of members allowed

Generally no personal liability of the members

Not subject to income tax (unless chosen to be taxed); profits and losses are passed through to the members

Typical charter documents include: articles of organization or certificate of formation; operating agreement

Operating Agreement sets forth how the business is to be managed; a member (owner) or Manager can be designated to manage the business and

Members typically contribute money or services to the LLC and receive an interest in profits and losses

Note: The mechanics and operation of corporations are governed by individual state corporate laws.

MINIMUM CAPITAL REQUIREMENT

C corporation

No minimum capital requirement.

S corporation

No minimum capital requirement.

Limited liability company (LLC)

No minimum capital requirement.

LEGAL LIABILITY

C corporation

Shareholders of a corporation are generally not liable for the debts of a corporation aside from their financial contribution to the corporation.

S corporation

Shareholders of a corporation are generally not liable for the debts of a corporation aside from their financial contribution to the corporation.

Limited liability company (LLC)

Members are generally not liable for the debts of the LLC aside from their contribution to the LLC.

TAX PRESENCE

C corporation

A C corporation is taxed on its income at 2 levels (commonly referred to as double taxation). First the C corporation pays income taxes on its corporate income; then if C corporation distributes profits to shareholders, such shareholders then pay income tax on those dividends. Many C corporations are set up where the shareholders do not intend to distribute profits by dividends. If a C corporation is part of a consolidated tax group where the C corporation is not viewed as a separate taxable entity, the double taxation effect is mitigated.

S corporation

Pass-through entity taxed like a partnership, as there is only 1 level of income taxation. The corporate profits “pass through” to the owners, who pay income taxes on the profits at their individual tax rates.

Limited liability company (LLC)

Unless the LLC elects to be treated as a corporation, it is a pass-through entity taxed like a partnership, as there is only one level of income taxation. The corporate profits “pass through” to the owners, who pay income taxes on the profits at their individual tax rates.

INCORPORATION PROCESS

C corporation

File Certificate of Incorporation or Articles of Incorporation with the appropriate Secretary of State.

S corporation

File Certificate of Incorporation or Articles of Incorporation with the appropriate Secretary of State, as well as the appropriate S corporation election documents with the applicable tax authorities.

Limited liability company (LLC)

File Articles of Organization or Certificate of Formation with the appropriate Secretary of State.

The timeline for incorporation varies by state jurisdiction, which can vary from as short as 1 business day (in Delaware) to several weeks, and can often be expedited by paying additional fees.

BUSINESS RECOGNITION

C corporation

Well regarded and widely used.

S corporation

Well regarded and widely used. Many institutional investors will require an S corp to convert to a C corp before investing, though conversion is simply with a single tax form.

Limited liability company (LLC)

Well regarded and used regularly in particular industries.

SHAREHOLDER MEETING REQUIREMENTS

C corporation

Required to hold annual meeting of shareholders to vote on certain items, such as election of directors.

S corporation

Required to hold annual meeting of shareholders to vote on certain items, such as election of directors.

Limited liability company (LLC)

Annual meetings of the members or managers are not required. The provisions of the operating agreement will determine any meeting requirements.

BOARD OF DIRECTOR MEETING REQUIREMENTS

C corporation

Annual meeting of the directors is required.

S corporation

Annual meeting of the directors is required.

Limited liability company (LLC)

Annual meeting of the members or managers is not required. Provisions of the operating agreement will determine any meeting requirements.

ANNUAL COMPANY TAX RETURNS

C corporation

Must annually file tax returns with federal and state tax authorities.

S corporation

Profits “pass through” to the shareholders who pay income taxes at their individual tax rates.

Limited liability company (LLC)

Profits “pass through” to the shareholders who pay income taxes at their individual tax rates, unless LLC elects to be treated as a corporation.

BUSINESS REGISTRATION FILING REQUIREMENTS

C corporation

Most states require initial registration, as well as annual filings.

S corporation

Most states require initial registration, as well as annual filings.

Limited liability company (LLC)

Most states require initial registration, as well as annual filings.

BUSINESS EXPANSION

C corporation

No need to change as business expands.

S corporation

If the number of shareholders exceeds 100, must convert to a C corporation. Many institutional investors will require that an S corporation convert into a C corporation before investing, though conversion is simply with a single tax form.

Limited liability company (LLC)

No need to change as business expands. However, many institutional investors will require an LLC to convert to a corporation before investing.

EXIT STRATEGY

C corporation

File dissolution documents with the appropriate Secretary of State.

S corporation

File dissolution documents with the appropriate Secretary of State.

Limited liability company (LLC)

File dissolution documents with the appropriate Secretary of State.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

Corporations typically need to either convene an annual shareholder meeting or execute shareholder written resolutions, as well as the filing of an annual return with the applicable Secretary of State.

For an LLC, typically the filing of an annual return with the applicable Secretary of State is needed.

DIRECTOR / OFFICER REQUIREMENTS

For corporations, at least 1 director is required. Certain states may require a Board chair position and, where the corporation is held by more than 1 shareholder, more than 1 director. Certain states may also require statutory officers such as President, Chief Financial Officer, Treasurer and Secretary. For an LLC, the entity must be managed by the members or managed by a manager appointed in the operating agreement.

LOCAL CORPORATE SECRETARY REQUIREMENT

For corporations, some states require a corporate secretary (eg, California), while other states do not (eg, Delaware).

An LLC does not need to have a corporate secretary.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Corporations will generally need to have a registered agent in the state of incorporation. This does not require the corporation to maintain an office or employee in the state. Third party agents with offices in such state commonly can serve as a registered agent.

LOCAL OFFICE LEASE REQUIREMENT

Not applicable for this jurisdiction.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Not applicable for this jurisdiction.

SUFFICIENCY OF VIRTUAL OFFICE

Yes, sufficient.

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

Yes, this is allowed.

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

Yes, this is allowed.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

Not applicable for this jurisdiction.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Not applicable for this jurisdiction.

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

Directors are elected by the shareholders, are the highest authority in the management of the corporation and govern the organization by establishing broad policies and objectives. In contrast, officers are appointed by the directors to oversee day-to-day operations of the corporation. Shareholders may adopt restrictions on the powers of directors in the charter.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

For corporations and LLCs that are not publicly listed, identity of directors, officers and managers is not publicly disclosed in most jurisdictions but may be available through state filings where access can be obtained, such as annual reports required to be filed with the state. Publicly listed companies are required to disclose the identity of their directors and officers as well as any shareholders holding at least 5 percent of such company.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

There is no maximum number of shareholders for a C corporation or for an LLC. For a corporation to be eligible for "S-corp" status, there is a maximum of 100 shareholders. Furthermore, there is no maximum number of directors for a corporation in most jurisdictions, though some states do have a maximum (eg, in California, the stated maximum can't be greater than 2 times the stated minimum minus 1).

There is no maximum number of managers for an LLC.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Minimum of 1 for each type of entity.

REMOVAL OF DIRECTORS OR OFFICERS

Removal of directors is generally allowed by a vote of shareholders; removal of officers is generally allowed by a vote of directors.

REQUIRED AND OPTIONAL OFFICERS

Typically a President or CEO and a Secretary is appointed; any other officer is allowed, but not required in most states; certain states may require statutory officers such as President, Chief Financial Officer, Treasurer and Secretary.

BOARD MEETING REQUIREMENTS

Typically at least 1 annual director meeting is required, which can be completed by written consent signed by all directors.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

For a shareholder meeting, the quorum set out in the corporate bylaws must be present during the shareholder meeting (typically a majority of those eligible to vote). For directors, typically a majority of directors must be present during a board meeting; alternatively, all of the directors may execute written resolutions.

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

A bank account is not required for incorporation. If a bank account is opened, it can be located in or outside the US.

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

Not required.

REQUIREMENT REGARDING PAR VALUE OF STOCK

For corporations, this will vary depending on the jurisdiction in which your corporation is organized. Some states, such as Delaware, require a par value. Other states, such as California, do not require any par value. For an LLC, par value is not required.

INCREASING OF CAPITALIZATION IF NEEDED

An increase in authorized capital may be effectuated by amending the charter, which generally requires authorization from the Board and at least of a majority of the shareholders.

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

Funds can be repatriated abroad from the United States by dividend, return of capital or redemption. These may have varying tax effects that should be considered.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Shares can generally be transferred between shareholders by written agreement. Company consent is not required unless restriction transfers have previously been agreed to, or in some cases, to confirm compliance with applicable securities laws.

OBTAINING A NAME AND NAMING REQUIREMENTS

Proposed name can be reserved. Certain name requirements apply. For example, corporations incorporated in the state of Delaware will require a "Corporation," "Corp.," "Incorporated," "Inc." or similar corporate indicator in the name.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

US law firms are subject to specific "know your client" requirements that require the firm to apply identity verification rules.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Generally, a majority of shareholders must approve any amendment to the charter at a meeting or in writing. The threshold for shareholder approval may be set at a higher percentage in the charter.

LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Typically a company will need to be registered to conduct business in each state with which it conduct business outside of the state in which the company is organized. Licenses might be required in certain specific regulated industries.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

It is possible, but not typical, to purchase a shelf company. A corporation can be created in an expedited time frame in most states, so use of a shelf company for expediency is not needed.

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