

# asean insiders series

● APRIL 2019

## Incorporation of Companies

## Open For Business In ASEAN

Southeast Asia has become an increasingly attractive destination for foreign investors with its fast-growing markets for business and huge untapped potential. In line with this trend, ASEAN nations have vigorously pursued corporate reforms to keep abreast with globalisation and to attract foreign investment.

The largest reform in Malaysian company law took place with the partial coming into effect of the Companies Act 2016 on 31 January 2017. The remaining provisions that introduced two new corporate rescue mechanisms, that is, judicial management and corporate voluntary arrangement, as well as the requirement that company secretaries be registered with the Registrar came into effect in March 2018 and March 2019 respectively. The entire Act is hence fully in force. Apart from that, on 19 November 2018, the International Trade and Industry deputy minister announced that a committee to facilitate the ease of doing business has been formed. Malaysia also welcomed in a new government – the first in six decades-which hopefully signals a fresh plan for new policies and reforms in the area of business.

In Myanmar, the new Myanmar Companies Law 2017 came into effect on 1 August 2018 signaling the complete repeal of the Myanmar Companies Act 1914. The new Companies Law 2017 simplifies the incorporation of companies in Myanmar. Among others, registration of a company is now perpetually valid unlike the 1914 Act which required a company to renew its registration every five years, and the minimum number of shareholders and directors required for the incorporation of a company has been reduced. In the Philippines, President Duterte recently signed the Revised Corporation Code of the Philippines which will supersede the old Corporation Code when it takes effect.

On a global perspective, Singapore remains at number 2 in the ease of doing business rankings for ASEAN countries, according to the World Bank. Malaysia climbed up nine places to number 15 and Brunei climbed up a spot to number 55. Thailand, Vietnam, Indonesia, Philippines, Laos, Cambodia and Myanmar either maintained its rankings or dipped slightly. Hopefully, with continued reforms taking place in these countries, their positions will improve surely and steadily.

This publication presents a comparative study with respect to the setting up of companies in all 10 countries in the ASEAN region, highlights of regulatory developments and corporate reforms in each country over the last couple of years, as well as a summary on the ease of doing business in ASEAN based on the World Bank Group's Doing Business Report 2019.



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|   |  <b>BRUNEI</b>  |  <b>CAMBODIA</b>   |
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| <b>Governing legislation</b>            | Companies Act, Chapter 39.  | <ul style="list-style-type: none"> <li>• Law on Commercial Enterprises 2005 (“LCE”)</li> <li>• Law on Commercial Rules and Register of 1995 and its amendments</li> </ul>  |
| <b>Regulators</b>                       | Registry of Companies and Business Name Division, Ministry of Finance.  | <ul style="list-style-type: none"> <li>• Ministry of Commerce (“MoC”)</li> <li>• Registry Offices at the Municipal/Provincial Departments of Commerce</li> </ul>   |
| <b>Types of companies</b>               | Limited liability companies, which may take the form of private limited companies or public limited companies.  | Limited liability companies which may take the form of a single-member private limited company, private limited company or public limited company.<br><br>Note that where at least 51% of a company’s capital is held by a foreign company, such companies are also known as foreign subsidiaries.   |
| <b>Other forms of business entities</b> | <ul style="list-style-type: none"> <li>• Sole proprietorships</li> <li>• Partnerships</li> <li>• Branch of foreign companies</li> </ul>   | <ul style="list-style-type: none"> <li>• Sole proprietorships</li> <li>• General and limited partnerships</li> <li>• Branch or representative offices</li> </ul>   |
| <b>Capitalisation requirements</b>      | There are no specific capitalisation requirements applicable to companies in Brunei.  | Minimum capital requirements in Cambodia is listed in the LCE. A company may only be incorporated if the shareholders have fully paid up a minimum share capital of KHR4 million (approximately USD1,000).   |
| <b>Foreign ownership restrictions</b>   | There are no foreign ownership restrictions.  | Foreigners may own 100% of the shares in a Cambodian commercial company. However, there is a restriction on land ownership. In such instances, 51% of shares in a company must be held by local shareholder.   |
| <b>Shareholders</b>                     | Shareholder rights may vary based on the provisions of the company’s memorandum of association or on the rights attached to their shares. The classification of shares may affect the following rights: <ul style="list-style-type: none"> <li>• right to dividends</li> <li>• right to voting</li> <li>• right to return of share capital</li> </ul> | Unless otherwise stated in the company’s articles of incorporation, there is only one class of shares in a company. The holder of these shares shall have the following equal rights: <ul style="list-style-type: none"> <li>• voting at any meeting of the shareholders of the company</li> <li>• receipt of any dividends declared by the company</li> <li>• receipt of company’s remaining property dissolution</li> </ul>  |
| <b>Directors</b>                        | A minimum of two directors are needed to form a board. There is no requirement for a minimum or maximum number of foreign directors.  | A private limited company must have at least one director whereas a public limited company must have at least three directors. There are no restrictions regarding foreign directors under the LCE.  |
| <b>Financial audits</b>                 | Companies must appoint an auditor at each general meeting to hold office until the next general meeting.  | Companies must appoint an auditor by ordinary resolution at their first Annual General Meeting (“AGM”) as well as at each succeeding AGM. Auditors shall hold office until the close of the next AGM.<br><br>Shareholders that have not issued any securities to the public or do not have any outstanding securities held by more than one person may adopt a resolution not to appoint an auditor at all.  |
| <b>Shareholders’ meetings</b>           | Annual general meetings must be held once every year and not more than 15 months after the holding of the last annual general meeting.  | There are two types of shareholders’ meetings: <ul style="list-style-type: none"> <li>• Ordinary shareholders’ meetings: initiated by shareholders based on a request to the directors of the company. Upon 21 days after the receipt of the request, if there is no action from the directors, the shareholders signing the request may call the meeting</li> <li>• AGM of shareholders: to be called upon by the directors of the company no later than 12 months after the company comes into existence</li> </ul> The following two resolutions may be made at a shareholders’ meeting, depending on the circumstances: <ul style="list-style-type: none"> <li>• Ordinary resolutions: for matters such as the election of directors, appointment of auditors, setting up of the remuneration of an auditor, etc.</li> <li>• Special resolutions: for matters such as the reduction of capital, amendment of the company’s articles, dissolution of the company, etc.</li> </ul> |

**INDONESIA****LAOS**

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| <b>Governing legislation</b>            | <ul style="list-style-type: none"> <li>• Law No. 40 of 2007 regarding Limited Liability Companies (“<b>Companies Law</b>”)</li> <li>• Law No.25 of 2007 on Capital Investment</li> <li>• Regulation of the President of the Republic of Indonesia Number 44 of 2016 on the List of Business Activities that are Closed to Investments and Business Activities that are Open to Investments with Certain Conditions (“<b>Negative List</b>”)</li> <li>• Regulation of the Indonesian Investment Coordinating Board Number 6 of 2018 on Guidelines and Procedures for the Permit and Facilities for Investments</li> </ul>   | <ul style="list-style-type: none"> <li>• Amended Enterprise Law 2013</li> <li>• Amended Investment Promotion Law 2016</li> </ul>   |
| <b>Regulators</b>                       | <ul style="list-style-type: none"> <li>• Ministry of Law and Human Rights</li> <li>• Investments Coordinating Board</li> <li>• Financial Service Authority</li> </ul>  | <ul style="list-style-type: none"> <li>• Ministry of Industry and Commerce</li> <li>• Ministry of Planning and Investment</li> </ul>   |
| <b>Types of companies</b>               | Limited liability companies, which may take the form of private limited liability companies or public limited liability companies.   | <ul style="list-style-type: none"> <li>• Limited liability companies, which may take the form of private limited companies, public limited companies and sole limited companies</li> <li>• State-owned companies</li> </ul>  |
| <b>Other forms of business entities</b> | <ul style="list-style-type: none"> <li>• Partnerships</li> <li>• Foundations</li> <li>• Cooperatives</li> </ul>  | <ul style="list-style-type: none"> <li>• Sole enterprises</li> <li>• Partnerships</li> <li>• Branch or representative offices</li> </ul>   |
| <b>Capitalisation requirements</b>      | <p>The minimum authorised share capital for a limited liability company is IDR50 million (approximately USD3,500), with at least at all times 25% of the authorised share capital must be issued and paid up.</p> <p>Payment of share capital may be made in money, land or other assets. Such payment must be fully made to the company’s account.</p> <p>Limited liability companies with foreign investment (“<b>Foreign Investment Companies</b>”) are strictly subject to a minimum authorised share capital requirement of IDR10 billion (approximately USD715 thousand).</p>  | There is no minimum registered capital requirement for foreign investors, however general investments are subject to the requirement that at least 30% of the company’s registered capital must be paid within 90 working days of the date of issuance of the Enterprise Registration Certificate. The remaining amount must be paid within one year from the date of issuance of the Enterprise Registration Certificate. |
| <b>Foreign ownership restrictions</b>   | Foreigners may wholly-own Foreign Investment Companies if the business activities of such Foreign Investment Companies are not restricted or limited under the Negative List. Most business activities however, would require local equity participation.  | Companies may be wholly owned by foreigners. However, some sectors require local equity participation.   |
| <b>Shareholders</b>                     | <p>Generally, all shareholders are entitled to the following rights attached to shares:</p> <ul style="list-style-type: none"> <li>• right to attend and cast votes at the general meeting of shareholders</li> <li>• right to receive dividends and liquidation assets</li> <li>• other rights, such as the right to call a general meeting of shareholders or file a lawsuit against the board of directors for losses incurred by the company as a result of their negligence.</li> </ul> <p>However, the Companies Law gives companies the flexibility to issue different classes of shares such as:</p> <ul style="list-style-type: none"> <li>• shares with or without voting rights</li> <li>• shares with special rights to nominate the company board of directors/board of commissioners</li> <li>• shares with rights to revoke or exchange for another class of shares</li> <li>• shares with pre-emptive rights to receive dividends</li> <li>• shares with pre-emptive rights to receive liquidation assets</li> </ul> | There are two types of shareholders in limited liability companies, common and preferred shareholders. The rights of shareholders are dependent on the type or class of shares held.   |
| <b>Directors</b>                        | Companies are represented by their board of directors, which will be authorised to bind the companies to agreement with third parties. Companies must have at least one director within their board of directors and there are generally no restrictions on foreign directors if the company is a Foreign Investment Company. However, certain industries do not permit companies to have only one director. For ease of doing business, it is recommended to have at least one director to reside in Indonesia (with valid working permits, for foreign directors).   | Companies must have at least one director who may or may not reside within Lao PDR. Companies are not restricted from having foreign directors.  |
| <b>Financial audits</b>                 | <p>Companies are not required to appoint an auditor except in the following circumstances:</p> <ul style="list-style-type: none"> <li>• where the company’s business is to collect and manage the community’s fund</li> <li>• where the company issues a debt acknowledgement letter to the public</li> <li>• where the company constitutes an “Issuer”</li> <li>• where the company owns assets and business with a minimum value of IDR50 billion</li> <li>• where the company is obliged to do so pursuant to the prevailing law</li> </ul>   | Auditors must be appointed where the limited company has assets in the value of LAK50 billion.   |
| <b>Shareholders’ meetings</b>           | <p>General meetings of shareholders consist of annual meetings and other general or extraordinary meetings.</p> <p>Annual meetings must be convened no later than six months after the end of an accounting year, whereas extraordinary meetings may be held at any time.</p> <p>Extraordinary meetings typically concern:</p> <ul style="list-style-type: none"> <li>• changes to the company’s articles</li> <li>• approval for provision of loans and binding the company as a guarantor or to encumber company’s assets</li> <li>• removal or appointment of a director or commissioner</li> </ul>   | <p>There are two types of shareholders’ meetings: ordinary and extraordinary meetings.</p> <p>Ordinary meetings are held at least once a year and are effective when passed by majority vote whereas extraordinary meetings are held whenever necessary and subject to several conditions.</p>   |

|   |  MALAYSIA  |  MYANMAR   |
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| <b>Governing legislation</b>            | Companies Act 2016   | <ul style="list-style-type: none"> <li>Myanmar Companies Law 2017 (“MCL”)</li> <li>Special Company Act 1950</li> <li>Investment Law 2016</li> <li>Investment Rules 2017 and its Notifications</li> </ul>   |
| <b>Regulators</b>                       | Companies Commission of Malaysia.  | <ul style="list-style-type: none"> <li>Directorate of Investment and Company Administration</li> <li>Myanmar Investment Commission</li> </ul>  |
| <b>Types of companies</b>               | <ul style="list-style-type: none"> <li>Companies limited by shares</li> <li>Companies limited by guarantee</li> <li>Unlimited companies</li> </ul>   | <ul style="list-style-type: none"> <li>Companies limited by shares</li> <li>Companies limited by guarantee</li> <li>Unlimited companies</li> </ul>   |
| <b>Other forms of business entities</b> | <ul style="list-style-type: none"> <li>Partnerships</li> <li>Branch or representative offices</li> <li>Sole proprietorships</li> <li>Limited liability partnerships</li> </ul>   | <ul style="list-style-type: none"> <li>Partnerships</li> <li>Overseas corporations</li> </ul>  |
| <b>Capitalisation requirements</b>      | <p>There are generally no minimum capital requirements unless the nature of the business requires certain regulatory approvals or the contracting counterparty requires certain capital conditions to be complied with. Examples of sectors with capitalisation requirements include:</p> <ul style="list-style-type: none"> <li>financial services</li> <li>wholesale and retail distributive trade</li> <li>tourism</li> </ul>   | Private companies under the MCL are not subject to any minimum share capital requirements. Public companies are not subject to any minimum capital requirements either.  |
| <b>Foreign ownership restrictions</b>   | There are no foreign ownership restrictions for incorporating a local company or registering a foreign company in Malaysia. However, limits on foreign ownership do remain in place across many sectors such as telecommunications, oil & gas, tourism, wholesale and retail distributive trade, and financial services.   | <p>The following categories are restricted under Notification 15/2017:</p> <ul style="list-style-type: none"> <li>investment activities that only the Union may carry out</li> <li>investment activities that may not be carried out by foreign investors</li> <li>investment activities that foreign investors may only carry out in the form of a joint venture with a citizen-owned entity or Myanmar citizen</li> <li>investment activities that may only be carried out with the approval of the relevant Ministries</li> </ul> <p>There is no foreign ownership restrictions to incorporate a private limited company under the new MCL. However, certain activities will be subject to approvals from the relevant ministries.</p>  |
| <b>Shareholders</b>                     | Shareholders are classed based on the type of shares held, i.e. ordinary or preference shares. Generally, the rights of ordinary shareholders are set out in the Companies Act 2016, unless otherwise provided in the constitution of a company. These include the rights to vote in general meetings and equal shares in distribution of assets and dividends. Preference shares carry no voting rights, and the rights attached to preference shares are required to be set out in the constitution of a company.  | <p>Generally, all shareholders are entitled to the following rights attached to shares:</p> <ul style="list-style-type: none"> <li>right to vote on a poll at a company meeting on any resolution</li> <li>right to an equal share in dividends</li> <li>right to an equal share in the distribution of assets of a company</li> </ul> <p>However, companies have the right to determine the terms of different classes of shares.</p>   |
| <b>Directors</b>                        | <p>Private companies require a minimum of one director, whereas public companies require a minimum of two directors.</p> <p>A company may have foreign directors but the minimum number of directors must ordinarily reside in Malaysia by having a principal place of residence in Malaysia.</p>  | Under the MCL, private companies must have at least one director who is ordinarily resident in Myanmar, i.e. a director who is a permanent resident or resident for at least 183 days within a 12-month period from the date of registration.  |
| <b>Financial audits</b>                 | The appointment of an auditor is mandatory. However, the Registrar may exempt private companies from appointing an auditor where the company is dormant, a zero-revenue company or a threshold-qualified company. Companies that elect to be exempted from audit must still lodge unaudited financial statements and the required statutory certificates with the Registrar of Companies.  | Financial auditors must produce a report on every balance-sheet and profit and loss account presented at the general meeting. Auditors must also submit such reports to the company’s shareholders.  |
| <b>Shareholders’ meetings</b>           | <p>Shareholder’s meetings are termed as “general meetings” in the Companies Act 2016. General meetings allow shareholders the opportunity to attend and vote. There are three types of general meetings recognised by Malaysian law:</p> <ul style="list-style-type: none"> <li>annual general meetings</li> <li>extraordinary general meetings</li> <li>class meetings</li> </ul> <p>Since the coming into effect of the Companies Act 2016 on 31 January 2017, private companies are no longer obligated to convene annual general meetings. However, shareholders have the right to request for the directors of the company to convene a general meeting. This right is subject to several conditions.</p> | <p>A general meeting shall be held within 18 months from the date of a company’s incorporation. Thereafter, a company must hold a general meeting at least once every calendar year. Extraordinary shareholders’ meetings may only be convened to decide on several important matters (the details of which are contained in the relevant law).</p> <p>There are no changes to the general meeting requirements of annual general meetings of the private companies under the MCL. The MCL did however introduce a few small changes relating to this matter, namely that small companies are not required to hold general meetings:</p> <ul style="list-style-type: none"> <li>unless the constitution of their company necessitates the same</li> <li>where members choose to apply this section by passing an ordinary resolution to this effect</li> <li>where the Registration determines that this section should apply</li> </ul> |

|   |  PHILIPPINES   |  SINGAPORE   |
|---|--|--|
| <b>Governing legislation</b>            | <ul style="list-style-type: none"> <li>Revised Corporation Code</li> <li>Foreign Investments Act 1991 (“FIA”), as amended</li> </ul>   | <ul style="list-style-type: none"> <li>Companies Act (Chapter 50) (“Companies Act”)</li> <li>Business Registration Act (Chapter 32)</li> <li>Partnership Act (Chapter 391)</li> <li>Limited Liability Partnerships Act (Chapter 163A)</li> <li>Limited Partnerships Act (Chapter 163B)</li> <li>Business Trust Act (Chapter 31A)</li> <li>Securities and Futures Act (Chapter 289)</li> <li>Code on Collective Investment Schemes</li> </ul> |
| <b>Regulators</b>                       | The Securities Exchange Commission (“SEC”).  | <ul style="list-style-type: none"> <li>Accounting and Corporate Regulatory Authority (“ACRA”)</li> <li>Monetary Authority of Singapore</li> </ul>  |
| <b>Types of companies</b>               | <ul style="list-style-type: none"> <li>Stock corporations (corporations which have capital stock divided into shares)</li> <li>Non-stock corporations</li> </ul>   | <ul style="list-style-type: none"> <li>Companies limited by shares</li> <li>Companies limited by guarantee</li> <li>Unlimited companies.</li> </ul>  |
| <b>Other forms of business entities</b> | <ul style="list-style-type: none"> <li>Sole proprietorships</li> <li>Partnerships and/or joint ventures</li> <li>Branch offices</li> <li>Regional headquarters</li> <li>Regional operating headquarters</li> <li>Representative offices</li> </ul>   | <ul style="list-style-type: none"> <li>Sole proprietorships</li> <li>Partnerships</li> <li>Limited liability partnerships</li> <li>Limited partnerships</li> <li>Branch office</li> <li>Representative office</li> <li>Business Trust</li> <li>Real Estate Investment Trust</li> </ul>   |
| <b>Capitalisation requirements</b>      | <p>Export enterprises and domestic market enterprises with at least 60% Filipino equity are required to have a minimum paid-in capital of PHP5,000 (approximately USD100).</p> <p>Small and medium-sized domestic market enterprises with more than 40% foreign equity must have a paid-in equity capital of at least USD200,000. However, a minimum paid-in capital of USD100,000 is sufficient for companies that:</p> <ul style="list-style-type: none"> <li>are involved in advanced technology, as certified by the Department of Science and Technology; or</li> <li>employ at least 50 direct employees, as certified by the appropriate Department of Labor and Employment Regional Office</li> </ul> <p>In addition to the above, foreign investors may invest up to 100% in a domestic or export enterprise provided they fulfill the following requirements:</p> <ul style="list-style-type: none"> <li>are not engaged in any activity listed within the FIA’s Negative List</li> <li>originate from a country or state that permits doing business with Filipino citizens and corporations</li> <li>possess a paid-in capital of at least USD200,000. This requirement may be reduced to USD100,000 under certain conditions, as discussed above</li> </ul> | All companies are subject to a minimum share capital of SGD1. Exceptions to this requirement only apply to companies undertaking regulated businesses (e.g. a travel agency or a provider of financial services) or incorporated pursuant to the Singapore Entrepreneur Pass scheme.   |
| <b>Foreign ownership restrictions</b>   | <p>The FIA has identified a list of restrictions on foreign ownership according to industry sector. This list is known as the, “Negative List”, and it is further sub-divided into the following two lists:</p> <ul style="list-style-type: none"> <li>List A includes activities reserved to Philippine nationals by mandate of the Philippine Constitution and special laws</li> <li>List B contains activities that are regulated for reasons of security, defense, health, moral and protection of small and medium enterprises</li> </ul>   | Save for companies which operate in certain restricted industries (e.g. telecommunications, broadcasting, the domestic news media, financial services, legal services, etc), companies may generally be wholly foreign owned.  |
| <b>Shareholders</b>                     | Shareholders are classified according to the type of shares that they own. There is always a class of shares that entitles its holder to complete voting rights.   | Shareholders are classified based on the type of shares they possess, i.e. ordinary or preference shares. As opposed to ordinary shares, preference shares confer some preferential rights on preference shareholders. Such rights may be in the form of dividends or the return of capital.   |
| <b>Directors</b>                        | <p>A corporation must not have more than 15 directors on its board at any one time, provided that in case of a bank/quasi-bank/trust entity merger or consolidation, the number of directors may be increased to up to 21 individuals. The scope, powers and duties of a director are primarily determined by the Revised Corporation Code.</p> <p>A corporation may have foreign directors to the extent of ownership held by foreign nationals.</p>  | A company must comprise at least one director who ordinarily resides in Singapore. Foreigners may generally be appointed as directors.   |
| <b>Financial audits</b>                 | <p>A certified independent public accountant must provide attestation and assurance on a company’s annual financial statements for:</p> <ul style="list-style-type: none"> <li>applications of increase and decrease of authorised stock capital</li> <li>stock dividend declarations</li> <li>corporate liquidations</li> </ul>   | Companies must appoint an auditor within three months from the date of incorporation, unless exempted from doing so under the Companies Act.   |
| <b>Shareholders’ meetings</b>           | <p>Meetings of directors, trustees, stockholders or members may be regular or special.</p> <p>A regular shareholders’ meeting takes place annually, at the start of the company’s fiscal year.</p> <p>A special stockholders’ meeting will discuss an expanded list of corporate acts.</p>   | <p>An annual general meeting (“AGM”) is a mandatory annual meeting of a company, unless exempted under the Companies Act.</p> <p>An extraordinary general meeting is a meeting other than a company’s AGM, which may be called when there’s a special matter which requires shareholder’s approval.</p>  |

|   |  THAILAND  |  VIETNAM  |
|---|--|---|
| <b>Governing legislation</b>            | <ul style="list-style-type: none"> <li>• Civil and Commercial Code (“CCC”)</li> <li>• Public Limited Companies Act B.E. 2535 (“PCLA”)</li> </ul>   | <ul style="list-style-type: none"> <li>• Law on Enterprises No. 68/2014/QH13 dated 26 November 2014 (“Law on Enterprises”)</li> <li>• Law on Investment No. 67/2014/QH13 dated 26 November 2014 and Guiding Decrees (“Law on Investment”)</li> <li>• Relevant Decrees and Circulars guiding the above laws</li> </ul>   |
| <b>Regulators</b>                       | Department of Business Development (“DBD”) under the Ministry of Commerce.   | Department of Planning and Investment (“DPI”).  |
| <b>Types of companies</b>               | Limited liability companies, which may take the form of private limited companies or public limited companies.   | <ul style="list-style-type: none"> <li>• Sole proprietorships</li> <li>• Partnerships</li> <li>• Limited liability companies, which may take the form of a single-member limited liability company (“SLLC”) or multi-member limited liability company (“MLLC”); and</li> <li>• Joint stock company (“JSC”)</li> </ul>   |
| <b>Other forms of business entities</b> | <ul style="list-style-type: none"> <li>• Sole proprietorships</li> <li>• Partnerships (registered, limited or ordinary partnerships)</li> <li>• Branch office or representative offices</li> <li>• Regional office or regional operating headquarters</li> </ul>   | <ul style="list-style-type: none"> <li>• Branch</li> <li>• Representative offices</li> <li>• Project management offices</li> </ul>  |
| <b>Capitalisation requirements</b>      | <p>The par value of each share in a private limited company must not be less than THB5 (approximately USD0.16).</p> <p>There is no minimum par value of shares in a public limited company. Rather, each share must have the same value.</p> <p>Minimum registered capital is only THB15 for a private limited company. Foreign companies require at least THB2 million for operating the non-restricted business activities according to the Foreign Business Act, B.E. 2542 (“FBA”). However, the capital should be enough to deploy the indented business operations.</p> <p>Where a company wishes to obtain a Foreign Business License to operate the restricted business under the FBA or investment promotion by the Board of Investment (“BOI”), a registered capital of THB3 million or more would be required.</p> | <p>Vietnam recognises the concept of charter capital (i.e. equity) and legal capital (i.e. minimum charter capital).</p> <p>Generally, there is no minimum charter capital requirement by law, except in certain conditional businesses (e.g. real estate business, airlines, banking).</p> <p>Upon establishment, the charter capital of the enterprises must be fully contributed within 90 days from the date of issuance of the enterprise registration certificate (“ERC”).</p>  |
| <b>Foreign ownership restrictions</b>   | Companies may be wholly-owned by foreigners. However, companies operating any of the restricted business activities with a foreign-owned equity amount of 50% or more will be subject to the conditions of the FBA. In addition, there may be foreign restrictions additionally imposed on companies operating in certain business sectors such as aviation, banking, and telecommunication.   | <p>Foreign investors may own 100% of the charter capital of an economic organisation except in prescribed sectors where foreign investment is prohibited or conditional to foreign investors.</p> <ul style="list-style-type: none"> <li>• Prohibited sectors: Certain types of pharmaceuticals, certain chemicals, minerals, specific types of endangered flora and fauna specimens, prostitution, humans or parts of human body, human asexual reproduction, firecrackers</li> <li>• Conditional sectors: Provided in Vietnam’s WTO commitments and other treaties. Some examples are logistics, telecommunication, and audiovisual services</li> </ul>   |
| <b>Shareholders</b>                     | Shareholders are classed based on the type of shares they possess, i.e. ordinary or preference shares.   | <p>The Law on Enterprises provides for the following types of shareholders for JSCs:</p> <ul style="list-style-type: none"> <li>• Ordinary shareholders</li> <li>• Preference shareholders which include: <ul style="list-style-type: none"> <li>- voting preference shareholders (only founding shareholders and entities authorised by the Government may hold voting preference shares),</li> <li>- dividend preference shareholders,</li> <li>- redeemable preference shareholders and</li> <li>- holders of other preference shares as stipulated in the charter of the company</li> </ul> </li> </ul>   |
| <b>Directors</b>                        | <p>Private limited companies must have at least one director of any nationality. However, public limited companies must have at least five directors to form a board and half of these directors must possess addresses in Thailand.</p> <p>Foreign director are generally allowed except in specific business sectors that impose a ratio of local directors, e.g. in the telecommunication sector.</p>   | <ul style="list-style-type: none"> <li>• For SLLCs: the owner must appoint from three to seven persons to sit on the Members’ Council</li> <li>• For MLLCs: each member may authorise up to three persons to sit on the Members’ Council</li> <li>• For JSCs: the Board of Management must have three to seven members</li> <li>• Chief Accountant: All companies are required to have a Chief Accountant</li> <li>• Legal Representative: May have two legal representatives but at least one legal representative must reside in Vietnam</li> <li>• Directors: If a director is not the legal representative, there is no residency requirement for such director</li> <li>• Inspectors: <ul style="list-style-type: none"> <li>- SLLCs: The owner has discretion to decide the number of Inspectors</li> <li>- MLLCs: If the company has 11 members or more, an Inspection Committee must be set up; if the company has less than 11 members, Inspection Committee is optional</li> <li>- JSCs: There must be an Inspection Committee with three to five Inspectors</li> </ul> </li> </ul> |
| <b>Financial audits</b>                 | <p>Incorporated business entities must submit their audited financial statements to the DBD within five months after the balance sheet date.</p> <p>Listed companies are subject to the additional requirement to submit quarterly financial statements to the Stock Exchange of Thailand. Quarterly financial statements will be reviewed by an independent auditor who will express no opinion on the status of such statements.</p>   | <p>The annual financial statements of all foreign invested enterprises must be audited.</p> <p>Enterprises must submit financial statements to relevant authorities within 90 days from end of the annual accounting period as stipulated by law.</p>   |
| <b>Shareholders’ meetings</b>           | <p>An ordinary meeting of shareholders must be held within six months of incorporation and subsequently within four months from the date of ending the account period of the company.</p> <p>All companies must also hold annual general meetings at least once every 12 months within four months of the end of their fiscal year.</p>  | <p>The General Meeting of Shareholders, which is the highest decision making authority of a JSC, must have an annual meeting once a year, usually within four months from the last day of the company’s fiscal year, but in no event later than six months.</p> <p>In addition to annual meetings, the General Meeting of Shareholders may have extraordinary meetings.</p>   |

## DOING BUSINESS IN ASEAN

Based on the World Bank's latest Doing Business 2019 report, all across the region, governments have been applying efforts to reform its regulations, making it easier to do business.

### Ease of doing business rankings for ASEAN countries according to the World Bank Doing Business 2019 report:

- Singapore – Rank 2
- Brunei – Rank 55
- Philippines – Rank 124
- Myanmar – Rank 171
- Malaysia – Rank 15
- Vietnam – Rank 69
- Cambodia – Rank 138
- Thailand – Rank 27
- Indonesia – Rank 73
- Laos – Rank 154

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| <p><b>Brunei [starting a business rank: 16]</b></p> <p>Brunei made starting a business easier by merging the name verification into the incorporation application, expediting incorporation applications and eliminating the practice of stamping share certificates.</p>  | <p><b>Myanmar [starting a business rank: 152]</b></p> <p>Myanmar made starting a business less expensive by reducing the registration fee.</p>   |
| <p><b>Cambodia [starting a business rank: 185]</b></p> <p>The Ministry of Commerce and General Department of Taxation of Cambodia have adopted online registration systems to facilitate the registration process as well as the process of yearly compliance requirements to ease the process of keeping company information up-to-date.</p>  | <p><b>Singapore [starting a business rank: 3]</b></p> <p>The highest ranked Asian country for ease of doing business is Singapore, which retains the number 2 spot on the World Bank's global rankings. Singapore made starting a business easier by abolishing corporate seals.</p>   |
| <p><b>Indonesia [starting a business rank: 134]</b></p> <p>By combining different social security registrations and by reducing notarization fees in both Jakarta and Surabaya, Indonesia made starting a business easier. Also, different registrations were combined at the one-stop shop in Surabaya.</p>   | <p><b>Philippines [starting a business rank: 166]</b></p> <p>The Philippines made starting a business easier by simplifying tax registration and business licensing processes. At the same time, the Philippines increased tax registration costs.</p> <p>President Duterte has also recently signed the Revised Corporation Code of the Philippines which will supersede the 38-year old Corporation Code when it comes into effect. Some of the salient provisions and key changes include:</p> <ul style="list-style-type: none"> <li>• The formation of a One Person Corporation;</li> <li>• Change in number and qualifications of incorporators;</li> <li>• Corporations having perpetual existence;</li> <li>• Rule on self-dealing directors being extended to family members; and</li> <li>• Voluntary dissolution</li> </ul> |
| <p><b>Laos [starting a business rank: 180]</b></p> <p>Laos made trading across borders faster by streamlining the customs clearance process which indirectly facilitated business in the country.</p>  | <p><b>Thailand [starting a business rank: 39]</b></p> <p>Fixed registration fees were introduced in Thailand making it less costly to start a business.</p>  |
| <p><b>Malaysia [starting a business rank: 122]</b></p> <p>Malaysia made starting a business easier by introducing an online registration system for goods and service tax. The Companies Act 2016 came into force on 31 January 2017, replacing the Companies Act 1965, with some provisions to take effect later. The remaining provisions relating to the introduction of two new corporate rescue mechanisms, judicial management and corporate voluntary arrangement, as well as the requirement that company secretaries be registered with the Registrar came into effect in March 2018 and March 2019 respectively. With this, all provisions of the Companies Act 2016 are now in force.</p> | <p><b>Vietnam [starting a business rank: 104]</b></p> <p>Reduced costs of business registration as well as the publication of an online notice of incorporation has made starting a business in Vietnam easier.</p>  |

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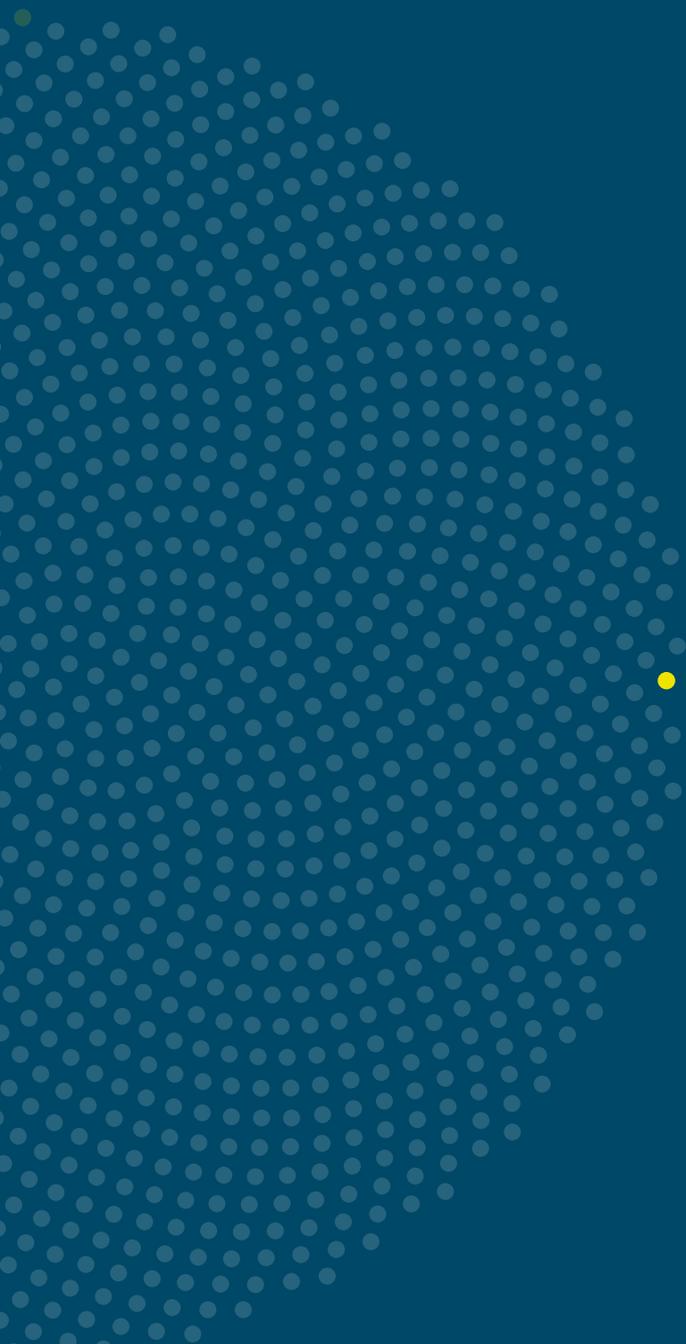
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