GLOBAL EXPANSION GUIDEBOOK

CORPORATE

Vietnam

DLA PIPER

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.

VIETNAM

Last modified 31 May 2023

FORM OF ENTITY

Vietnamese corporate laws introduce 5 entity types, being a joint stock company (JSC), a limited liability company with 2 or more members (LLC2), a limited liability company with 1 member (LLC1), a partnership and a private enterprise. The LLC1 is the most popular and widely used type by foreign investors when they intend to set up and wholly own and control a legal entity in Vietnam. Partnerships and private enterprises are more suitable for local and small investors. In addition, the form of partnership may only be designed and appropriate for a limited number of specific professional businesses, such as legal or auditing businesses. Therefore, we will only cover the first 3 entity types: JSC, LLC2 and LLC1.

Joint stock company (JSC)

- At least, 3 shareholders and no restriction to the maximum number.
- Generally, no personal financial liability of shareholders as it is limited to their capital contribution in a JSC.
- Earnings of a company are subject to corporate income tax and shareholders (only individuals) are taxed on any distributed dividends.
- Typical corporate documents generally include an Enterprise Registration Certificate (ERC), the charter (which is usually called the articles of incorporation in certain jurisdictions), organizational resolutions of the general shareholders meeting (GSM) and the board of management (BOM), shareholders' registration book and share certificates.
- The GSM makes decisions on the most important affairs of the JSC. The BOM has overall responsibility to implement the GSM's decisions and makes decisions on certain, less important affairs of the JSC. The general director (or CEO) has day-to-day management responsibilities.
- Shareholders typically purchase shares in the JSC, either ordinary shares or preference shares.
- Individual shareholders are required to file tax returns (personal income tax) with local tax authorities upon receiving dividends (where they would like to declare tax by themselves). With respect to corporate shareholders, the distributed dividends would be included in their tax finalization returns (corporate income tax) at the end of the relevant fiscal year.

Limited liability company with 2 or more members (LLC2)

- Must have at least 2 members and no more than 50; can be both individuals and legal entities
- Generally, no personal financial liability of members as it is limited to their capital contributions in an LLC2.
- Earnings of a company are subject to corporate income tax and members (only individuals) are taxed on any distributed profits.
- Typical corporate documents generally include:
  - Enterprise Registration Certificate (ERC)
  - Charter (which is usually called articles of incorporation in certain jurisdictions)
  - Organizational resolutions of the Members' Council (MC)
  - Members registration books and
  - Capital contribution certificates
- The MC makes decisions on the most important affairs of the LLC2 and has overall management responsibility. General Director (or CEO) has day-to-day management responsibilities.
- Members contribute capital to the charter capital of LLC2 or purchase paid capital contributions from former members.
- Individual members are required to file tax returns (personal income tax) with local tax authorities upon receiving profits (where they would like to declare tax by themselves). With respect to corporate members, the distributed profits would be included in their tax finalization returns (corporate income tax) at the end of the relevant fiscal year.

Limited liability company with 1 member (LLC1)

- Only 1 member is required, either an individual or a legal entity.
- Generally, no personal financial liability of a member as it is limited to its capital contribution in an LLC1.
- Company's earnings are subject to corporate income tax, but the sole member (either a corporate or an individual) is not taxed on any distributed profits.
- Typical corporate documents generally include:
  - Enterprise Registration Certificate (ERC)
  - Charter (usually called the articles of incorporation in certain jurisdictions) and

    - Decisions of the sole member, which may be made directly by a member or indirectly through either the member's council or the company president.

- Either the member's council or the company president has overall management responsibility. The General Director (or CEO) has day-to-day management responsibility.

- Member contributes capital to the charter capital of the LLC1 or purchase paid capital contribution from the former member.

- Where the company owner is a legal entity, its distributed profits would be included in its tax finalization return (corporate income tax) at the end of the relevant fiscal year.

Partnership

- At least 2 unlimited liability partners (only individuals) and no restriction to the maximum number; no restriction to the minimum and maximum number of limited liability partners.

- Generally, no personal financial liability of limited liability partners as it is limited in their capital contributions in the partnership. However, unlimited liability partners are liable for the obligations of the partnership to the extent of all of their assets.

- Earnings of a partnership are subject to corporate income tax and partners (only individuals) are taxed on any distributed profits.

- Typical corporate documents generally include Enterprise Registration Certificate (ERC), charter (which is usually called articles of incorporation in certain jurisdictions), decisions of the Partners' Council and capital contribution certificates.

- Partners' Council has overall management responsibilities; unlimited liability partners have day-to-day management responsibilities.

- Partners contribute capital to the charter capital of a Partnership. The limited liability partners can purchase paid capital contribution in the Partnership from former limited liability partners.

- Individual partners are required to file tax returns (personal income tax) with local tax authorities upon receiving profits (where they would like to submit a self-declaration of their tax). With respect to corporate limited liability partners, the distributed profits would be included in their tax finalization returns (corporate income tax) at the end of the relevant fiscal year.

Private enterprise

- Only a sole individual owner

- The owner has personal liability for all activities of the private enterprise to the extent of all of their assets.

- Earnings of an enterprise are subject to corporate income tax, but the sole individual owner is not taxed on any distributed profits

- Typical corporate documents generally include an Enterprise Registration Certificate (ERC) and internal rules issued by the owner.
- Owner has overall and day-to-day management responsibilities.
- Owner registers the investment capital of a private enterprise.

ENTITY SET UP

Joint stock company (JSC)

The JSC is a separate and distinct legal entity. Generally, it is managed by the GSM that makes decisions on the most important affairs of the JSC. The BOM is responsible for implementation of the GSM's decisions, making decisions on certain less important affairs of the JSC and overseeing the general affairs of the JSC. Members of the BOM are appointed by the GSM which consists of all shareholders with voting rights. The general director (or CEO), who runs the day-to-day operations of the JSC, is appointed by the BOM. When a JSC has 11 or more shareholders, a board of supervisors (BOS) appointed by the GSM assists the GSM to supervise all operational affairs of the JSC.

Limited liability company with two or more members (LLC2)

LLC2 is a separate and distinct legal entity. Generally, it is managed by the MC that makes decisions on the most important affairs of the LLC2 and oversees general affairs of the LLC2. The MC consists of all company members (or their authorized representatives) that collectively contribute their capital to the charter capital of the LLC2. The general director (or CEO), who is appointed by the MC, is responsible for running day-to-day operations of the LLC2.

Limited liability company with one member (LLC1)

The LLC1 is a separate and distinct legal entity. Company's president or member's council , which consists of individual(s) appointed by the sole member of the LLC1, makes decisions on the most important affairs and oversees the general affairs of the LLC1. General director (or CEO), who is appointed by the company's president or the member's council, is responsible for running day-to-day operations of the LLC1.

MINIMUM CAPITAL REQUIREMENT

Generally, there are no minimum capital requirements, except for some strictly regulated businesses (eg, banking, insurance, securities, education and real estate development).

LEGAL LIABILITY

Generally, shareholders (in respect of the JSC), members (in respect of the LLC2) and owner (in respect of LLC1) are not personally financially liable for the debts of the company, aside from their obligation to make full payment for their shares in the charter capital of the company.

TAX PRESENCE

Joint stock company (JSC)

The JSC is liable to pay corporate income tax levied on its earnings, and shareholders (only individuals) are taxed on any distributed dividends.

Limited liability company with two or more members (LLC2)

The LLC2 is liable to pay corporate income tax levied on its earnings, and members (only individuals) are taxed on any distributed profits.

Limited liability company with one member (LLC1)

The LLC1 is liable to pay corporate income tax imposed on its earnings. However, the sole member (either a legal entity or an individual) is not taxed on its distributed profits.

INCORPORATION PROCESS

Generally, the process consists of 3 steps:

- Applying for an Investment Registration Certificate (IRC) from the authority of investment registration where the company has foreign shareholder(s)/member(s).

  It is noted that, where a foreign shareholder/member would like to acquire an equity from an existing shareholder/member of a Vietnamese domiciled company, an approval for acquisition (M&A Approval) is required (instead of the IRC).

- Applying for an Enterprise Registration Certificate (ERC) from the authority of enterprise registration; and

- Conducting some mandatory post-licensing works, such as making a public announcement of the entity establishment, making a corporate seal, registering tax and obtaining a specific license (if necessary) if an entity engages in conditional businesses (eg. multi-level marketing businesses, labor outsourcing businesses).

BUSINESS RECOGNITION

Joint stock company (JSC)

JSCs are well regarded and widely used, especially if the promoters intend to offer shares to the public and trade them on a stock market.

Limited liability company with two or more members (LLC2)

LLC2s are well regarded and widely used by foreign investors if there is more than one investor intending to do business together.

Limited liability company with one member (LLC1)

LLC1s are widely used by foreign investors where they would like to wholly own and control their business in Vietnam.

SHAREHOLDER MEETING REQUIREMENTS

Joint stock company (JSC)

A GSM meeting is required at least annually.

Limited liability company with two or more members (LLC2)

The MC's meeting is required at least annually.

Limited liability company with one member (LLC1)

Meeting requirements for an LLC1 with a member's council are stipulated by the owner in the company's charter.

BOARD OF DIRECTOR MEETING REQUIREMENTS

Joint stock company (JSC)

Assume that the term "Board of Directors" under the laws of jurisdictions outside Vietnam is equivalent to the term "Board of Management in a JSC" under the laws of Vietnam. Meetings of the Board of Management are required at least quarterly.

Limited liability company with two or more members (LLC2)

Not applicable for this jurisdiction.

Limited liability company with one member (LLC1)

Not applicable for this jurisdiction.

ANNUAL COMPANY TAX RETURNS

Tax finalization returns must be filed annually with local tax authorities.

BUSINESS REGISTRATION FILING REQUIREMENTS

With respect to foreign investments, initial investment registration and post-business formation registration are required. Subsequently, any change to any content of the IRC or the ERC must be registered with and/or notified to the local authorities.

Reports on the implementation of investment projects are also required to be submitted to the relevant licensing authority quarterly and annually.

BUSINESS EXPANSION

If business expansion results in changes to any content of the IRC or the ERC, relevant registration with and/or notification to the local authorities must be made.

In the case of the LLC1, if any more members are offered the ability to make their contribution to the charter capital, the company must then be converted into either an LLC2 or a JSC as applicable.

EXIT STRATEGY

With respect to foreign investment, application for termination of an investment project must first be made with the investment registration authority. Then, the dissolution of the company is conducted with the enterprise registration authority. It is noted that tax finalization is the key for obtaining the final decision of dissolution of any enterprise in Vietnam.

ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

With respect to keeping internal records, the company is required to maintain at its head office meeting minutes of the GSM and the BOM (in respect to JSCs) and the MC/member's council (in respect to LLCs) and other resolutions or decisions of the company, accounting books, accounting records and annual financial statements, among others. With respect to filing annual reports, a foreign-owned company is required to submit an annual report on status of investment project implementation, an annual report of evaluation and supervision of investment project and an audited annual financial statement, among other documents.

DIRECTOR / OFFICER REQUIREMENTS

Directors (ie, members of the BOM) are only relevant and applicable to JSCs – not LLCs. Under Vietnamese law, a director must satisfy the following conditions:

- Have full capacity for civil acts and not fall into the category of persons not permitted to manage an enterprise as stipulated by law and
- Have professional expertise and experience in business management of the company and not be a shareholder of the company, unless otherwise stipulated in the charter of the company.

Additionally, an independent director might be required to satisfy other special conditions relating to the independence feature.

Regardless of whether a company is JSC, LLC2 or LLC1, an officer (ie, general director or director under Vietnamese law) must satisfy the following requirements:

- Have full capacity for civil acts
- Do not fall into the category of entities not permitted to manage enterprises in accordance with the Law on Enterprises and

- Have professional qualifications and experience in business administration of the company if the charter of the company does not stipulate otherwise.

LOCAL CORPORATE SECRETARY REQUIREMENT

Not applicable for this jurisdiction.

LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

In Vietnam, all enterprises are required to have at least 1 legal representative who is residing in Vietnam.

The legal representative of an enterprise means an individual representing the enterprise to exercise the rights and perform the obligations arising out of transactions of the enterprise; representing the enterprise to act as the person lodging a petition for resolution of a civil matter, as a plaintiff, defendant or person with related interests and obligations in arbitration proceedings or courts; and to exercise other rights and perform other obligations in accordance with the law.

LOCAL OFFICE LEASE REQUIREMENT

Generally, the company is required to have its head office in Vietnam.

OTHER PHYSICAL PRESENCE REQUIREMENTS

Except for what is provided herein, there are no other physical presence requirements under Vietnamese law.

SUFFICIENCY OF VIRTUAL OFFICE

The use of a virtual office is not officially recognized by Vietnamese law.

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

Such a service is not officially recognized by Vietnamese law.

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

Such a service is not officially recognized by Vietnamese law.

NATIONALITY OR RESIDENCY REQUIREMENTS FOR SHAREHOLDERS, DIRECTORS AND OFFICERS

In general, the company is required to have at least 1 legal representative residing in Vietnam.

Further, if the company is conducting certain conditional business lines (eg, aviation), the nationality or residence of shareholders, directors and officers may be required.

RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

Nominee shareholders or directors are not officially recognized by Vietnamese law.

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

Please see the "Entity set up" section.

PUBLIC DISCLOSURE OF IDENTITY OF DIRECTORS, OFFICERS AND SHAREHOLDERS

Generally, the identity of directors (ie, members of the BOM in the case of JSC), officers (ie, the general director or director under Vietnamese law) and non-founding shareholders are not required to be public (subject to the requirements for listed companies).

During the establishment of the entity and in regard to certain changes, the information of the members, founding shareholders, officers and legal representatives may be required to be public on the National Business Registration Portal.

MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

With respect to the number of shareholders of a JSC, please refer to the " Form of entity" section.

With respect to the directors (ie, members of BOM) in a JSC, the number of members ranges from 3 to 11.

With respect to the number of the general director (or director) under Vietnamese law of a company regardless of whether it is a JSC, LLC2 or LLC1, the number is at least 1.

MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

Please refer to the "Form of entity" section.

REMOVAL OF DIRECTORS OR OFFICERS

Generally, directors in the case of JSC shall be removed by the body that has the right to appoint the director.

The officer shall be removed by the body that has the right to appoint the officer. Additionally, the removal of directors and officers may require notification to the relevant authority.

REQUIRED AND OPTIONAL OFFICERS

Generally, the company is required to have at least 1 general director or director. Any other optional officer, such as the deputy general director or deputy director, is allowed.

BOARD MEETING REQUIREMENTS

Please refer to the "Shareholder meeting requirements" and "Board of directors meeting requirements" sections.

QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

Joint stock company (JSC)

Quorum for a GSM to be conducted:

1. Where the number of attending shareholders represents more than 50 percent of the total number of voting shares (the charter may stipulate a higher percentage).
2. Where a meeting is not able to be conducted for the first time because the condition stipulated above is not satisfied, the meeting may be convened for a second time within 30 days from the date of the intended opening of the first meeting, unless otherwise stipulated in the charter of the company. A meeting of the GSM which is convened for a second time shall be conducted where the number of attending shareholders represents at least 33 percent of the total number of voting shares.
3. Where a meeting convened for a second time is not able to be conducted because the condition stipulated above is not satisfied, it may be convened for a third time within 20 days from the date of the intended opening of the second meeting, unless otherwise stipulated in the charter of the company. In this case, a meeting of the GSM shall be convened irrespective of the total number of voting shares of shareholders attending the meeting.

Quorum for passing a resolution of GSM

1. A resolution is approved by a number of shareholders representing more than 50 percent of the total number of voting shares of all attending shareholders, except for the cases in points 2 and 3 below (the charter might stipulate a higher percentage).

2. A resolution on the following important matters shall be passed if it is agreed by a number of shareholders representing at least 65 percent of voting shares of all attending shareholders; the specific percentage shall be stipulated in the charter of the company:

   - Classes of shares and the total number of shares of each class

   - Change of lines of business and business sectors

   - Change of the organizational and managerial structure of the company

   - Investment project or sale of assets valued at 35 or more percent of the total value of assets recorded in the most recent financial statements of the company, except where the charter of the company stipulates a different percentage or value

   - Re-organization or dissolution of the company and

   - Other matters as stipulated in the charter of the company.

3. A resolution of the GSM shall be passed by way of collection of written opinions if it is approved by members representing more than 50 percent of the total number of voting shares; the specific percentage shall be stipulated in the charter of the JSC.

Quorum for the meeting of BOM

A meeting of the BOM shall be conducted where 3/4 or more of the total members are in attendance. If this condition is not satisfied, it shall be convened for a second time within 7 days from the intended date of the first meeting, except where the charter stipulates a shorter time limit. In this case, the meeting shall be conducted if more than half of the number of members of the BOM attends the meeting.

Quorum for passing a resolution of BOM

Except where the charter of the company provides for any other higher percentage, a resolution of the BOM shall be passed when it is agreed by the majority of the members in attendance; in the case of a tied vote, the final decision shall be made in favor of the vote of the chairman of the BOM.

Limited liability company with two or more members (LLC2)

Quorum for a meeting of the MC to be conducted

1. Where the attending members represent at least 65 percent of the charter capital; the specific percentage shall be stipulated in the charter of the LLC2.

2. Where a meeting does not take place because the condition stipulated above is not satisfied, the meeting may be convened for a second time within 15 days from the date on which the first meeting was intended to be opened. A meeting of the MC which is convened for a second time shall be conducted where the attending members represent at least 50 percent of the charter capital.

3. Where a meeting which has been convened for a second time does not take place because the condition stipulated above is not satisfied, it may be convened for a third time within 10 working days from the date on which the second meeting was intended to be opened. In this case, the meeting of the MC shall be conducted irrespective of the number of attending members and of the amount of charter capital represented by attending members.

Quorum for passing a resolution of the MC

Unless otherwise stipulated in the charter of the LLC2, a resolution of the MC will be passed in a meeting in the following cases:

1. It is approved by the number of votes representing at least 65 percent of the aggregate capital of the attending members, except for the cases in points 2 and 3 below.
2. In respect of the following important decisions, the approval by the number of votes representing at least 75 percent of the capital of the attending members is required:

   - sale of assets valued at 50 or more per cent of the total value of assets recorded in the most recent financial statement of the company, or a smaller percentage or value as stipulated in the charter of the company;

   - amendment of and/or addition to the charter of the company; and

   - re-organization or dissolution of the company.
3. A resolution of the MC will be passed by way of collection of written opinions if it is approved by members representing at least 65 percent of the charter capital; the specific percentage will be stipulated in the charter of the LLC2.

Limited liability company with one member (LLC1)

Quorum for a meeting of the member's council (if any) to be conducted

A meeting of the member's council will be conducted where at least 2/3 of the total number of its members attend.

Quorum for passing a resolution of the member's council

A resolution of the member's council will be passed when it is agreed by more than 50 percent of the attending members or when it is agreed by the attending members owning more than 50 percent of the total number of votes. However, important decisions (being any amendment of and/or addition to the charter of the company, any re-organization of the company, or any assignment of a part or all of the charter capital of the company) must be agreed to by at least 75 percent of the attending members or by the attending members owning at least 75 percent of the total number of votes.

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

It is not a requirement to open a bank account prior to incorporation. However, after incorporation, the company must open at least a bank account at a local bank, especially for the purpose of the registered capital contribution.

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

Annual financial statements of a foreign-owned company must be audited by an independent licensed auditor in Vietnam within 90 days from the end of the annual accounting period.

The company must keep its book locally at its head office or other places stipulated by the charter.

REQUIREMENT REGARDING PAR VALUE OF STOCK

Generally, no requirement, except when listing a joint stock company where the par value of the stock offered for first-time sale to the public is VND10,000.

INCREASING OF CAPITALIZATION IF NEEDED

In order to increase the charter capital of a foreign-owned company, the company is required to register the amending of its IRC and ERC to record the new amount of charter capital, together with the internal amending of the charter of the company.

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

Funds can be repatriated abroad via dividends or redemption.

RESTRICTIONS ON TRANSFERABILITY OF SHARES

Joint stock company (JSC)

Shares are freely transferable except for:

1. Transferring shares of founding shareholders within the first 3 years of existence and
2. Restrictions stipulated by the charter.

Limited liability company with two or more members (LLC2)

Generally, capital contribution is freely transferable between the members. However, the contributed capital can only be transferred to a non-member party if the other members do not purchase such amount of contributed capital.

Limited liability company with one member (LLC1)

Generally, contributed capital is freely transferable.

OBTAINING A NAME AND NAMING REQUIREMENTS

The company registers a name upon applying for incorporation. The company's name may not be the same as another company's name (which has been registered) or similar enough to another company's name (which has been registered) to cause confusion.

SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

Generally, none, except for some special business activities, such as those taken up by banks.

APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

Amendment of charter requires approval of the GSM (in the case of a JSC), the MC (in the case of a LLC2) or the member's council or owner (in the case of an LLC1).

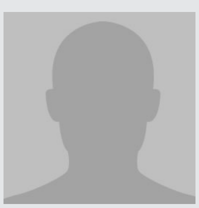
LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

Specific licenses or registrations may be required to conduct business in particular business sectors. The types of business license or required registration depends on the nature and actual features of the intended businesses.

PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

A shelf company is not common in Vietnam.

KEY CONTACTS



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