



# GLOBAL EXPANSION GUIDEBOOK CORPORATE

*Indonesia*



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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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## INDONESIA



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### FORM OF ENTITY

#### Limited liability company

A separate and distinct legal entity, managed by the board of directors responsible for making major business decisions and overseeing the general affairs of the company, under the supervision of a board of commissioners. The members of the board of directors and the board of commissioners are appointed and dismissed by the general meeting of shareholders.

### ENTITY SET UP

#### Limited liability company

A separate legal entity.

The typical charter documents and main features include the following:

- The deed of establishment containing the articles of association and its approval from the Ministry of Law and Human Rights (MOLHR)
- The shareholders' resolutions containing any amendments to the articles of association and their receipts of notice or approvals from the MOLHR
- The limited liability of the shareholders
- The board of directors has overall management responsibility and
- The board of commissioners has overall supervisory responsibility.

The general meeting of shareholders must be convened annually (within 6 months of the end of the financial year) and an extraordinary general meeting of shareholders may be convened at any time as required to make necessary decisions.

## MINIMUM CAPITAL REQUIREMENT

### Limited liability company

Generally, the authorized capital is determined based on the agreement of the company's founders (without any minimum requirement). Certain lines of business (such as banking, insurance etc.) will be subject to relevant regulations that may require a minimum amount of capital. At least 25 percent of the authorized capital must be issued and paid up as required under the Indonesian Company Law. The shareholders of a foreign investment company (a company with any number of foreign shareholders - a PMA company) must invest more than IDR 10 billion for each line of business, excluding the value of any land and or building, per project location. The investment value is to be realized at a later stage (not at the time of establishment). For the establishment of a PMA company, a minimum of issued and paid-up share capital or equity is IDR 10 billion.

## LEGAL LIABILITY

### Limited liability company

Subject to limited exceptions as stipulated under the Indonesian Company Law, the shareholders are not liable for the debts of the company beyond their financial contributions to the company. However, the Indonesian Company Law also recognizes the legal principle of lifting the company's liability, which causes the shareholders to be personally liable for the company's liability (piercing the corporate veil principle) – for example, when there is bad faith among the shareholders and ignorance of the formal incorporation procedure. The shareholder may also be held liable when proven to have taken part in a tortious act by the company.

## TAX PRESENCE

### Limited liability company

Corporate income tax is reduced from 22 percent to 20 percent as of the 2022 tax year and VAT of 11 percent is imposed on the delivery of goods and services and will be raised to 12 percent no later than January 1, 2025.

## INCORPORATION PROCESS

### Foreign investment limited liability company in general

- Establish the company by signing the deed of establishment (which includes the articles of association). Then, after being registered with and approved by the MOLHR by the issuance of MOLHR Decree, the company will obtain legal entity status. The MOLHR's online/registration system will additionally issue a taxpayer identification number (*Nomor Pokok Wajib Pajak* or NPWP) to the newly established company.
- Apply for a Business Identification Number (NIB) through the Online Single Submission (OSS) system maintained by the OSS Agency, currently adopting a risk-based approach (RBA). The NIB also applies as a Company Registration Certificate (TDP), Importer's Identification Number (API), customs access and initial mandatory manpower reporting. If foreign manpower is going to be employed, an application of a license to utilize foreign manpower may additionally be submitted through the OSS. Acquiring an NIB means that the company has participated in health and manpower social security programs.



- Depending on the risk level of the business, the company is deemed ready to operate once it has been issued an NIB (if the risk level is low), to obtain standard certification from the relevant ministries via the OSS-RBA system (if the risk level is medium; non-verified for medium-low or verified for medium-high) or to obtain a license (if the risk level is high).
- Fulfill various post-establishment company obligations such as reporting obligation, creating a master list (if applicable) and other obligations.

## BUSINESS RECOGNITION

### Limited liability company

Well regarded and widely used.

## SHAREHOLDER MEETING REQUIREMENTS

### Limited liability company

Required to hold an annual general meeting of shareholders within 6 months of the end of each financial year. An extraordinary general meeting of shareholders can be held at any time as required by the company.

## BOARD OF DIRECTOR MEETING REQUIREMENTS

### Limited liability company

No specific requirements unless imposed under the company's articles of association.

## ANNUAL COMPANY TAX RETURNS

### Limited liability company

Must submit an annual tax return to the Indonesian tax authorities. MOLHR recently implemented a confirmation on the taxpayer's status (*Konfirmasi Status Wajib Pajak* or KSWP) process for services provided through the MOLHR's online/registration system. The MOLHR may withhold issuing the approval or receipt of notification if the result of the KSWP shows invalid information (ie, the company is not compliant in submitting annual tax returns) and will resume the services when the company has rectified the issue.

## BUSINESS REGISTRATION FILING REQUIREMENTS

### Limited liability company

Every company must be registered in the Company Register maintained by the OSS-RBA system so that the company can obtain an NIB. Additionally, ongoing filing requirements apply to, among other things, certain

amendments made to the articles of association, changes to the board of directors and the board of commissioners, and annual financial statements. A PMA company is additionally required to submit a periodic investment report ( *Laporan Kegiatan Penanaman Modal* or LKPM) to the OSS-RBA System.

## BUSINESS EXPANSION

### Limited liability company

A PMA company business expansion may need the OSS-RBA Agency, BKPM or other government institution's approval or a reporting obligation. If the expansion constitutes 1 or more new lines of business, a PMA company shall be required to invest more than IDR10 billion for each additional line of business per project location (please also see "Minimum Capital Requirement").

## EXIT STRATEGY

### Limited liability company

An Indonesian company may be dissolved by being wound up (voluntary dissolution and liquidation) or under a court order.

## ANNUAL CORPORATE MAINTENANCE REQUIREMENTS

### Limited liability company

The board of directors must draw up the annual report to be approved by the annual general meeting of shareholders. The board of commissioners must also draw up the annual supervisory report to be presented in the annual general meeting of shareholders.

## DIRECTOR / OFFICER REQUIREMENTS

### Limited liability company

Generally, every company must have at least 1 director and 1 commissioner. In certain lines of business, the board of directors and the board of commissioners are each required to have at least 2 members, as well as an independent commissioner.

No director or commissioner may, within the 5 years before their appointment, have been:

- Declared bankrupt
- A member of a board of directors or a board of commissioners found by a court to have caused a company to be declared bankrupt or
- Sentenced for a criminal offense which caused the state to suffer a financial loss or related to the financial sector.

For more information on directors' duties, see our [Global Guide to Directors' Duties](#).

## LOCAL CORPORATE SECRETARY REQUIREMENT

Limited liability company

Generally, not legally required, unless it is a publicly listed company.

## LOCAL LEGAL OR ADMIN REPRESENTATIVE REQUIREMENT

Limited liability company

Not legally required.

## LOCAL OFFICE LEASE REQUIREMENT

Limited liability company

A company incorporated in Indonesia must have a registered office in Indonesia. A lease agreement is one of the supporting documents to be submitted to the OSS-RBA agency, BKPM or other government institution when establishing the company and obtaining the NIB from the OSS-RBA.

## OTHER PHYSICAL PRESENCE REQUIREMENTS

Limited liability company

Not applicable for this jurisdiction.

## SUFFICIENCY OF VIRTUAL OFFICE

Limited liability company

A company must have a physical office located in Indonesia, particularly for a PMA company. However, in general there is no explicit prohibition against using a virtual office.

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

Limited liability company

May apply in certain circumstances and subject to certain requirements.



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

### Limited liability company

There is no specific prohibition against a local director or corporate secretary being provided by a 3rd-party service provider. Please note however, that a corporate secretary is not legally required, unless it is a publicly listed company.

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

### Limited liability company

In certain business fields which are closed to foreign investment, all shareholders must be Indonesian (legal entities or individuals). Shareholders are not subject to any residency requirement.

In general, no Indonesian nationality or residency requirement applies to either directors or commissioners, except that the director or other officer that handles or is responsible for employment matters must be Indonesian. For certain lines of business, a specific requirement on the nationality or residency of a director or a commissioner may apply.

## RESTRICTIONS REGARDING APPOINTMENT OF NOMINEE SHAREHOLDERS OR DIRECTORS

### Limited liability company

Although under a strict interpretation of the law, nominee shareholder and director arrangements are not allowed, they are still common in practice. During the incorporation process, the founders of the company are required to submit a statement letter regarding the ultimate beneficiary owner of the company via the notary.

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

### Limited liability company

Members of the board of directors and the board of commissioners are appointed and dismissed by the general meeting of shareholders. The board of directors is responsible for making business decisions, overseeing the general affairs and running the day-to-day operations of the company and is supervised by the board of commissioners. Limitations on the authority of the board of directors in general are provided for under the Indonesian Company Law and may be further stipulated in the articles of association of the company.

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

## Limited liability company

The identities of the shareholders and members of the board of directors and board of commissioners are publicly available in the relevant company register, accessible upon request in the MOLHR database by paying official administrative fees.

## MINIMUM AND MAXIMUM NUMBER OF DIRECTORS AND SHAREHOLDERS

### Limited liability company

A company must have at least 2 shareholders (with exceptions regulated in the Indonesian Company Law (such as a state-owned company, a small-medium enterprise)), 1 director and 1 commissioner, except for certain business activities which, for example, require at least 2 directors and 2 commissioners and to appoint an independent commissioner. There is no maximum number unless stipulated under the articles of association.

## MINIMUM NUMBER OF SHAREHOLDERS REQUIRED

### Limited liability company

A limited liability company must have at least 2 shareholders (particularly for PMA companies), except in certain special circumstances when it can have only 1, but only for a limited period of time and for those regulated in the Indonesian Company Law.

The Omnibus law/regulation (ie, Law No. 11 of 2020 on Job Creation as recently replaced by Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation) introduces individual companies as an exception of the above general concept, the shareholder of which is only 1 individual. However, it must meet the criteria of micro- and small-scale enterprises as regulated in the relevant laws and regulations, which will not apply for any PMA companies. If it no longer meets such criteria, it must convert its status to a limited liability company through notarial deed and be registered with the MOLHR.

## REMOVAL OF DIRECTORS OR OFFICERS

### Limited liability company

Members of the board of directors or the board of commissioners may be removed under a resolution of the general meeting of shareholders, the procedure for which is commonly provided in the company's articles of association and in line with the provisions under the Indonesian Company Law.

## REQUIRED AND OPTIONAL OFFICERS

### Limited liability company

A company is legally required to have a board of directors and a board of commissioners.

## BOARD MEETING REQUIREMENTS

### Limited liability company

There are none under the Indonesian Company Law. However, the company's articles of association may stipulate requirements for meetings of the board of directors and the board of commissioners, such as the quorum, procedure and voting requirements.

## QUORUM REQUIREMENTS FOR SHAREHOLDER AND BOARD MEETINGS

### Limited liability company

The quorum for a shareholders' meeting depends on the agenda for the meeting. The quorum may be at least or more than 1/2, 2/3, or 3/4 of all of the issued shares with valid voting rights depending on the nature of the resolutions to be passed and as stipulated under the company's articles of association. If the quorum for the 1st meeting is not met, a second meeting may be held with a different quorum, depending on the agenda for the meeting.

The Indonesian Company Law does not set the quorum for meetings of the board of directors or the board of commissioners. These may be stipulated in the company's articles of association.

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

### Limited liability company

In practice, banks in Indonesia can only open an account after the company has been incorporated as they require certain documents from the company including, but not limited to, its deed of establishment, NIB and the NPWP. Indonesian law does not specifically require the bank to be local but, in practice, the share capital is paid into a bank which has opened its office in Indonesia. This payment evidence must be submitted to the MOLHR. In practice, failure to pay the share capital will forbid the company from making changes or amendments to their articles of associations when they process them to the MOLHR.

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

### Limited liability company

According to the Indonesian Company Law, a company's financial reports must be audited if:

- The company's business activities are related to the collection and/or management of public funds.
- The company issues promissory notes to the public.
- The company is a publicly listed company (*Perseroan Terbuka*).

- The company is a state-owned company (*Persero*).
- The value of the company's assets and/or total business turnover is at least IDR50 billion or
- It is required under the prevailing laws and regulations.

The auditor or public accountant must be local and have a license issued by the Ministry of Finance as a public accountant, and in some cases, must be registered with the relevant government institutions. The company's books are usually kept in the company's premises.

## REQUIREMENT REGARDING PAR VALUE OF STOCK

### Limited liability company

Under the Indonesian Company Law, all shares must be issued with a par value or nominal value denominated in Rupiah, except for publicly owned companies that may issue shares without any par value.

## INCREASING OF CAPITALIZATION IF NEEDED

### Limited liability company

The capital of an Indonesian limited liability company consists of its authorized, issued and paid-up capital. An increase in capital must be approved under the general meeting of shareholders resolutions. The articles of association must be amended and approval must be obtained from the MOLHR for the increase of the authorized capital. Receipt of notification from the MOLHR must be obtained for the increase of the issued capital and paid-up capital.

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

### Limited liability company

Funds can be repatriated from Indonesia through dividends, capital reductions and share buybacks, subject to certain requirements and procedures under Indonesian law, such as the minimum reserve requirement (for dividends) or a maximum 10 percent of all the company's issued shares (for a share buyback).

## RESTRICTIONS ON TRANSFERABILITY OF SHARES

### Limited liability company

Shares are generally transferable, subject to certain requirements and procedures under the Indonesian Company Law, the articles of association of the company, the investment positive list and contractual arrangements with a third party, if any. A share transfer requires a notarized deed and publication in a newspaper if it causes a change of control in the company; it must be approved by the general meeting of shareholders under a resolution (that

must be restated in a notarial deed), it may need to be approved by certain government institutions, and it must be recorded in the company's shareholders register and reported to the MOLHR.

The company's articles of association usually stipulate other requirements for transferring rights over shares, such as to first offer them to a certain classification of shareholders or the other shareholders, to obtain prior approval from a company organ and or to obtain prior approval from the relevant authorities as required under the prevailing laws and regulations.

## OBTAINING A NAME AND NAMING REQUIREMENTS

### Limited liability company

The proposed name of a company must be approved by the MOLHR. By law, the name of a company must satisfy several requirements, such as it must be in Roman script, not already be used or be identical to that of another company, not be contrary to public order and or morality and not be identical to that of a government entity or international organization, unless approved otherwise. Current practice suggests that the proposed company name must consist of 3 words.

The MOLHR provides a company name booking service with certain official fees to be paid.

## SUMMARY OF "KNOW YOUR CLIENT" REQUIREMENTS

### Limited liability company

Banks and financial service institutions in Indonesia are required to apply certain know your client principles. Indonesian companies, as well as notaries, are required to identify, verify and report the ultimate beneficial owner to the government. If necessary, a government institution may audit a company to identify and verify its beneficial owner.

## APPROVAL REQUIREMENTS FOR AMENDING CHARTER DOCUMENT

### Limited liability company

Amendments to the company's articles of association or data must either be approved by or notified to the MOLHR, depending on the item being amended. In addition, PMA companies may need to apply for approval from certain government institutions (if required under specific regulations) to change certain company information such as their name, line of business or capital contributions. Please also see the KSWP process discussed in "Annual Company Tax Returns."

## LICENSES REQUIRED TO CONDUCT BUSINESS IN JURISDICTION

### Limited liability company

Limited liability companies require approval from the MOLHR for their deed of establishment, which contains their articles of association. Companies (including PMA companies) are also required to obtain a business license and/or standard certificate from the OSS-RBA Agency, BKPM or other government institutions if the proposed



business activities are classified as high-risk, medium-high- or medium-low-risk, accordingly. For low-risk business activities, the NIB only is sufficient to carry out its business activity. General company licenses and documents such as NPWP are also required. Certain other permits, licenses and/or approvals from relevant national or local government authorities may also be required depending on the company's location and line(s) of business. In late 2021, the integrated risk-based approach online single submission system (the OSS-RBA System) was updated by the government to support the issuance of licenses and permits. In some cases, consultation may be required to ensure the issuance of the required licenses or permits is approved.

## PROCESS OF PURCHASING AND UTILIZING A SHELF COMPANY

### Limited liability company

There is no specific regulation on purchasing or utilizing a shelf company.

### KEY CONTACTS



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