
TAIWAN

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Taiwan

Part II

Formation

A Limited companies

Note: this section deals with companies limited by shares and limited companies; differences are noted where applicable.

1 Ready-made companies

Not available.

2 Time-scale for formation

a Normal time taken

I Full incorporation procedure

Three to four weeks.

II Changing name, objects etc of a newly acquired company

Two to three weeks.

b Reduction of normal time

Not possible.

3 Costs of formation

a Full incorporation costs

registration fee - 0.025% of the total authorised capital with the minimum of NT\$1,000

all other fees (eg lawyers' and auditor's fees) - non-statutory and variable.

4 Civil liability of officers and shareholders

a Extent of company officers' and shareholders' personal civil liability

I Officers/Directors

Directors have a duty of care and shall assume a fiduciary duty and must exercise the degree of care as a good administrator.

There is possible liability for conducting the affairs of the company with intent to defraud creditors.

II Shareholders

Liability is limited to the equity contribution.

b Directors' and officers' liability insurance

Available from local insurance companies.

5 Documents required for incorporation

Company limited by shares

list of shareholders

list of directors and supervisor(s)

a copy of the foreign investment approval issued by the Investment Commission (in the event the company is a FIA company)

a copy of the certificate of incorporation of each foreign corporate shareholder, which must be notarised and also legalised by a representative office of the ROC located in the country where the party issuing the document is situated

photocopy of the passport or copy of alien resident certificate and resident address for each individual shareholder and each representative of each corporate shareholder who is not an ROC national

letter of designation, executed by the corporate shareholder(s), of representative to be elected as director or supervisor of the company

a copy of ID cards or census certificates for each shareholder, director and supervisor who is an ROC national

minutes of the meeting of promoters (with record of election of the directors and supervisors). In the case of a single shareholder company, no promoters' meeting is required

minutes of the meeting of the board of directors (to elect the chairman of the board)

articles of incorporation

a consent letter for acting as a director or supervisor or the chairman of the board to be issued by each of the new directors, supervisor and chairman

a copy of the receipt for payment of the house tax for the most recent year, or a copy of the title deed for the premises

an original copy of the letter issued by the landlord consenting to the Company's use of said address as its office or a copy of the lease agreement executed by and between the preparatory office of the Company and the landlord

a report prepared and certified by a CPA certifying the equity investments by each shareholder.

Limited company

a copy of the foreign investment approval issued by the Investment Commission (in the event the company is a FIA company)

a copy of the certificate of incorporation of each foreign corporate shareholder which must be notarised and also legalised by a representative office of the ROC located in the country where the party issuing the document is situated

photocopy of the passport or copy of alien resident certificate and resident address of each individual shareholder and each representative of each corporate shareholder who is not an ROC national

letter of designation of representative(s), executed by the corporate shareholder(s)

a copy of ID cards or census certificates for each shareholder who is an ROC national

concurrence letter of shareholders (ie written confirmation that the shareholders agree to incorporation details such as office address, appointment of directors etc)

articles of incorporation

a consent letter for acting as a director to be issued by the director

a copy of the receipt for payment of the house tax for the most recent year, or a copy of the title deed for the premises

an original copy of the letter issued by the landlord consenting to the Company's use of said address as its office or a copy of the lease agreement executed by and between the preparatory office of the Company and the landlord

a report prepared and certified by a CPA certifying the equity investment by each shareholder.

6 Incorporation procedure

a Procedure

An application together with the documents described in 5 above should be filed with the competent government authority for registration of incorporation.

A certificate of incorporation (company licence) is no longer issued. However, a corporate registration card will be issued upon request. For incorporation of a company limited by shares, the application should be filed within 15 days of the assumption of office by the directors and supervisor(s). For incorporation of a company other than a company limited by shares, the application should be filed within 15 days of the signing of the articles of incorporation.

The appropriate authority with which to file the documents is determined by reference to the following criteria (see **Part IV 1** for details):

paid-up capital

geographical location

foreign investment approval

location in an export processing zone or industrial park.

b Authorisation to commence business

The Ministry of Economic Affairs has introduced a new policy under which the requirement for applying the business licence is waived from 13 April 2009. However, a company is still required to apply for business registration with the local tax authorities. In addition, some businesses must obtain special licences before or after completing their incorporation registration, such as banks, insurance companies, forwarders and import/export companies. Banks and insurance companies must apply to the Financial Supervisory Commission, Executive Yuan, 18th Floor, No 7, Shiang Ming Blvd, [Section 2](#), Ban Chiao City, Taipei.

Tel: + 886 2 8968 0899, Fax: + 886 2 8969 1215.

c Sanctions for defective compliance

The persons obliged by law to file the incorporation application and who fail to do so within the 15 day time-limit (see **a** above) are liable for a fine of NT\$10,000 to NT\$50,000.

7 Pre-incorporation contracts

Such contracts only bind the person purporting to act for the company or as agent for it; they are not binding on the company until ratified by the company after incorporation.

8 Persons involved in company formation

a Persons required to be involved

Company limited by shares The chairman of the board is required to submit the application for incorporation.

Limited company All directors are required to submit the application for incorporation.

b Persons typically involved in practice

Lawyer or CPA.

9 Capital requirements

a Minimum capital

With the abolishment of the minimum capital requirement for a company limited by shares on 14 April 2009, the Shareholder has the discretion to decide on the amount of the capital of the Company, provided that the amount is sufficient to cover the costs and expenses for incorporating the Company; otherwise, the authorities might not approve the application for the incorporation registration of the Company.

b Usual capital

As in **a** above.

c Payment for shares

Shares must be fully paid up.

10 Name requirements and restrictions

a Form

Name must end with the words 'Company Limited by Shares' or 'Limited Company' respectively.

b Prohibited names

No company may use a corporate name which is identical to that of another company. Where the corporate names of two companies contain any marks or identifying words respectively that may distinguish the different categories of business of the two companies, such corporate names must not be considered identical to each other.

A company may operate any category of business which is not prohibited or restricted by the laws and regulations, except for any business requiring special approval which must be explicitly described in the articles of incorporation of the company.

A company must not use a name which tends to mislead the public to associate it with the name of a government agency or a public welfare organisation, or has an implication of offending against public order or good customs.

Before proceeding to the company incorporation registration procedure, a company must first apply for approval and reservation, for a specific period of time, of its corporate name and the scope of its business. Rules for examination and approval of such application must be prescribed by the central competent authority.

c Names requiring consent or approval

Not applicable.

11 Control of mergers and acquisitions

Take-overs and mergers are subject to the Company Law, Fair Trade Law, Corporate Mergers and Acquisitions Law, Financial Holding Company Law and other applicable laws (as the case may be).

12 Company officers

a Minimum and maximum numbers

Company limited by shares Minimum of three directors and one supervisor (who may not be a director or an employee). If there are managing directors, there must be a minimum of three and they must not constitute more than one-third of the number of directors.

Limited company Minimum of one director; maximum of three directors.

b Nationality or residence requirements

Company limited by shares None for the directors but at least one supervisor must be a resident national. This requirement for resident supervisor does not apply to a FIA company.

Limited company None.

Managers of both types of company must be resident.

c Qualifications

Company limited by shares Any person with legal capacity can be a director or supervisor. A supervisor cannot be a director, manager or employee of the company in question. The representatives of the same corporate shareholder can not be elected or act as a director and a supervisor of the company concurrently unless such company is incorporated by a single corporate shareholder.

Limited company Directors must be shareholders with legal capacity or representatives of corporate shareholders.

A person is excluded from any management office, including that of director or supervisor, if any of the following applies:

he has violated the Organised Crime Prevention Statute and has served a sentence of imprisonment within the previous five years

he has committed an offence of fraud, breach of trust or misappropriation and has served a sentence of imprisonment of one year or more within the previous two years

he has misappropriated public funds during time in public service and has served a sentence of imprisonment within the previous two years

he has been adjudged bankrupt without having rights restored

his checking account has been suspended by the Clearing House and has not been reinstated

he has only limited legal capacity.

d Employee participation requirements

None.

e Companies as company officers

An individual must be designated to represent any corporate director.

f Are companies required to appoint auditors?

A ROC (Taiwan) company is generally not required to appoint external auditors to inspect its accounts. Certain companies or companies engaged in certain activities are required to appoint auditors. Examples include a company of which the paid-in capital is NT\$30,000,000 or more (excepting national enterprises), a public reporting company, a listed company, a company of which the shares are traded over-the-counter, a company applying to securities authorities for approval to issue corporate debentures (with respect to the accounts submitted to the securities authorities), a company applying to securities authorities for approval to issue new shares to the public (with respect to the accounts submitted to the securities authorities) and companies in regulated industries such as a securities investment consultancy enterprise.

g Are auditors required to be professionally qualified?

The auditor must be a certified public accountant. In some cases, such as the annual and semi-annual financial statements of a public reporting company, a listed company and a company of which the shares are traded over-the-counter, such accounts must be jointly certified by two certified public accountants of a CPA firm which satisfies certain qualifications prescribed by the securities authorities.

h Company officers as auditor

Not permitted.

13 Powers of company officers

a Management powers

Directors acting as a board of directors decide all business transactions, except that certain matters must be resolved by a meeting of shareholders.

A supervisor is empowered to investigate business and financial condition individually.

b Representation of the company

I Issue and authentication of documents

Usually effected by the chairman of the board of directors, except that share certificates must be issued by at least three directors.

II Conclusion of contracts on behalf of the company

Usually effected by the chairman of the board of directors, or by the general manager subject to the authorisation of the board of directors.

c Appointment and dismissal of directors and chief executive(s)

I Appointment

Directors and supervisors are elected by shareholders' meeting, or appointed by the corporate shareholder if the company is a single shareholder company; managing directors are elected by the directors; chairman of the board is elected by the directors or managing directors (if any); managers are appointed by the board of directors.

II Dismissal and termination of office

Directors and supervisors are dismissed by resolution of the shareholders' meeting, or dismissed by the corporate shareholder if the company is a single shareholder company.

Managers are dismissed by board of directors.

d Employee involvement in appointment of company officers

None.

14 Shareholders

a Minimum and maximum number

Company limited by shares Minimum of two shareholders or one government/corporate shareholder; no maximum.

Limited company Minimum of one; no maximum.

b Local shareholding requirements

Company limited by shares No local shareholding requirement on promoters or shareholders. Promoters may not transfer their shares within one year of the date of incorporation except for those of the newly incorporated company due to merger or spin-off.

Limited company None.

c Nominee shareholdings

Not permitted.

d Holding of shares under trust

Permitted, but may not be pleaded against the issuing company unless the trust has been notified.

e Minimum number or value of shares taken up on incorporation

Company limited by shares No minimum requirement.

Limited company No minimum requirement.

A public reporting company may issue its shares at a price below par value if approved by the Securities and Futures Commission.

f Requirements for shares to be paid up

Required.

15 Public disclosure of company information

a Disclosure on company's letterheadings and business stationery

No requirements.

b Public registry

For details of information disclosed at public registry see **Part IV A**.

16 Classes of share permitted

Company limited by shares

nominative (registered) shares

bearer shares

common shares

preferred shares.

Limited company

No share certificates are issued, but each shareholder receives a certificate setting out the shareholder's name and the amount of his capital contribution.

17 Location of corporate activities

a Registered office

Must be located within the jurisdiction. Must meet the zoning requirements according to the business items to be engaged.

b Statutory records and registers

Must be kept at the registered office.

c Domicile

Determined by the location of the registered office.

d Nationality

Determined by the location of the registered office.

e Residence for tax purposes

Determined by the location of the registered office.

f Other relevant status

Foreign company A company incorporated under laws other than those of the ROC.

g Residence outside the jurisdiction

Not permitted.

h Board meetings

The board meeting can be held within or outside the territory of the ROC; there are no mandatory rules as to frequency but must be held at least once in each fiscal year.

i Shareholders' meetings

Must be held at least once each fiscal year.

j Resident management and control

Permitted.

18 Foreign nationals as directors

Permitted but the managers of any type of company must be resident.

19 Power of attorney

Permitted.

20 Liability of parent company for insolvent subsidiaries

Generally none, but if a director appointed by the parent company conducts the business contrary to law or any ordinance and thereby cause loss or damage to any other person, the parent company may be jointly liable to compensate such a person.

21 Capital

a Public flotation

Possible for a company limited by shares.

b Securities exchange listing

Possible for a company limited by shares.

c Other sources of corporate finance

Banks and other financial institutions.

d Alteration of a company's share capital

Company limited by shares Increase of authorised capital requires a resolution adopted by a majority of shareholders at a meeting attended by shareholders representing at least two-thirds of the total number of issued shares. Generally, issue of new shares is determined by the board of directors by a resolution adopted by a majority vote at a meeting attended by at least two-thirds of directors.

Paid-in capital may be reduced under certain conditions by a resolution adopted by a majority of shareholders at a meeting attended by shareholders representing more than one-half of the total number of issued shares (or two-thirds or more of the total number of issued shares if the amendment to the Articles of Incorporation is required for the reduction).

Limited company Increase of capital must be agreed on by a majority of shareholders. Statutory prohibition on the reduction of capital no longer exists.

e Company purchase of own shares

Generally not permitted, except in the following circumstances:

all special shares may be redeemable out of surplus profits or proceeds realised from issue of new shares

if a company decides to transfer the whole or any essential part of its business or assets, any shareholder who objects to such resolution may request the company to redeem all the shares held by him

if a company decides to consolidate or merge with another company, any shareholder who objects to such resolution may request the company to redeem all the shares held by him

buyback for the purpose of transfer to the employees within three years of the buyback, provided that the number of such shares shall not exceed 5% of the total issued and outstanding shares of the company and that the total purchase price shall not exceed the amount of retained earnings plus realised capital reserve.

for a company whose stocks are either listed on a stock exchange or traded on the over-the-counter market, upon the approval of a majority of the directors present at a directors meeting attended by two-thirds or more of director, it may buy back its shares and the buy back: (i) is for transferring shares to its employees; or (ii) is for equity conversion in coordination with the issuance of corporate bonds with warrants, preferred shares with warrants, convertible corporate bonds, convertible preferred shares, or share subscription warrants; or (iii) is required to maintain the company's credit and shareholders' equity and the shares so purchased are cancelled.

f Company assistance for purchase of own shares

Not permitted.

A company may enter into a stock option agreement with its employees by a board resolution adopted by a majority vote at a meeting attended by at least two-thirds of the directors. Stock options are not transferable.

22 Borrowing and charges

a Secured loans

Permitted.

b Unsecured loans

Permitted.

c Chargeable assets

All assets of the company may be used as security.

d Limits on company's borrowing powers

None.

e Registration of company charges

Chattel mortgages, conditional sales, trust receipts and real estate mortgages must be registered in order to be enforceable against a bona fide third party or to become effective, as the case may be.

23 Authentication of documents and contracts

a Company seal

Required.

b Procedure for authentication

Documents and contracts may be authenticated by affixing the company's chop (ie stamp or seal) and responsible person's chop which are registered with the government agency in charge of company registration.

24 Corporate capacity

a Limitation on company to contract

In case a company enters into bankruptcy, insolvency, reorganization, moratorium or similar legal authorisation that affects creditors' rights generally, the company may be subject to certain restrictions to contract as required by law.

b Third party protection

The only means whereby a third party may protect his interests is by satisfying himself that the person signing the contract is authorised to represent the company; this may be done by requesting the resolution of the board of directors' meeting and the certificate of company seal and responsible person seal issued by the government agency in charge of company registration.

25 Service of writs

At company's registered office.

26 Annual compliance costs

None.

27 The requirements for a Taiwan company to apply for listing of its stock on the Taiwan Stock Exchange ('TSE')

The Taiwan company must be a company limited by shares.

a Non Hi-tech company

According to the Taiwan Stock Exchange Corporation Rules Governing Review of Securities Listings, as last amended on 30 September 2013 ('TSE Guidelines'), the following requirements should be met when applying for listing on the TSE:

- (a) **Incorporation** - The Applicant should have been incorporated for at least three full fiscal years.
- (b) **Capitalisation** - The paid-in capital of the Applicant should be NT\$600,000,000 or more when applying for listing.
- (c) **Profitability** - The Applicant's operating income and pre-tax net profit as stated in the consolidated financial statements must meet one of the following requirements and the Applicant has no accumulative losses for the most recent fiscal year:
 - (i) the ratio of the operating income to the paid-in capital and the ratio of the pre-tax net profit to the paid-in capital of each of the most recent two fiscal years must reach 6% or more ('Ratio'); or
 - (ii) the average Ratio for the most recent two fiscal years must reach 6% or more and the Ratio of the most recent fiscal year must be higher than the Ratio of the preceding fiscal year; or
 - (iii) the Ratio for each of the most recent five fiscal years shall reach 3% or more.
- (d) **Diversification of ownership** - The number of registered shareholders shall be 1,000 or more. Excluding company insiders and any juristic persons in which such insiders hold more than 50% of the shares, the number of registered shareholders shall be at least 500, and the total number of shares they hold shall be 20% or greater of the total issued shares, or at least 10 million.

b Hi-tech company

According to Article 5 of the TSE's Guidelines, if the Applicant is a hi-tech company certified by the Industrial Development Bureau ('IDB') of the Ministry of Economic Affairs, the following requirements should be met when applying for listing on the TSE:

- (a) **Capitalisation** - The paid-in capital of the Applicant should be NT\$300,000,000 or more when applying for listing.
- (b) **Product Marketability** - The products of the Applicant should have been developed successfully and have marketability duly certified by the IDB.
- (c) **Underwriter's Recommendation** - The Applicant must be recommended by underwriters to apply for TSE listing.
- (d) **Profitability** - The respective net worth, as stated in the Applicant's most recent periodical financial statements and financial statements for the most recent year is not less than two-thirds of the paid-in capital.
- (e) **Diversification of ownership** - The number of registered shareholders shall be 1,000 or more. Excluding company insiders and any juristic persons in which such insiders hold more than 50% of the shares, the number of registered shareholders shall be at least 500.

28 The requirements for a Taiwan company to apply for trading stocks on GreTai Securities Market ('GTSM')

The Taiwan company must be a company limited by shares.

According to the GreTai Securities Market Regulations Governing Review of Securities Traded on Over-the-Counter Markets, as last amended on 28 October 2013 ('GreTai Regulations'), the following requirements should be met when applying for trading stocks on the GTSM:

- (a) **Capitalisation** - The paid-in capital of the Applicant should be NT\$50,000,000 or more when applying for listing.
- (b) **Incorporation** - The Applicant should have been incorporated for at least two full fiscal years.

- (c) **Profitability** - The Applicant's operating income and pre-tax net profit must meet the following requirements:
- (i) the ratio of the operating income to the paid-in capital and the ratio of the pre-tax net profit to the paid-in capital of the latest fiscal year must reach 4% or more ('Ratio') and the Applicant has not incurred losses for the most recent year; or
 - (ii) the ratio for each of the latest two fiscal years shall reach 3% or more;
 - (iii) the average ratio for the latest two fiscal years must reach 3% or more and the Ratio of the most recent fiscal year must be higher than the Ratio of the preceding fiscal year.
- Note:* The requirements under (b) and (c) above are not applicable to a hi-tech company which is certified by the government authority and whose products have been developed successfully and have marketability as certified by the government authority.
- (d) **Diversification of ownership** - The Applicant's number of registered shareholders, excluding company insiders and any juristic person in which such insiders hold more than 50% of the shares, shall not be less than 300; the total amount of the combined shareholdings of such registered shareholders shall constitute 20% or more of the total issued shares, or more than 10 million shares.
- (e) **Central custody of shares** -
- (i) directors, supervisors, and shareholders holding 10% or more; or
 - (ii) directors, supervisors, shareholders holding 5% or more, and shareholders whose shares are acquired by capitalisation of patent or know-how and holding 0.5% or 100,000 shares or more (in the case of a hi-tech company) are each required to deliver the entire amount of their shares to the government designated central custodian for custody.
- (f) **Recommend by securities firms** - The Applicant is recommended in writing by two or more securities firms.
- (g) **Stock agent** - The Applicant must appoint a stock agent to handle stock affairs at the place where the GreTai is located.
- (h) The Applicant's stock shall have been traded on the emerging stock market for not less than six months.
- (i) The stocks and bonds publicly offered and issued by the Applicant shall all have been issued in scripless form.

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