COMPENDIUM

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Austria

Kraft Rechtsanwalts GmbH
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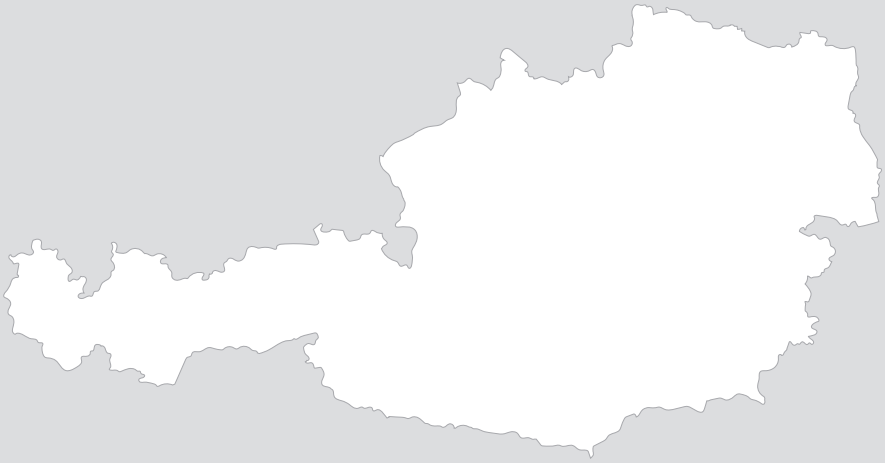

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The Vienna based law firm was established in 1987 by Rainer Maria Kraft and is now managed by Elisabeth Mayer-Wildenhofer. The firm provides a comprehensive range of services to corporate and private clients with national or international interests. Unlike large law firms, Kraft & Wildenhofer‘s partners can ensure the sustained individual attention on which the successful solution to a case so often depends.

Through its expert contact in the world of business, it has access to the specialist knowledge and experience required to respond more effectively to today’s increasingly complex world. These strengths are further reinforced by the firm’s international network of law and accounting offices in the European Union, Central Europe and beyond – all of which share a belief in the importance and value of personal contact and responsibility in the practice of law.

In Austria, the firm keeps in close touch with accountants, tax advisers, notaries public, real estate brokers and managers, insurance agents and the banking and financial institutions, as well as the numerous experts required to give evidence in court. As a member of the Austrian Bar Association, the firm can represent clients before all Austrian Courts, including the Courts of Appeal and the Supreme Court. Such strengths allow Kraft & Wildenhofer to respond to the most challenging tasks.

Commercial and Corporate
Formation of companies
Acquisitions, mergers and takeovers
Joint venture agreements
Corporate restructuring
Agency, distribution and franchising
Unfair competition

Family and Estates
Wills
Probate
Trusts
Estate planning

Capital Markets
Compliance issues
Liability of investment counsels

Employment
Employment agreements
Work and residency permits

Real Estate
Acquisition and disposal of property
Lease agreements

It Law / Data protection
E-Commerce
General Data Protection Regulation

Intellectual Property
Trademarks
Model and design

Litigitation

Debt Collection

Austria

Corporate Law

Regulations and Rules

The main statutes in corporate law are the Austrian Commercial Code *(Unternehmensgesetzbuch, UGB),* the Law on Limited Liability Companies *(Gesetz über Gesellschaften mit beschränkter Haftung, GmbHG)* and the Stock Corporation Act *(Aktiengesetz, AktG).*

Other relevant statutes are the General Civil Code *(Allgemeines Bürgerliches Gesetzbuch, ABGB)* especially for companies constituted under civil law *(Gesellschaft bürgerlichen Rechts),* the Law on Co-operative Societies *(Genossenschaftsgesetz),* the Law on the Commercial Register *(Firmenbuchgesetz),* the Law on Private Foundations *(Privatstiftungsgesetz),* the Insurance Companies Supervision Act *(Versicherungsaufsichts-gesetz)* and the Act on the Statute of the Societas Europaea *(SE-Gesetz).*

Type of Companies

The most common types of companies in Austria are the General Partnership *(Offene Gesellschaft, OG),* the Limited Partnership *(Kommanditgesellschaft, KG),* the Company with Limited Liability *(Gesellschaft mit beschränkter Haftung, GmbH),* the Stock Company *(Aktiengesellschaft, AG)* and the Private Foundation *(Privatstiftung).*

Since 2007 most types of companies are also open to the so-called liberal professions *(„freie Berufe“),* as for example lawyers, notaries, doctors, pharmacists, accountants or architects; however the various professional codes contain certain restrictions.

Further types of companies are the companies constituted under civil law *(Gesellschaft nach bürgerlichem Recht, GesbR),* the Cooperative *(Genossenschaft),* the European Economic Interest Grouping *(Europäische wirtschaftliche Interessenvereinigung, EWIV),* the European Company *(Europäische Gesellschaft, SE)* and the European Cooperative Society *(Europäische Genossenschaft, SCE).*

Effective 1 January 2024, Austria now has introduced the Flexible Company *(“Flexible Kapitalgesellschaft”* or *FlexCo)* as a new legal form of corporation specially oriented to the needs of startups.

The new company form represents a hybrid form of the limited liability company *(GmbH)* and a bit of the stock corporation *(AG).* Most of the regulations relating to the Flexible Company are essentially based on the Austrian Limited Liability Companies Act, whose rules also apply via subsidiary application, and also include a few provisions from the Austrian Stock Corporation Act. In addition to simplifying and streamlining the relevant stipulations, the new law also focuses on enabling employees to participate in the success of the company. This is particularly important to young companies which aim to win the loyalty of highly sought-after skilled workers but are frequently unable to compete with the salaries offered by larger, existing companies. The FlexCo offers companies the possibility to incentivize employees by offering them equity interests (company value shares).

The stipulated minimum share capital consisting of the capital contributions of the shareholders equals € 10,000, of which only half must be paid in cash.

The acquisition of own shares is permissible up to the maximum of one third of the share capital. This will allow the company to have shares ready for future investors. Furthermore, the new regulations al-low for flexible capital-raising measures such as the contingent capital increase for the purpose of granting subscription rights or share options to employees, as well as authorized capital for the issuance of new shares. Shareholders can also participate in the FlexCo with a capital contribution of € 1.

Liability of Shareholders

The liability of the shareholders of a Company with Limited Liability or a Stock Company is limited to their capital contribution. On the contrary the partners of a General Partnership are fully and personally liable for the debts of the Partnership, the liability to creditors cannot be limited. A Limited Partnership consists of at least one general partner *(Komplementär),* who is liable like a partner of a General Partnership, and of at least one limited partner *(Kommanditist),* whose liability is restricted to the amount of his capital contribution *(Einlage).*

Share Capital

The minimum share capital *(Stammkapital)* of a Company with Limited Liability is EUR 10,000. In principle, at least one half of the capital must be paid in cash (but there are exceptions for contributions in kind).

The minimum stock capital *(Grundkapital)* of a Stock Company is EUR 70,000. At least 25% of the stated capital stock (plus any premium) must be paid up prior to the registration. The minimum nominal value of the shares is EUR 1 unless the shares simply represent a percentage of the share capital (without a nominal value). It is possible to issue non-voting preferred shares which grant a right to a preferred dividend but do not include any voting rights. Since 2011 non-listed companies have to issue registered shares. There is no minimum share capital for General Partnerships and Limited Partnerships.

Corporate Governance

All partners of a General Partnership (and all general partners of a Limited Partnership) are entitled and obliged to manage and to represent the partnership. The partnership agreement may stipulate other regulations.

Companies with Limited Liability must have the following corporate bodies: (i) managing director(s) *(Geschäftsführer),* (ii) General Assembly *(Generalversammlung).* A supervisory board (Aufsichtsrat) is only compulsory for large companies (e.g. more than 300 employees) and optional for the others.

The General Assembly must meet at least once a year and is called by the managing directors. Shareholders resolutions can also be adopted by written consent, if all shareholders agree. The following decisions - inter alia – require a resolution by the shareholders:

- → the appointment and dismissal of managing directors
- → approval of the annual report
- → distribution of profits
- → release from liability of the managing directors
- → changes to the articles of association, including an increase or reduction of the share capital
- → raising of claims against the managing directors
- → liquidation of the company
- → mergers

Generally, shareholder resolutions of a Company with Limited Liability require a simple majority of the shareholders present. Unanimous voting is required inter alia for a change of the object of business of the company. A majority of 75% is required inter alia for changes to the articles of the association (with a few exceptions) or the sale of the corporate assets as a whole. The articles of association may provide other rules.

The management board of a Company with Limited Liability consists of one or more managing directors, who are appointed and dismissed by the shareholders and are also subject to directives of the shareholders. The managing directors represent the company and do the day-to-day business. Usually the managing directors have an employment contract with the company which stipulates the remuneration of the directors. The managing directors are personally liable towards the company for exercising the care and diligence of a prudent businessman in performing their tasks. They are not personally liable towards

creditors of the company in general, exceptions exist if they violate special legal rules (e.g. the requirement to file for bankruptcy on a timely basis).

The corporate bodies of a Stock Company are the board of directors (Vorstand), the shareholders meeting (Hauptversammlung) and the supervisory board (Aufsichtsrat).

A shareholders meeting is called by the board of directors and must be held at least once a year within eight months after the end of an accounting year. The following matters, inter alia, require a shareholders resolution:

- → appointment of the members of the supervisory board:
- → appointment of the auditors
- → changes to the articles of association, including an increase or reduction of the share capital
- → approval of the annual report (unless the supervisory board approves it)
- → distribution of profits
- → release from liability of the board of directors and the supervisory board

Shareholders resolutions are in principle adopted by a simple majority. For certain fundamental decisions, in particular changes of the articles of association a qualified majority of 75% of the votes is required.

The board of directors consists of one or more members, represents the company and carries out the day-to-day business and are not subject to directives. The members of the board of directors are appointed by the supervisory board for a period of 5 years (reappointment is permitted). Usually the members of the board of directors are employed with the company, and are regarded as employee with free labour contract *("freie Dienstnehmer"),* so they are not protected by labour laws. Profit shares are common. The members of the board of directors are personally liable towards the company for exercising the care and diligence of a prudent businessman in performing their tasks.

The supervisory board members are appointed by the shareholders meeting (except the representatives of the employees). There have to be at least three members. The supervisory board must supervise the management board. A number of transactions must be approved by the supervisory board, e.g. the acquisition, alienation and mortgaging of real estate, opening and closing of branches, determination of the general business policy etc. The liability of the members of the supervisory board is the same as the liability of the members of the management board.

Annual Account - Financial and Operating Results

The financial statements *(Jahresabschluss)* consist of the balance sheet, the profit and loss statement, an appendix and a position report.

The financial statements have to be prepared by the management within five months of the end to the accounting year. They require the approval of the shareholders assembly in the case of a Company with Limited Liability and the supervisory board in the case of a Stock Corporation. Furthermore a statutory audit is required for Stock Corporations, large or medium sized Companies with Limited Liability, banks, insurance companies and investment funds.

The financial statements must be filed with the commercial register (except Partnerships which must only register if the general partner is a corporation) within nine months of

the end to the accounting year. Large Stock Corporations, companies listed on the stock exchange, banks, insurance companies and investments funds must publish the financial statements in the "Wiener Zeitung". Any delay in filing the financial statements is subject to a penalty which is imposed against the company and the managing director (§ 283 UGB).

Establishing a Company

For the foundation of a Company with Limited Liability the registration with the Commercial Register is necessary. The following documents have to be filed: (i) articles of association including at least the name and the legal seat of the company, the company purpose, the amount of the share capital and the contribution of every shareholder. The founders have to appoint managing directors, who have to sign specimen signatures, which are deposited at the Commercial Register. The Application for Registration has to include an affidavit to be issued by the managing director that the share capital has been paid to the bank account of the company and that the managing director may dispose of it without third party rights.

Liquidating a Company

For Corporations such as the Company with Limited Liability and the Stock Corporation a formal winding-up procedure is provided by law. If the shareholders agree to dissolve the company or the company is dissolved for any other reason, the company enters into a liquidation period. During this period the company is represented by the liquidators (who may be the directors or third parties). The property of the company is sold and the debts are paid. The remaining funds are distributed to the shareholders. At the end of the procedure the company is struck from the register.

Reforms Affecting Companies with Limited Liability for Small Enterprises

As of January 1, 2018 it is possible to establish the so called "single member" or "one-person Company with Limited Liability". The purpose of this new concept is to simplify and thereby to speed up the process of foundation of a company with limited liability and therefor to minimize the expenses.

The simplified creation of a Company with Limited Liability is possible when an individual person is the one and only shareholder and managing director at the same time. To establish the company a notarial deed is not needed. The electronical way of foundation is enough, yet it is required to doubtlessly determine the identity of the only shareholder. The application for registration in the companies register is carried out electronically by the bank after the capital is paid in cash and the identity of the shareholder is successfully determined.

With the corporate law - amendment law 2023 (Gesellschaftsrechts – Änderungsgesetz 2023, GesRÄG 2023), as of January 1, 2024 a new form of company the "flexible capital company"(Flexible Kapitalgesellschaft) was established. Thelegal form is especially suited to Start-ups and other innovative companies.The mandatory minimum share capital of all limited liability companies was reduced to EUR 10,000. One half of the capital will still be required to be payed in cash.

Foreign Investmnets

Screening of Foreign Direct Investments (FDI)

In Austria the legislation on screening of foreign direct investment is based on the Federal Act on the Control of Foreign Direct Investments (Investment Control Act – ICA / InvKG) at national level. At EU level the legislation is based on Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the Union (FDI-Screening-Regulation).

The Investment Control Act applies if the Austrian undertaking targeted by the acquisition is active in an area of particular relevance for security or public order. A non-exhaustive list of these areas is set out in the annex to the Investment Control Act. e.g. water, information technology, pharmaceutical sector, energy, medical products,defence) An authorisation is required in the following cases:

- → Acquisition of the whole undertaking;
- → Acquisition of a specific share of voting rights (ten per cent or twenty five per cent);
- → Acquisition of a controlling interest; or
- → Acquisition of material assets, whereby a determining influence on part of an undertaking is acquired.

An authorisation is not required, if the undertaking targeted by the acquisition is a micro enterprise, including start-up enterprises, with fewer than ten employees and an annual turnover or an annual balance sheet total of less than two million Euros.

If it is concluded that the acquisition does not lead to a threat to security or public order, an authorisation is granted. An authorization is deemed to be granted, if no decision is issued within the one month period in the first phase of the procedure or within the two months' period of the in-depth investigation.

If it is concluded that the acquisition leads to a threat to security or public order the authorisation has to contain all conditions necessary to eliminate this threat.

If conditions are not sufficient to eliminate the threat the authorisation has to be denied.

Acquisitions requiring an authorisation under the Investment Control Act shall be deemed to have been concluded under the condition precedent that the authorisation is granted. An acquisition subject to an authorisation requirement is not valid until the authorisation is granted.

The Investment Control Act contains criminal law provisions providing for penalties of up to one year's imprisonment (or up to three years' imprisonment in qualified cases), as well as administrative penal provisions providing for fines of up to 40.000 Euros.

Registration with Government, Authorities and Permits

There are in general no restrictions on converting or transferring funds related to foreign investments. All cross-border capital transactions for non-residents and residents, including the acquisition of Austrian securities, debt services, the repatriation of profits, interest payments, dividends and proceeds from the sale of investment are unrestricted.

Nevertheless the Austrian Central Bank *(Nationalbank)* is entitled to enact restrictions and sanctions pursuant to EU-law under certain circumstances, e.g. major difficulties in international relationships, where the security of Austria is endangered, etc. In this case certain transactions require the permission of the Austrian Central Bank.

The EU-directives on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing do apply. As a national implementation of the 4th EU-directive, the Financial Markets Anti Money Laundering Act *(Finanzmarkt-Geldwäschegesetz)* was adopted by the Austrian parliament and came into force on January 1, 2017. The Beneficial Owners Registry Act *(Wirtschaftlicher Eigentümer Registergesetz)* became effective as of January 15, 2018 and requires companies, associations and legal entities to register their beneficial ownership information to the Federal Institute Statistics Austria; therefore creating a new register to ensure transparency in view of more complex corporate structures, associated companies, trusts and private foundations. Alongside, there are also provisions to be found, e.g. in the Codes of Professional Conduct for Attorneys at Law *(Rechtsanwaltsordnung)* and Notaries *(Notariatsordnung),* in the Austrian Trade Act *(Gewerbeordnung),* and Gambling Act *(Glücksspielgesetz).*

Directive (EU) 2018/843 (5th Money Laundering Directive) amending Directive (EU) 2015/849 (4th Money Laundering Directive) was published in the Official Journal of the EU on June 19, 2018 and must be implemented within the general implementation period by January 10, 2020. The implementation has been carried out with the EU Financial Adjustment Act 2019 (Articles 16 to 18), Federal Law Gazette I No. 62/2019.

This directive expands the use cases of customer due diligence to include, among others, tax-related service providers; service providers that exchange virtual currencies into fiat money and vice versa; electronic wallet providers; and art dealers. This directive also aims to increase transparency about who really owns companies and trusts. It further requires Member States to establish publicly accessible beneficial ownership registers to prevent money laundering and terrorist financing through opaque structures. The individual national registers will be directly interconnected to facilitate the exchange of information between member states.

Furthermore various transactions related to foreign countries, e.g. foreign direct investments, must be notified to the Austrian Central Bank for statistical purposes.

Austrian Foreign Trade Law and the applicable EU directives provide for restrictions regarding the import and export of certain goods (e.g. firearms).

The nine provinces have established regulations *(Grundverkehrsgesetze)* under which the acquisition of real estate (and certain rights related to real estate) by foreigners (in some cases also by Austrians) is subject to approval by the provincial authorities. These restrictions concern primarily real estate for agricultural use and real estate in tourist regions. The regulations differ from province to province.

Most business activities in Austria require a business license *(Gewerbeberechtigung).* If the business is conducted by a corporation, a partnership or a branch of a foreign company, an individual person (trade manager) must be named responsible for the correct conduct of the business. This person is commonly called the *"gewerberechtlicher Geschäftsführer",* who must be resident in Austria, in the EEA or Switzerland or in a country where penalties of Austrian administrative authorities can be executed. Since the manager must be in a position to work in the business accordingly, in most cases a *"gewerberechtlicher Geschäftsführer"* resident in Austria is nominated.

Transfer of Dividends, Interests and Royalties Abroad

Austria does, generally, not restrict the transfer of dividends, interests and royalties abroad. The exemptions are mentioned above.

For the taxation of these transfers see section "Tax Law".

Foreign Personnel

There are restrictions on employment for foreign employees.

EU-citizens as well as EEA-citizens and Swiss-nationals are entitled to work in Austria without a work permit. Furthermore, special temporary provisions apply to refugees from the Ukraine in order to be able to guarantee employment.

The former quota-based system has been changed. For key personnel, high qualified persons, skilled workers in shortage occupations and start-up founders the "Red-White-Red-Card" is possible: the work permit is valid for a certain job in a certain company for a maximum period of two years. After two years a (i) "Red-White-Red-plus" card or (ii) a temporary residence permit is possible. The" Red-White-Red-plus" allows working not only in a certain job but in the whole country. After five years a residence permit EU (Daueraufenthalt EU) can be obtained if an integration agreement (especially evidence of knowledge of the German language has to be provided) is fulfilled.

Additionally, there are special provisions regarding juvenile persons, family reunification and citizens of non-EU member states having a residence permit of another EU member state.

Foreign companies who perform services in Austria with foreign personnel have to consider that some rules of Austrian labour law apply, e.g. the minimum salaries stipulated in collective bargaining agreements, restrictions of working time etc. Any violation of provisions can lead to administrative penalties.

Labour Law

Austrian labour law is characterized by high standards of protection of the employees' rights and the importance of collective bargaining (company agreements are less important). Therefore, the possibility to govern the labour conditions by individual contracting is restricted.

Registration with Government, Authorities and Permits

The most important distinction is drawn between white-collar workers *(Angestellte)* and blue-collar workers *(Arbeiter).* White-collar workers are employed in commercial, higher non-commercial or clerk services, all other employees are blue-collar workers. Since this distinction is commonly seen as antiquated, in recent years the legal rules for white-collar workers and blue-collar workers have been adjusted, but there are still some differences, e.g. reasons for early termination, or special payments. Furthermore, in many sectors there are different collective agreements for white-collar workers and blue-collar workers.

Alternative to the usual labour contract, there is the possibility to enter into a free labour contract *(freier Dienstvertrag).* In a free labour contract the "employee" is not personally dependent on the "employer" (e.g. he can set his working time by himself, he works with his own equipment), therefore just a few labour laws apply to free labour contracts. However, this classification depends less on the contract and its designation, but rather on the actual dependence on the employer, so that the agreement of a free labour contract only for the purpose of avoiding labor law, is illegal and therefore still applicable.

A labour contract may be concluded for a definite or indefinite period of time. A contract for indefinite time can always be terminated by an ordinary termination *(Kündigung)* by both parties, provided they comply with certain notice requirements (termination periods and dates). The termination period the employer must comply with depends on the years of service: it may run from 6 weeks (in the first two years of service) to 5 months (after 25 years of service). The notice periods for blue-collar workers were adjusted to those for white-collar workers, so that they are now the same (with a few exceptions). The legal termination period may be lengthened but not shortened by the individual contract. The period the employee has to comply with must not be longer than the period the employer has to comply with. The employer may terminate the contract to the end of each quarter. This rule can be changed by contract, so that both parties may terminate the contract on 15th or the last day of the month. In enterprises where a work council is actually established, the work council must be informed by the employer before giving notice of the termination to the employee.

A termination can be challenged because of a proscribed reason of the termination (e.g. union activity, activities in organizing the election of a work council) or because the termination is socially unjustified (important for elder employees). For some protected groups, such as members of the work council, pregnant employees, handicapped people or apprentices, terminations are restricted.

Beside ordinary termination, contracts (whether for a definite or indefinite period of time) may be terminated with immediate effect by either one of the parties, if there are important reasons that make the continuation of the employment unacceptable. The employer may immediately terminate the labour contract if the employee is disloyal in his service, incapable of performing his services, refuses to comply with orders of the employer etc. If the dismissal of the employee is not justifiable due to lack of an important reason, the employment nevertheless ends immediately. In that case the employee remains entitled to full payment, just as if the employer would have ordinarily terminated the employment. On the other hand the employee suffers from negative consequences, such as loss of severance payment under the scheme "old" or compensation claims against the employee, in case the employee terminates the contract without any justification.

If an employment contract or a free labour contract was terminated after December 31, 2012, generally (e.g. in case the contract is terminated by the employer, in case of unjustified dismissal or contracts ending by passage of time), a fee *(Auflösungsabgabe)* of EUR 131 (2019) had to be paid by the employer. Under certain circumstances no such fee applied: termination by employee, justified dismissal, etc. However with effect from January 1, 2020 employers no longer have to pay the dissolution tax.

When the employment ends, the employee is generally entitled to severance payments. Since there are two systems of severance payments in Austria, the claim of the employee depends on when the employment contract has begun. For contracts started before January 1st, 2003 (severance scheme old/*Abfertigung alt)* the employment had to last for at least three years for the employee to be entitled to a severance payment, and only if the employment has been ordinarily terminated by the employer, by mutual consent, by justified immediate resignation by the employee, by unjustified dismissal by the employer, time lapse or resignation due to pregnancy. The amount of the payment of severance scheme old depends upon the time of service and ranges from 2 months' salary to 12 months' salary. The Act on Statutory Corporate Employment Retirement Scheme *(Betriebliches Mitarbeiterversorgungsgesetz)* applies to contracts beginning after December 31, 2002 (severance scheme new/Abfertigung neu; there is an opt-in-possibility for older contracts). The employee is entitled to severance payment regardless how the employment ends. Under this new legislation the employer has to pay 1.53% of the monthly remuneration to a fund, which pays the severance payment to the employee in the end.

The members of the managing board of a Stock Corporation are excluded from the protective provisions of the labour law. However, labour law may apply to managing directors of a Company with Limited Liability depending on the rights and duties they have (Except for the Working Hours Act, these mandatory provisions do not apply to managing directors and executives, as well as company agreements). Shareholders holding a majority or a blocking minority of shares will not be regarded as employees if they serve as managing directors of that company.

Employees Representatives and Union Representation

In Austria there is only one trade union, the Austrian Trade Union Federation *(Österreichischer Gewerkschaftsbund, ÖGB).* The influence of the trade union is still significant since the Austrian Trade Union Federation concludes collective agreements (see below).

Staff members of companies having at least five employees are entitled to establish a work council *(Betriebsrat).* The number of members of the work council depends on the number of employees. The members of the work council do not need to be members of the trade union. The work councils, therefore, are formally independent from the trade union although in fact there are often connections. A work council may conclude company agreements with the owner of the company (see below).

The members of the work council enjoy certain privileges as the law provides them with specific protection regulations (e.g. protection against termination). If they have to perform their duties as members of the work council during normal working hours, their salary must not been reduced. In companies with a great number of employees (more than 150) one or more members (2 if there are more than 700 employees, 3 if there are more than 3000 employees) of the work council are entitled to be totally released from their duty under their employment contract while still receiving payment thereof. Members of the work council must not be discriminated.

There are no specific privileges for members of the Trade Union, but a termination because of union activities is not justified (see above).

Collective Agreements, Company Agreements

The parties of collective agreements are the Austrian Trade Union Federation and statutory employer organisations, in particular the chamber of commerce (Wirtschaftskammer) and its sub-organizations. Generally collective agreements are concluded for a specific sector or branch. In most cases they apply to the whole territory of Austria, but there are also collective agreements applicable only in a certain province. The collective agreements apply to all employees in the specific branch, no matter if they are members of the trade union or not. These agreements govern the main aspects of the employment like wages, working conditions, working time etc. They apply to all employment relations, overriding the individual contract, except those terms of the individual contract that are more favourable to the employee. Collective agreements are thus of great significance in Austria.

Company Agreements are concluded between the management of the company and the work council (if there is no work council, no company agreements can be concluded). Only specified matters can be governed by a company agreement, e.g. introduction of piece-work system, regulation of the daily work time. Company agreements are of less importance than collective agreements.

Real Estate

The following statutes regulate real estate in Austria:

- → *General Civil Code (Allgemeines Bürgerliches Gesetzbuch - ABGB);*
- → *General Land Register Act (Allgemeines Grundbuchsgesetz);*
- → *Real Estate Transaction Laws (Grundverkehrsgesetze) of the nine provinces of Austria;*
- → *Rent Control Act (Mietrechtsgesetz)*

Types of Ownership

Ownership – Co-Ownership – Condominium:

Ownership in the sense of Austrian law is generally defined in § 354 ABGB. Consequently ownership on a piece of real estate means, as in all states of Central Europe, the right on the one hand to make use of the substance and the proceeds from a property, generally without any restriction, and on the other hand to exclude other people therefrom.

It is also possible that more than one person is owner. In the case of joint ownership (Miteigentum) each owner has the right to participate proportionately on the earnings of the property and to request dissolution of the co-ownership. This is however not allowed if the dissolution would be detrimental to at least one other co-owner.

Condominium is a special form of the co-ownership and means each co-owner has the exclusive right to use a certain apartment in a building.

"Usus Fructus"

"usus fructus" means the right to use a certain piece of real estate and consume all earnings thereof, even though the owner is someone else

Construction Right *(Baurecht)*

A construction right is the right to construct a building on the surface of a property owned by another one. This right is transferable and has to be constituted by a contract with the owner of the real estate. Furthermore it is limited to a certain time period.

Closely related to the Construction Right is the *"Superaedifikat",* a non-permanent building on the sur-face of another one's property. Unlike the construction right, the *"Superaedifikat"* is considered mova-ble property.

Land Register

In Austria rights connected to real estate, especially the ownership, "usus fructus", mortgages *(Hypotheken),* easements *(Dienstbarkeiten)* and construction rights *(Baurecht)* are recorded in the Land Register, administrat-ed by the District Courts *(Bezirksgerichte).* Currently there are 116 District Courts existing.

The Land Register is divided into in the main register *(Hauptbuch)* and the document collection *(Urkunden-sammlung).* Each piece of real estate has a lot number *(Einlagezahl).* The register maintains three schedules of each lot number:

- → **Schedule A:** Schedule of estate (Gutbestandsblatt)
- → **Schedule B:** Schedule of ownership (Eigentumsblatt)
- → **Schedule C:** Schedule of encumbrances (Lastenblatt). This schedule especially shows mortgages and easments

The Austrian land register is a public data bank, therefore everyone is entitled to inspect all documents. Fur-thermore the Land Register is subject to the principle of priority, which means that a right registered first pre-vails over all rights that have been registered subsequently, as well as to the principle of confidence, which means everyone can rely on the assumption that the registered information concerning the ownership and especially the schedule of encumbrances is right and complete.

Transfer Formalities

In most cases, it is not necessary that a contract to establish rights and encumbrances on real estate is consti-tuted in the form of a notary deed. Only the declaration of the registered owner agreeing to the registration of the right in the Land Register *(Aufsandungserklärung)* needs a certification by a notary public.

Mortgages

A mortgage is the right of a creditor to obtain satisfaction of a debt from a certain piece of real estate if the debtor does not fulfil his obligation as agreed. The mortgage depends on the existence of the secured debt and comes into existence with its registration in the Land Register Schedule C.

A registration is only allowed if the mortgage contains a certain sum of money or a reference to a maximum amount of money *(Höchstbetragshypothek)* and is duly signed by the registered owner as well as certified by a notary. Furthermore it is possible that more than one mortgage is registered on one piece of real estate. In this case the ranking between the mortgages depends on the arrival of the registration application to the Land Reg-ister (principle of priority).

If the secured debt is not repaid as agreed, the creditor has the right to initiate a public sale of the property by court order.

Restrictions on Acquisition

All nine provinces of Austria have enacted Real Estate Transaction Laws *(Grundverkehrsgesetze)* which contain various restrictions regarding the acquisition of real estate. After Austria became member of the EU, many restrictive provisions in these laws have been liberalized, so that all EU-citizens are treated equally.

The existing restrictions can be classified as follows: On the one hand there are constraints for real estate used for agricultural purpose and on the other hand there are restrictions on property in certain areas which are of special interest for tourism.

In both cases the acquisition of real estate and other certain rights is subject to approval by the Land Transfer Authorities *(Grundverkehrsbehörden).*

Special Legal Protections for Parties

In case a consumer concludes an agreement to become owner or tenant of a property, he has the special right to withdraw from this contract within one week, if the contract was signed on the day of the first examination of its subject matter (Article 30a Consumer Protection Act). The possibility to withdraw from the contract is not accessible if the subject matter of the contract is a vacation flat or business premises.

Construction and Use Restrictions

A number of restrictions concerning the use of real estate can be found in public law. The most important ones are:

- → It is necessary to obtain a building license *(Baubewilligung)* for the construction of buildings;
- → It is not possible to obtain a building permit on every piece of real estate. The Austrian land development plan *(Flächenwidmungsplan)* divides every piece of Austria's property in various zones, such as building land or agricultural land. The construction of buildings on agricultural land is prohibited.

Leasehold Types

The Austrian civil law differentiates between two kinds of leases, *"Miete"* and *"Pacht"*. The difference is very important, as legal consequences differ. In case of *"Miete"* the lessee *(Mieter)* has the right to use the object of lease, whereas in the case of "Pacht" the lessee *(Pächter)* has not only the right to use the rented object, but also to participate in the earnings of the property.

The lessee is highly protected by the provisions of the Rent Control Act *(Mietrechtsgesetz, MRG)* in case the lease agreement is considered as *"Miete"*. Especially the right of the lessor *(Vermieter)* to terminate the lease contract as well as the determination of the amount of rent are subject to legal restrictions.

Following limitations of the lessor should be mentioned here as well:

- → Temporal limitations
- → It is only possible to place a contract of lease under temporal limitation if the agreement was settled in written form. Moreover not every temporal limitation is possible, as the Rent Control Act appoints a minimum respite of 3 years.
- → Reasons for the lessor to terminate the contract
- → Generally the lessor is only allowed to terminate the contract for important reasons. The Rent Control Act enumerates several important reasons. It is for example possible to terminate the contract, if the lessee does not use the property according to the contract or does not pay the rent punctually after admonition.
- → Upper limit for the rent
- → Generally the lessee and the lessor can stipulate an adequate rent. For certain kinds of apartments, especially if they are of a lower category, the Rent Control Act provides low upper limits for the rent.

The provisions of the Rent Control Act (Mietrechtsgesetz) are mandatory (ius cogens) and cannot be (with some exceptions) changed by contract to the disadvantage of the lessee. Where a contract includes some less fa-vourable passages, the lessee is not bound by these contractual obligations and can rely on the provisions of law.

Section 1 Rent Control Act regulates the appliance of the Rent Control Act. Not all leases are subject to the Rent Control Act. In particular, leases which fall under the category of "Pacht" are not regulated by the Rent Control Act. In this case the lessee consequently cannot rely on the protections of the Rent Control Act.

Lease Formalities

Generally there are no formalities for lease contracts in the Austrian law, albeit there are several exceptions to this tenet. Most of these exceptions are provided in the above mentioned Rent Control Act.

Tax Law

Corporate Taxes

Taxes on Corporate Income

The profits of a corporation are taxed at the company level at a flat rate, while profits of individuals (and partnerships) are taxed at a progressive rate (exceptions see below).

Since 2005 the rate of the corporate income tax is 25% (previously being 34%). Therefore, the level of corporate income tax in Austria is now comparatively low. As part of the Eco-Social Tax Reform 2022, it was decided to reduce the corporate income tax rate further in stages to 24% from 2023 and to 23% from 2024.

The profits of a corporation are taxed whether the profits are paid out to the individual shareholders or retained in the company. Dividends paid to individual shareholders are subject to a withholding tax of 27.5% since January 1, 2016. (Therefore, profits of a corporation which are paid to the shareholders are taxed in all with a rate of 45.63 per cent). Corporations have to pay a minimum tax related to the minimum capital even if no profit is generated. For stock corporations this amounts to EUR 3,500. For companies with limited liability the tax amounts to EUR 1,750. For companies with limited liability founded after June 30, 2013 the minimum tax for the first five years is EUR 500 per year, during the next five years EUR 1,000. As of the 11th year the full minimum tax has to be paid.

The taxation of private foundations differs from the taxation of other legal entities: the nonpaid dedication of assets to a foundation is, generally, taxed with 2.5% (the tax rate is 25%, though, if the documentation is not disclosed or a foreign foundation is not comparable to an Austrian for example). Some types of income, e.g., income from bank deposits, debt securities or from the sale of participations are subject to a tax rate of 25% (interim tax) as long as they are retained (this tax is credited when the amount is paid to the beneficiary being subject to taxation). Dividends from participations in Austrian corporations and – under certain circumstances - from participations in a comparable foreign corporations are tax exempt, whereas income from business operations is subject to the corporate income tax of 25%. Benefits to the beneficiary from the substance are tax-free, whereas such from the proceeds are subject to the capital gains tax of 27.5%.

Corporate Residence

A company is resident in Austria if it has its legal seat (as designated in its statutes) or its place of effective management in Austria. A company with its residence in Austria is taxed on its worldwide income. A company with no residence in Austria is taxed on its income earned through the activities of a permanent establishment in Austria and its incomes from immovable property located in Austria, capital gains from the sale for shares in resident companies and royalties (see below).

Other Taxes

Other relevant taxes are:

- → **Value added tax** *(Mehrwertsteuer):* The rate is in general 20%; 10% are charged for leases of land and buildings for residential purposes (including camping and hotel accommodation), transport of passengers (except airfares), foodstuff, books; 13% are charged for services rendered by film-theatres, artists, sale of livestock, plants,.
- → **Real estate transfer tax** *(Grunderwerbssteuer):* rate 3.5%; (as of January 1, 2016 the tax rate is staggered if the acquisition of the real estate was entirely or partly free of charge)
- → **Capital transfer tax** *(Kapitalverkehrssteuer):* none (until December 31, 2015 the rate was 1% in particular for issuing shares of a domestic corporation (company with limited liability and stock company)).
- → **Stamp duties:** e.g. for lease agreements (not for living quarters after November 11, 2017), suretyships, assignments etc.
- → **Energy taxes** on natural gas, electricity, coal, petroleum
- → **Digital tax:** After December 31, 2019, online advertising will under certain circumstances (esp. high sales figures) be taxed at a rate of 5%. Before, here has only been an **advertising tax** of 5% for advertisements in print media, radio, TV and billboards.

There is no property tax in Austria; only the possession of real estate is taxed with an annual rate of app. 1 % of the assessed value *(Einheitswert),* which is regularly beneath the actual value.

Since 2008 no inheritance and gift tax is imposed any longer due to a ruling of the Austrian Constitutional Court.

Branch Income

A company with its residence in Austria is taxed with its worldwide income (including the incomes of a foreign branch). A company with no residence in Austria is taxed on its Austrian-source income. Austria is party to a number of tax treaties which seek to avoid double taxation.

Income Determination

Inventory generally has to be valued at the lower of cost and market value. If inventory is valued according to cost, the FIFO method is generally accepted. The LIFO method is allowed only if it is in accordance with the company's actual practice.

Capital gains from the sale of business assets are generally included in taxable income and are taxed at the standard rate.

Participations

Capital gains (dividends) from a shareholding in domestic subsidiaries are exempt from taxation. Portfolio dividends (i.e. participation of less than 10%) of foreign companies listed in the EU parent-subsidiary-directive or other foreign companies comparable to Austrian companies from countries providing Austria with full administrative assistance) are also exempt from taxation. Other dividends from non-resident companies are exempt if the foreign company is a company comparable to an Austrian company or a type of company listed in the EU parent-subsidiary-directive, and only if the parent company has held at least 10% of the shares of the foreign company for the minimum of one year. Withholding tax is levied for dividends from domestic participations not exceeding a 10% participation. Gains from the sale of participations or from liquidation of the company are taken into account.

Dividends from international participations (parent company is subject to unlimited income taxation in Austria, subsidiary is comparable to an Austrian company, the participation exceeds 10% of the subsidiary's capital and is held for more than one year) are tax-free. This also applies to gains from the disposal or liquidation of such participations unless the parent company irrevocably opts into taxability (including the possibility for depreciation to the shares' fractional value).

The above mentioned exemption does not apply if the foreign company is either not subject to a comparable company tax abroad or tax-exempt due to special foreign provisions or the foreign tax rate is 15 % or below. In such cases Austrian Law changes the system *("Methodenwechsel"):* instead of the exemption method the credit method is applicable. Furthermore no exemption applies if foreign capital gains are deductible abroad.

Deductions

Generally, all expenses being caused by running a business are deductible. The costs for business lunches are deductible with 50% if made for promotion purposes. Since March 2014 costs for personnel exceeding EUR 500,000 per year are not deductible anymore. As of January 1, 2016 expenses for construction work of more than EUR 500 are only deductible, if payments thereof have not been made in cash.

The basis for depreciation is the cost price or production cost. Only the straight line method of depreciation is permitted by tax laws (no progressive or diminishing balance depreciation is allowed). The depreciation period is from 5 to 10 year for machines, at least 8 years for passenger cars, 15 years for the goodwill, 40 years (2,5% per year for business purpose) to 66,6 (1,5% per year for residential purpose) years for buildings depending on the use of the building. Excess write down to the lower going concern value (= fraction of the total purchase price that a buyer of the whole company would pay for a certain asset assuming the buyer intends to continue the business) is only possible in case of technical or economic obsolescence. Some assets cannot be depreciated, in particular real estate.

Net profit losses may be carried forward without any time limit. The former provisions that loss carry forwards can only be set off against 75% of the income applies after the year 2014 only to companies. To avoid misuse of losses carried forward a change in ownership of the company shares, under certain circumstances, namely a substantial change of the shareholders (more than 75%), a substantial change in the organization and a substantial change in the economic structure without reorganization reasons (so called *"Mantelkauf"),* lead to a loss of the ability to carry forward the net profit losses of the previous years.

Although there are no statutory provisions specifically dealing with transfer pricing, the arm's length principle is applied in Austria because of general rules of the Austrian tax law.

The income tax and the corporate income tax are not deductible.

Group Taxation

Since 2005 Austrian tax law allows the building of a tax group. The group parent needs an equity participation of more than 50% (directly or indirectly) including the majority in voting rights. It is also possible to build a group, where one company must hold at least 40% and each of the other ones at least 15% *(Mehrmüttergruppe).* Such participation needs a group agreement, has to last for at least three years and an application with the tax office has to be filed. Irrespective of the participation held, 100% of the profits and losses of Austrian group members will be attributed to the group parent; as of January 1, 2015 the loss attribution of foreign group members can only be taken into account by 75% of the total amount of the domestic taxable income. The remaining losses can be carried forward and be taken into account in subsequent years. Undistributed profits of foreign group members are not attributed to the parent company, distributed profits are tax-free (international participation). Foreign group members resident in countries without administrative assistance cannot become members anymore, with 2015 such existing foreign group members were excluded from the group by law.

Tax incentives

There are several tax incentives in Austria, e.g., different forms of research tax allowances and deduction of tax for education.

An invention allowance for example is granted for expenses incurred in the development or improvement of inventions valuable for the economy. Some education (e.g. for training in similar fields to the current job) and advanced training costs are deductible.

Since 2010 individuals can participate from the new profit tax allowance (Gewinnfreibetrag): a differentiated rate of the profits can be deducted as notional operating expenses, in total up to EUR 45,350. For profits up to EUR 30,000 a part of 13% (at most EUR 3,900) can be set off without any further requirements; the other parts depend on the actual investment in securities and certain assets.

Withholding Taxes

A withholding tax of 27.5 % (since January 1, 2016) is levied on dividends distributed by a resident company to its Austrian shareholders. For natural persons, generally, the taxation is final ("Endbesteuerung"). No withholding tax is levied if the parent company holds more than 10% of the capital, for lower participations the withholding tax is credited. Dividends of resident companies to its foreign shareholders in the EC/EEA are tax-free if the participation exceeds 10% and exists for more than one year.

Double taxation treaties can contain lower tax rates.

Interest income from other sources is subject to standard corporate income tax (or individual income tax)

Royalties paid to non-residents are subject to a final withholding tax of 20 % unless a reduced rate applies under a tax treaty.

Tax rate on dividends, interest and royalties according to tax treaties (selected countries):

Country	Dividends	Interest	Royalties
Australia	15	10	10
Belgium	15	15	10 (0 in some cases)
Brazil	15	15	Up to 25
Canada	5 or 15	10	10
Denmark	0 or 15	0	0
France	0 or 15	0	0
Germany	5 or 15	0	0
Italy	15	10	10 (0 in some cases)
Japan	10 or 20	10	10
Korea	5 or 15	10	2 or 10 (0 in some cases)
The Netherlands	5 or 15	0	10 (0 in some cases)
Portugal	15	10	5 or 10
Russia	5 or 15	0	0
Spain	10 or 15	5	5
Switzerland	0 or 15	0	0
United Kingdom	5 or 15	0	0 (10 in some cases)
USA	5 or 15	0	0 (on films 10)

Tax administration

A company must file the annually corporate income tax return by April 30 (by June 30 when filed electronically) of the subsequent calendar year (no matter when the financial year ends). If the company is represented by a tax advisor the period for filing the return may be extended.

Prepayments of corporate income tax must be made in four equal payments by February 15, May 15, August 15 and November 15 in accordance with the assessment notice issued by the tax authorities (based on the previous year's tax payments). If the Corporate Income Tax is more than the prepayments the difference must be paid within a month after receiving the tax statement. Excess prepayments are refunded.

Corporate Taxes

A company must file the annually corporate income tax return by April 30 (by June 30 when filed electronically) of the subsequent calendar year (no matter when the financial year ends). If the company is represented by a tax advisor the period for filing the return may be extended.

Prepayments of corporate income tax must be made in four equal payments by February 15, May 15, August 15 and November 15 in accordance with the assessment notice issued by the tax authorities (based on the previous year's tax payments). If the Corporate Income Tax is more than the prepayments the difference must be paid within a month after receiving the tax statement. Excess prepayments are refunded.

Taxes on Corporate Income

Residents of Austria are liable to Austrian Income Tax on the worldwide income. A person is regarded as resident if he has a domicile (= place where he occupies a residence under circumstances, which indicate that he will retain and use it on a basis which is not merely temporarily) or his customary place of abode (= physical presence over an extended period) in Austria. A person who remains for 183 or more days during a year in Austria is considered to have his customary place of abode there.

A person with no residence in Austria is only subject to Austrian income tax for specific income sources or assets.

Gross Income

There are seven sources of income:

- → Agriculture and forestry
- → Trade or business
- → Independent personal service (e.g. lawyers, tax advisors)
- → Employment
- → Investment of capital
- → Rental and royalties
- → Other income sources

The income from the first three sources (so called business income) is calculated in a manner similar to the treatment of income of a corporation (see above).

The taxable income from the four other sources is determined by deducting from the gross income any expenses that are incurred to acquire, safeguard and maintain this income (so called Werbungskosten).

From the employee's gross salary social security contributions, kilometre and daily allowance (up to a certain limit) or distributions of the employer to a pension funds in favour of the employee are deducted. Non-recurring payment of salaries, in particular 13 and 14 salary (vacation and Christmas remuneration) enjoy a tax-free allowance of EUR 620 per year and excess amounts are also tax-advantaged depending on the amounts paid.

In 2012 the tax treatment of capital gains from the sale transfer of non-business property has been changed: profits from the sale of real estate (difference between proceeds and acquisition costs) after April 1, 2012 are taxed with a special rate of 25%. After January 1, 2016 the tax rate has increased to 30%. An option to the normal taxation with the standard rates is possible.

Exemptions apply if the real estate has been the main place of residence for at least 2 years since the acquisition or for at least 5 years within the last 10 years or if the building has been newly built and not used as an income source in the last 10 years (in this case only for the building).

Gains on the sale of other goods despite capital assets and real estate within one year are tax-free only if below EUR 440. Losses cannot be deducted.

After January 1, 2016 gains on the sale of participations will be taxed on the new withholding tax regime (27.5% withholding tax) regardless of the amount of holding and the holding period.

Deductions

As mentioned above expenses that are incurred to acquire, safeguard and maintain the income are deductible.

Furthermore taxable income is reduced by:

Special personal expenses *(Sonderausgaben),* e.g., premiums paid into voluntary health, accident and life insurance programs, payments incurred to finance private house building and improvement (contracted before January 1, 2016), purchase of newly issued shares or profit sharing certificates. The maximum amount being deductible, generally, is EUR 2,920; only 25 % *("Sonderausgabenviertel")* of the payments made are deductible. Contributions

to churches, contributions to charitable organisations, tax losses carried forward from previous years etc. are deductible, as well.

Extraordinary expenses *(außergewöhnliche Belastungen):* Payments incurred by a taxpayer because of extraordinary circumstances (e.g. natural catastrophes, children's tuition away from home, etc.).

Several deductible amounts stipulated by law *(Absetzbeträge),* e.g.:

Sole earners: EUR 520, -- (with one child) + additional amount depending on the number of children)

Sole earners with children and no spouse or partner: EUR 520, -- + additional amount depending on the number of children)

Employees: EUR 54,--; from 2016, the deduction for employees is component of the deduction for travel expenses and automatically considered in payroll accounting (EUR 421,--)

Tax Credits

Some of the deductible amounts stipulated by law reduce the income tax even if they exceed the tax. Therefore, a negative income tax is possible and the taxpayer is granted a tax credit which is paid to him.

The Familienbonus Plus (from tax assessment 2019 onward) will lead to credit (other than single parent deduction).

OtherTaxes

Social security distributions are mandatory, but these are not regarded as taxes in Austria. There are no local taxes on income, but the employer has to pay a local tax (Kommunalsteuer) on basis of the sum of wages he pays to his employees (tax rate is 3%).

Brasil

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We practice business-oriented law, working promptly and efficiently in developing solutions for our clients. Since the firm was founded in 2011, we have centered our practice on a wide range of corporate transactions, with a focus on mergers and acquisitions, spin-offs and takeovers (M&A). Since then, we have grown both our team and the range of practice areas to cover different areas of business law to better serve our clients, without losing our fundamental qualities. The close relationship with our clients, the straightforward and agile communication, the identification of relevant business and background elements, and the development of solutions based on a multidisciplinary analysis continue to be the hallmarks of our practice.

Areas of Practice

Corporate, M&A, Securities and Capital Maket
Estate and Equity Planning
Foreign Investment
Litigation and Dispute Resolution
Arbitration
Tax
Business Contracts
Labor
Real Estate
Agency & Franchising
Offset & Project Finance
Operations, Venture Capital
Privacy and Data Protection
Compliance
Fintechs and Innovation
General Practice

Corporate Law

Companies

Brazilian law provides different forms of association for the conduct of economic activities geared to the production or circulation of goods and services. Among the most usual are the corporation *("Sociedade Anônima S/A")* and the limited business company *(LTDA),* which are both subject to registration at the Commercial Board *("Junta Comercial").*

Corporations (S/A)

Regulations

Corporations are governed by their bylaws and by Law 6404/76 and are widely recommended when forming joint ventures in Brazil. The structure of a Corporation allows the adoption of more robust corporate governance practices. The capital stock of a Corporation can also be controlled or fully owned by foreign legal entities and/or individuals. The registry is fulfilled when registered at the *Registro Público de Empresas Mercantis (Junta Comercial).*

Types

It can be either: (i) privately held (securities not traded in the stock market) or (ii) publicly held (securities are traded in the stock market, subject to Law 6,385/76 and the Normative Rulings issued by the Brazilian Securities Commission *(Comissão de Valores Mobiliários - CVM),* which corresponds to the U.S. Securities and Exchange Commission (SEC).

Share Capital

No minimum capital is required, however, some activities require a minimum share capital for authorization to register a corporation, such as financial institutions and trading companies, for example. The capital can be paid in currency or assets. At least 10% (or 50%, in case of financial institutions) of the amount of capital subscribed in currency must be paid upon incorporation; the remaining amount must be paid during such term as set out in the bylaws.

The Capital Structure follows the subsequent pattern: the capital is divided into shares, which can be either common or preferred shares, with or without a par value. Owners of preferred shares can have their voting rights restricted and/or be assigned additional economic benefits. A disproportional distribution of profits is not allowed by law, however, preferred shares may entitle shareholders to different profit share conditions and dividends. The number of nonvoting preferred shares may not exceed 50% of the company's total shares. The advantages of the preferred shares of privately held companies are: (i)

priority in the distribution of fixed or minimum dividends; (ii) priority in stock redemption, with or without a premium; (iii) accumulation of the advantages of items (i) and (ii).

Shareholders: Minimum number: 2. They are entitled to the mandatory dividend.

Liability of Shareholders: Limited to the price of the subscribed or acquired shares. The corporation has a distinct existence from that of its shareholders. Hence it has capital autonomy in relation to the partners. The assets of the corporation constitute the guarantee of creditors for debts incurred on its behalf. However, this rule is not absolute: for the protection of third parties, Brazilian legislation sets forth some cases wherein the partners are exceptionally accountable for the debts of the corporation.

General Shareholders Meetings

The General Shareholders Meeting is the supreme body of the company. Convening quorum: in the first call, with the presence of shareholders representing a minimum of 1/4 of the total votes conferred by the shares with voting rights; in the second call, it will be called with any number of shareholders.

Types: periodical (AGO) and special (AGE). AGO: powers to deliberate on matters provided for by law. AGE: Other powers unrelated to the AGO. For voting of the following matters a qualified quorum is necessary: half of the total votes conferred by shares with voting rights in the case of private corporations if the bylaws do not contain a different provision, is needed for matters listed in Article 136 of the Corporations Acts; (ii) Simple majority is necessary for other matters. The bylaws may require higher quorums for specific matters. Frequency: whenever necessary. Reform of corporate bylaws for: (i) a capital increase: requiring the prior opinion of the Audit Committee, if in operation. Types of increase: a) by capitalization of profits or reserves: implies the alteration of the par value of the shares or distribution to the shareholders of the new shares corresponding to the increase; b) by the public or private issue of shares: a condition for this type of increase is that at least 3/4 of the share capital has been paid up. The shareholders have the preemptive right for the subscription of the increase, in proportion to the number of shares held thereby; (ii) capital reduction: requiring the prior opinion of the Audit Committee, if in operation. Situations: a) loss up to the sum of accumulated losses; b) if excessive. Opposition of creditors: the reduction only becomes effective 60 days after the publication of the AGE.

Administration

The management structure is composed by a Board of Officers (at least one and must be a natural person) or a Board of Officers and a Board of Directors, as set forth in the corporate by-laws, furthermore they are responsible for the administration of the Corporation. All publicly held corporations, companies with authorized capital and quasi-public corporations must have a Board of Directors in place.

Board of Directors: is responsible for fixing the generation of business and orientation of the company. It is composed of individuals, that reside in the country or otherwise (nonresidents shall necessarily grant power of attorney to a resident of Brazil). Minimum number of members: 3. It is elected by the General Shareholders Meeting. Term of appointment: not more than 3 years, reelection is permitted. Members of the Board of Officers, minimum of 1, may be elected for executive officer positions.

Board of Executive Officers: is the executive body of the company and represents it before third parties. It is composed of individuals, shareholders or otherwise. Minimum number of members: 1. They are elected and can be removed at any time by the Board of Directors (when there is one) or by the General Shareholders Meeting (when there is no Board of Directors). Appointment term: not more than 3 years, reelection is permitted. The corporate by-laws may establish that certain decisions that are the prerogative of the officers shall be taken in meetings of the Board of Executive Officers. In the event that the by-laws are silent and in the absence of a decision from the Board of Directors, the representation and performance of the necessary acts for its regular operation will be the responsibility of any officer.

Common Rules to Administrators. Installment Term

Administrators (directors) that don't reside in Brazil are conditioned to the appointment of a representative resident in the country, with powers lasting up to 3 years longer than the administrator´s term to be served with lawsuits pursuant to the law of corporations and notices from CVM *(Comissão de Valores Mobiliários)* in the case of public companies.

Remuneration: fixed by the General Shareholders Meeting, including benefits of any nature and representation fees, taking into account their responsibilities, the time devoted to their duties, their professional competence and reputation and the value of their services in the market. There is no minimum or maximum limit.

Obligations: the administrator shall employ, in the discharge of his duties, the care and diligence that any active and honest person normally employs in the administration of their own business together with an obligation of loyalty.

Acts prohibited to the administrator: (i) perform acts of liberality at the cost of the company; (ii) borrow resources or property from the company, without authorization, or use, to his own advantage, or to the advantage of a company in which he is a stakeholder, or of third parties, its assets, services or credit; (iii) receive from third parties, without the company's authorization, any kind of direct or indirect personal gain, by reason of the position held in the company (iv) have a position in the advisory body, board o f directors or audit committee a competing corporation (v) have a conflicting interest with the company.

Liability: administrators are not personally liable for the obligations they incur on behalf of the company and by virtue of a regular management duty. However, they are civilly liable for any losses caused, when he acts: I within his duties, with a negligent or fraudulent intent; II in violation of the law or of the bylaws.

Audit Comittee

The corporation has an Audit Committee which may be convened, in case its operation is not permanent, in any general shareholders meeting. Its duties include: (i) to supervise the acts of the administrators and verify the fulfillment of their legal and bylaw obligations; (ii) to comment on the annual management report; (iii) to comment on the proposals of the administrative bodies to be submitted to the General Shareholders Meeting concerning, among other things, the modification of the share capital, distribution of dividends, transformation, merger by incorporation of companies , merger and spinoff; (iv) to report to the administrative bodies or the General Shareholders Meeting the errors, frauds or crimes that it discovers and suggest courses of action that are useful to the company; (v) to analyze, al least quarterly, the trial balance and other financial statements drawn up periodically by the company; (vi) to examine and consider the financial statements for the fiscal year.

Composition: Minimum of 3 and maximum of 5 members and alternates in an equal number, shareholders or otherwise, elected at the General Shareholders Meeting.

Financial Statements

The law requires publication of many different documents (corporate documents, call notices and financial statements).

The financial statements shall be available to the shareholders at least one month prior to the date scheduled for the AGO. They must be published in a local newspaper of high circulation at least 5 days before the date scheduled for the AGO. Corporations that have annual revenue up to BRL 78 million are permitted to publish balance sheets and other corporate acts solely via the internet.

The documents shall be the subject of the opinion of the Audit Committee, if in operation. They shall be submitted to the decision of the General Shareholders Meeting and sub-

sequently filed in the Commercial Registry, along with the AGO records which approved them.

Publicly Held Companies (Quoted Companies)

Are subject to specific rules in addition to the general rules applied to private companies. They are supervised by the Brazilian Securities Commission (CVM). The public distribution of securities cannot occur without prior registration at CVM. The sale of control of a publicly held company is subject to CVM approval. Moreover, such companies shall have independent auditors and comply with a series of mandatory disclosures determined in the rules issued by CVM.

Corporate Governance: Law 6404/76, which regulates corporations, was recently amended with the aim of increasing transparency and extending the rights of minority shareholders. Therefore, at least theoretically, there was the inclusion of rules that may be classified as concerning corporate governance, including the following: (i) reduction in the capital of the company of the number of preferred shares without voting rights or subject to restriction in the exercise of such right; (ii) increase of advantages of the preferred shares of publicly held companies (iii) tag along: in the event of the sale of the direct or indirect control of a publicly held company, the acquirer will be obliged to conduct a public offering for the acquisition of the voting shares held by the other shareholders, at the amount equivalent to 80% of that paid per voting share of the control block; (iv) increase in the period of time preceding the publication of the General Shareholders Meeting to 15 days in the 1st call and 8 days in the 2nd call (the required advance notice for privately held companies is 8 and 5 days, respectively); (v) right to elect and remove a member and an alternate in the Board of Directors to shareholders with at least 15% of the total voting shares and to holders of preferred shares without the right to vote or with the restriction of the right to vote that represents a minimum of 10% of the share capital; (vi) inclusion of the spinoff among the cases that entail the right of withdrawal, (if the spinoff implies the reduction of the mandatory dividend, participation in groups of companies or changes in the corporate purpose); (vii) obligation of the controller of a publicly held company, of the shareholders and group of shareholders that elect a member of the Audit Committee to immediately notify the CVM, the Stock Exchange and organized entities of modifications to their shareholder status in the company; (viii) in the event of the company becoming a private company, the controlling shareholder or the company itself must make a public offering for the acquisition of all the shares at a fair price; (ix) increased independence of the Audit Committee, permitting any member to supervise the acts of the administrators, verify compliance with the legal and bylaw obligations, and claim errors, frauds or crimes, suggesting courses of action that are useful for the company to the administrative bodies, and in case of failure to carry out the necessary measures, by such bodies, to the Shareholders' Meeting.

Securities can be traded in the stock market if the corporation is publicly held. New rules for publicly held companies were introduced by the recent Law 11638/07, requiring them to draw up consolidated annual financial statements on the basis of international standards (IFRS – International Financial Reporting Standards).

More recently, the law was amended to provide that ordinary and preferred shares may belong to one or more classes, and to allow for minority shareholders to have their votes multiplied by the number of seats being elected on governance bodies, with this being a requirement for mergers, incorporation and spin-off of public companies which do not have this provision in their by-laws. Some authority was transferred directly to the General Assembly, such as deciding on the transformation, merger, incorporation, spin-off, liquidation and accounts approval, authorizing administrators to restructure or file for bankruptcy, and the sale of assets over 50% of the total company assets.

Limited Companies (LTDA)

Limited Business Companies are created under articles of association which must provide for, among other things, the company's objectives and capital stock and the ownership interest of each partner. Generally, a Limited Business Company can perfectly operate as a subsidiary whose capital is controlled or fully owned by foreign entities and/or individuals. They are particularly fit for smaller businesses. In forming the business relationship within a Limited Business Company, partners are given more freedom, including with respect to the distribution of profits. Limited Business Companies are governed by their articles of association and by Law 10406/02 (Brazilian Civil Code). The registry is fullfilled when registered at the Registry of Commerce *(Junta Comercial).*

Partners

Minimum of 1 required.

Share (Quota) Capital

The capital can be paid in currency or assets. An initial payment of a minimum amount of capital subscribed in currency is not required. The capital is divided into ideal parts ("quotas") with a par value. The owner of a "quota" cannot be deprived of voting rights.

Capital increase: only permitted after all the shares have been paid up. The preemptive rights of the partners to participate in the increase must be observed, in proportion to their holdings.

Capital reduction: The capital may be reduced by a corresponding change in the articles of association: (i) following payment, if there are irreparable losses; and (ii) if excessive in relation to the company purpose.

Transfer and assignment of shares: the transfer to third parties of shares or of the preemptive right to participate in capital increases requires the approval of partners representing at least ¼ of the share capital (except if the articles of association determine otherwise). There is the need to change the articles of association.

Liability of Partners

Limited to the amount of the partner's ownership interest; however, all partners are jointly liable for the payment of the capital. The same provisions contained in the item "Liability of Shareholders", chapter SHARE CAPITAL in S/As, above, apply to LTDAs, in so far as the liability of partners is concerned. Moreover, the partners are jointly and severally liable for debts with the social security authorities, as well as for labor debts, as a result of the application, in these specific cases, of the 'disregarding the corporate entity' theory.

Administration

One or more individuals, partners of the company or not, provided that they are resident in Brazil. Appointment can be made either in the Articles of Association or in a separate document. The management structure (the existence of both the Board of Directors and the Board of Officers, or only the Board of Officers) must be defined in the Articles of Association. The designation thereof requires the approval of 2/3 the partners (when the capital is not totally paid up) or of partners representing over half of the share capital (when the capital has been paid up). Removal of a partner administrator who was appointed in the Articles of Association requires approval by partners representing at least half of the share capital.

Remuneration: there is no minimum amount or maximum limit. The participation of part-

ners in the company profits, in a different proportion to the partners' interest in the share capital is an option, provided that the Articles of Association or the partners' agreement so allow. Transformation of the company type, merger, merger by incorporation of companies and spin-off are allowed. Generally, no publication is required. Nonetheless, publication is required in the case of minutes of the meeting of partners approving a capital reduction. The responsibility of the LTDA's administrator before third parties, in principle, follows the previously made comments applicable to the administrator of a S/A. However, in practice, the administrators of LTDAs are being held to answer in the labor and social security field, jointly with the company, regardless of the cause of the event.

Resolutions

The law requires (i) 2/3 of the capital for appointment of an administrator who is not a partner of the company, whenever the capital stock is not fully paid; over half of the capital: (a) amendment to the articles of association; (b) mergers, mergers by incorporation of companies, dissolutions and end of liquidations; (c) appointment of an administrator who is not a partner of the company, whenever the capital stock is fully paid; and (d) appointment of an administrator (in a separate document), his removal and remuneration, modification of the Articles of Association, incorporation, merger, termination or ceasing of liquidation of the company as well as any request for court-supervised reorganization. The Articles of Association may require higher quorums for specific matters. The decisions of the partners shall be taken in a partners meeting (for LTDAs with up to 10 partners) or in a general partners' meeting (for LTDAs with more than 10 partners). If omitted from the Articles of Association, the legal rules that discipline the general shareholders meetings of S/As will apply to the meetings. Securities cannot be traded in the stock market as a means to raise funds. This could only happen if the Company is transformed into a publicly held Corporation.

Esclusion Partners

The law provides for the possibility of nonjudicial exclusion of a partner who jeopardizes the continuity of the company, by virtue of acts of undeniable gravity, as resolved by the partners representing more than half of the share capital, as long as the Articles of Association provide for exclusion for good cause and the legal procedures are observed. For companies with two or more partners, the non-judicial exclusion of a partner can only occur in a meeting specifically called for this purpose, provided that the partner accused has been made aware of this with enough time to prepare his defense.

Financial Statements

Generally, no publication of financial statements is required.

Choice

With the provisions brought by the Civil Code, many of the advantages that previously existed for LTDAs have disappeared, notably their structuring flexibility. This should lead to greater reflection in regards to the choice of company type. The choice will depend on each specific case, but by and large, one may say that LTDAs work very well for the operation of subsidiaries whose total quota capital is held by foreign companies, whereas possible joint ventures in Brazil should elect for the adoption of a S/A, owing, among other things, to the legal security conferred by the already officially accepted interpretation of the rules that govern this type of company.

Branch Offices of Foreign Companies

A foreign company may directly operate in Brazil through a branch office, i.e, through an extension of the foreign corporate entity itself. However, this procedure presents some disadvantages in comparison to the establishment of a business in Brazil through ownership interests, for the following reasons:

- → The need of prior authorization, through an act of the Federal Executive Branch – a slow and highly bureaucratic procedure;
- → Prohibition of the remittance of royalties to the head office abroad for the use of trademarks and exploitation of patents, and
- → Tax disadvantages.

Corporate Reorganization Operations and Sale of Establishments

Corporate reorganization operations may be conducted both by Corporations ("S/As") and Limited Business Companies ("LTDAs"). These operations include:

- → **Transformation:** the company is transformed from one type of company to another, without the dissolution or interruption of its activities;
- → **Merger:** two or more companies are combined to form a new company, which succeeds all their original rights and obligations;
- → **Spin-off:** the company transfers portions of or even its total equity (assets and liabilities) to one or more companies, with the continuation of the spun-off company, if its equity has been partially transferred, or with its extinction, if all its equity has been transferred. The law stipulates specific succession rules for the obligations of the spun-off or extinguished company; and
- → **Merger by incorporation:** one or more companies will be absorbed by another company, which succeeds them to all their rights and obligations.

S/As and LTDAs may further sell their industrial or commercial establishments, in which case the acquirer will succeed to all their respective rights and obligations.

Acquisition Companies

The total or partial acquisition of a Brazilian company by a foreign company may occur through many different types of transactions.

Without prejudice to other types of transactions that may be recommended in proper tax planning, we highlight (i) the acquisition of shares or quotas of capital stock of the Brazilian company; (ii) the subscription of new ownership interest as a result of a capital increase by the company involved; and (iii) the acquisition of establishments, assets, and/or goodwill ("fundo de comércio").

In the light of the topic "acquisition of companies", the possibility of setting off the premium paid by the acquirer is of significant importance and must necessarily be analyzed by a skilled professional, particularly when it comes to assessing the tax risks involved.

Whatever method is adopted for the acquisition, special care should be taken by the foreign investor, particularly with respect to the following:

- → a thorough analysis of the financial and legal situation of the prospective local partner (in the case of a joint venture);
- → a detailed analysis of the financial, accounting, and legal situation of the company involved, as well as a detailed analysis of the market in which it is engaged, by professionals specialized in Brazilian law (financial, accounting, and legal audits conducted by investment banks, independent auditors and specialized attorneys);
- → the accurate identification of liabilities and contingencies of the company to be acquired is a crucial step to defining which representations and warranties will be given by sellers with respect to the company, its businesses and assets; definition of the responsibilities for losses regarding events occurring prior to the transaction; setting the price and any application withholdings; defining collateral and/or escrow; among other protective measures to be taken by the investor;
- → assessment of the best structure, in terms of its tax and corporate aspects, to be used for the intended transaction, especially in relation to any premium to be paid;
- → assessing whether it is necessary to submit the transaction to the Brazilian antitrust authorities or any third parties with whom the company has a contract (change of control clause); and
- → analysis of issues regarding compliance and anticorruption.

Depending on the transaction, (binding or non-binding) letters of intent, acquisition instruments, shareholder or associate agreements, agreements with officers, guarantee agreements, and other documents will have to be negotiated between the parties.

Consortium

Different organizations, S/As or LTDAs, under the same control or otherwise, may set-up a consortium to carry out a specific undertaking.

Through a consortium several companies (Corporations or Limited Business Companies, whether or not under common control) associate with each other to carry out a specific undertaking, being able to carry out certain activities, which could not be carried out individually by each company, especially due to technical or economic financial conditions. This type of association is frequently used in public bids and for the concession of construction works and private and public services, import and export.

A consortium is not a corporate entity and, as a general rule, its members are only bound by the conditions provided for in its incorporation agreement, without the presumption of joint or separate liability.

This rule does not apply to the obligations pertaining to federal taxes; in this case, the member companies will be jointly responsible for these obligations. Depending on each case, the member companies may also incur joint and separate liability with respect to labor, tax (other than federal taxes) and consumer related obligations.

The consortium incorporation agreement and its amendments must be filed at the Registry of Commerce (Junta Comercial) of the venue of its headquarters.

Undisclosed Joint Venture Partnership (SCP)

It consists merely of a private agreement, entered into by two or more participants, with the purpose of permitting the exploration of a specific business opportunity or specific business activity. It is commonly used in specific transactions such as import, export, participation in specific businesses, public bids, among others.

The law differentiates two types of participants: (i) the visible partner: who carries out the activities of the company purposes in his individual name and assumes sole responsibility for the company obligations, and (ii) the secret partner: that appears merely as an investor, not known to third parties; is liable to the visible partner within the limit provided in the company's formation instrument.

An SCP is not a separate legal identity different from that of their participants and its formation is not subject to any formality. Proof of existence of an SCP can be made by any means of evidence permitted under Brazilian law.

Foreign Investmnets

Direct Investment

Assets, machinery and equipment brought into the Country without an initial outlay of foreign currency, to be employed in the production of goods or services, and financial or monetary resources admitted into the Country for investment in business activities, are considered foreign capital, provided that in both cases they belong to individuals or corporate entities residing, domiciled or based abroad, and must be registered electronically with the Central Bank of Brazil (BACEN), through an investor-recipient related code called SCE-IED, which was initially instituted through the repealed BACEN Circular 2,997 of 11 August 2000, and is currently ruled by Resolutions 278 and 281, of December 31, 2022.

This registration is made in the IED module of the SCE in the Electronic Central Bank System - SISBACEN, on the BACEN website. As mentioned above, an investor-recipient code SCE-IED is assigned to each pair of foreign investor and related Brazilian company, and the following information must be provided: initial investment, changes to the net shareholders' equity, changes to the recipient's paid capital and the percentage of paid capital held by each foreign investor and any subsequent change, as well as economic and financial statements.

Registration at BACEN is a condition for the remittance abroad of profits and dividends, and interest on owners' equity, obtained by means of investments made in the Country guarantees the investor the possibility of repatriating the resources invested.

The investor can also invest in Brazilian companies through the conveyance of tangible goods (machinery and equipment), provided that such goods are imported, without the obligation of a payment to a nonresident. In this case, the registration must be made, firstly, in the SCE Crédito module of the SCE, and, subsequently, in the IED module of the SCE as foreign direct investment. This Registration in the SCE Crédito module must be linked to the cleared Import Declaration *(Declaração de Importação - DI).*

In addition to investments in corporeal property to be employed in the production of goods and services, BACEN also accepts intangible goods such as trademarks, patents and know-how, as the subject of investment as foreign capital. The registration of intangible goods in BACEN should also be done through the SCE Crédito module, linked to an invoice or equivalent document that characterizes the importation of the intangible goods, provided that it has been approved by the agency responsible for the registration and control of industrial property rights in the Country, namely the INPI (Brazilian Patent and Trademark Office). Finally, the registration is conducted in the SCE-IED module.

The technology transfer subject to INPI registration does not characterize an intangible good for the purposes of the financial operation registration designed for the payment of the capital of Brazilian companies.

The foreign investor may also make investments through the conversion of credits that are capable of generating transfers abroad, such as foreign loan principal and interest duly registered in the SCE Crédito Module, profits or dividends, interest on owners' equity and other amounts remittable abroad.

On the basis of the declarations and data informed electronically to the SISBACEN, by companies or their representatives, a Consolidated Foreign Direct Investment Registration Statement will be generated. This statement is the appropriate document to evidence the investment made by the foreign investor before third parties.

The investment registration procedure shall be formalized within 30 days from the investment's entry into Brazil.

Based on the information contained in the foreign exchange contract or international transfer of sums in Real, an automatic registration is made in the IED module of the SCE in case sums are remitted to Brazil as a result of the following events: (i) currency remitted from abroad; (ii) conversion of other type of registration into direct foreign investment; (iii) any transfer between different registration types; (iv) international transfer of shares; and (v) remittance of profit, dividend, interest on owners' equity, or return of capital abroad. Although registration is automatic in the events above, the recipient must, within thirty days from any event that changes the ownership interest of the foreign investor, update the amounts of net shareholders' equity and paid capital as well as the amount of capital paid by each foreign investor.

BACEN also determines that the investments arising from the events below are registered through a statement entered in the IED module of the SISBACEN SCE not automatically: (i) remittance of tangible and intangible assets from abroad for the purpose of capitalization by the recipient; (ii) corporate reorganizations – i.e., merger, merger by incorporation of companies or spin-off – occurring in Brazil and involving at least one company with foreign capital registered with BACEN; (iii) exchange of shares in Brazil, which means any exchange of ownership interests in Brazilian companies, one of which must be a recipient of direct foreign investment registered with BACEN, whenever such exchange is made between a domestic investor and a non-resident investor or between non-resident investors; (iv) transfer of shares in Brazil, which means the transfer of fully paid shares of a Brazilian company held by a non-resident investor for the payment of the shares subscribed by such non-resident in another Brazilian company; (v) reinvestment, which means the capitalization of profit, dividend, interest on shareholders' equity and profit reserve in the recipient company that generated them; (vi) distribution of profit/dividend, payment of interest on shareholders' equity, sale of ownership interests, return of capital and net assets as a result of liquidation, whenever they are used as reapplication in another Brazilian company; (vii) distribution of profit/dividend, payment of interest on shareholders' equity, sale of ownership interests, return of capital and net assets as a result of liquidation, whenever they are used in payments in Brazil or direct payments abroad.

Foreign investors with ownership interests in Brazilian companies may transfer these interests to third parties abroad. The foreign purchaser, notwithstanding the price paid for the acquisition, must alter the Consolidated Foreign Direct Investment in Brazil Registration Statement, obtaining a new SCE-IED registration number, which will identify its investment in substitution of the assigning investor, in order to allow future remittances, profit reinvestment registration and any repatriation of the investment.

Lastly, it is important to mention that individuals or companies domiciled or based abroad, that have ownership interests and other assets in Brazil are obliged to register in the CPF (Federal Register of Individual Taxpayers) and CNPJ (Federal Register of Corporate Taxpayers), respectively.

Economic and Financial Information

Resolution 278, sets a requirement for the submission of accounting information, as follows:

- → Recipients of foreign capital, except those described in letter "b" below, who, as of the reference date of December 31 of the previous year, holds total assets in the amount equal to or greater than BRL 100,000,000.00 (one hundred million reais) will have until 31 March of each year to update in the BACEN system their information.
- → Recipients of foreign direct investment that, on the reference date of the quarterly declaration, has total assets with a value equal to or greater than equity of BRL 300,000,000.00 (two hundred and fifty million Reais) must update their economic and financial information registered with the BACEN system quarterly, according to the schedule annually disclosed.

Foreign Investment in Local Currency

In accordance with the rules of BACEN, foreign capital should only be registered with BACEN, in local currency, if the respective amount is stated in the accounting records of the Brazilian recipient company of the foreign capital, and if there is documentary evidence with respect to the ownership of the foreign capital.

Once the registrations are regularized with BACEN, the foreign investor is authorized to remit abroad the total computed profits and dividends, among others, up to the limit of the holdings held in the company.

Lastly, the capitalization of profits and dividends, interest on owners' equity and profit reserves, originating from the portion of the capital registered in local currency, are subject to the same registration modality.

Indirect Investments: Foreign Loans

Foreign Loans Via the Free Exchange Rate Market

The foreign loan contracting process is conducted through the electronic declaratory registration, by means of the Financial Operation Registration Module (SCE Crédito) of SISBACEN, which dispenses with the presentation of documents to BACEN, prior to the receipt of the loan resources. The electronic registration is thus prepared through the declarations and data informed electronically in SISBACEN, in two phases: (i) prior registration, relating to the general conditions of the operation, to allow for the entry of resources into the Country and (ii) registration of the payment scheme, done after the closing of the foreign exchange and entry of the resources into the country, enabling remittances to be made abroad as payment, both of the principal and interest.

Resolution 278 has established the requirement for information submission in the SCE Crédito system whenever the value of the foreign credit operation is equal to or exceeds US$1,000,000.00 (one million United States dollars) or its equivalent in other currencies.

BACEN does not currently call for any minimum or maximum average term for the debt amortization and repayment of the loan principal, or for the renewal and extension of loans. However, such terms may be fixed by BACEN in accordance with the Country's current foreign exchange and monetary policy. The interest varies in accordance with the term contracted, and may be fixed or variable, or even non-applicable, provided that, as previously mentioned, they are within the parameters prevailing in the international market. Spreads are also permitted.

Still in relation to the interest, the term for its calculation will begin to run on the date that the funds enter the Country, namely, the settlement date of the foreign exchange contract. However, when the disbursement of the funds abroad occurs up to five (5) consecutive days before their entry into the Country, the disbursement date may be used as the initial date for the reckoning of the term.

After the entry of the funds into the Country, the payment scheme must be registered, in order to permit remittances of the payments of the interest and principal abroad.

As a general rule, the interest will be taxed by withholding income tax, at the rate of 15%. This rule, however, is subject to many exceptions depending on some factors such as the type of loan and the jurisdiction of the creditor (tax haven or non-tax haven jurisdiction) and also depending on the existence of a double taxation agreement applicable to the case.

The Tax on Financial Operations – Currency Exchange (IOF – currency exchange) is currently zero upon entry of the principal for all foreign loans. No Tax on Financial Operations - Exchange (IOF - exchange) is levied on the repayment of the principal or payment of interest. Because the rules applicable to this tax are constantly changing, it is important to check which rules are in force before concluding the operation.

If it does, there is no TFO on the principal amount. When the principal amount and interests are paid, there is no TFO, regardless of the term of the loan. We emphasize that such parameters are often subject of amendments, which can be in effect from their publication by decree.

Loans (principal and interest) may, as a general rule, be converted into foreign direct investment, after their registration in the SCE Crédito, by means of the performance of simultaneous foreign currency purchase and sale operations. However, it is important to take into account the consequences of such conversion in terms of income tax and the Tax on Financial Operations - Exchange (IOF - exchange).

The accelerated payment of the loan principal (either total or partial) is permitted, it being sufficient to include, in the SCE Crédito, the payment date of the principal and interest, and the sum of the interest due up to the payment date.

Foreign Loan through the Issue of Securities

Resolução 278 regulate the electronic declaratory registration, by means of the Financial Operation Registration Module (SCE Crédito), of foreign loan operations obtained by means of the placement of convertible securities (issued by an institution based in the Country and placed abroad, which represent rights over shares or quotas of its own issuance) and securities exchangeable into shares or quotas (issued by an institution based in the Country and placed abroad, which represent rights over shares or quotas issued by another institution based in the Country) or also warrants (purchase options of shares or quotas, placed abroad by institutions based in the Country).

Moreover, BACEN legislation also establishes that, prior to the date of the conversion, exchange or exercise of the purchase option by the holders of warrants, the distribution of dividends and exercise of subscription will constitute rights of the issuer institution of the securities abroad.

Promissory notes issued for placement in the international market, whether under the private placement regime or otherwise, are known as Floating Rate Notes or Fixed Rate Notes, depending on whether their remuneration is stipulated in variable or fixed interest.

The entity issuing the notes does not require a specific legal form or special registration for their issuance, and BACEN is directly and exclusively responsible for their control, in the same format as loan registrations. However, the difference lies in the existence of an issuing agent figure of the notes, which shall necessarily be an authorized financial institution, responsible for issuing and obtaining funds from entities abroad.

Foreign Exchange Market

In 2005, BACEN published new rules with a view to simplify foreign exchange operations in Brazil, indicating the probability of a future complete foreign exchange opening, which, to this date, has not yet occurred. Additionally, the measures in question are designed to combat illegal transfers linked to drug traffic, arms and terrorism. The main rules currently in force are:

- → Unification of the free and floating rate markets;
- → Individuals and corporate entities may purchase and sell foreign currency or make transfers of any nature, without a limitation of value; however, transfers in the name of third parties are prohibited;
- → Brazilian investments abroad, regardless of BACEN authorization, are not subject to any limitation of value;

Nonresident individuals or corporate entities in Brazil may maintain accounts in the Country called "nonresident accounts", with financial institutions authorized by BACEN to operate in Brazil; however, the use of such accounts to make transfers in the name of third parties is forbidden.

Local Currency Loans

In 2007, BACEN published new foreign exchange rules permitting the registration in local currency of foreign loans, which, until that time, could not be registered at BACEN, due to the non-existence of evidence of the regular entry of the resources into the Country (via the contracting of foreign exchange, as determined in the prevailing foreign exchange regulations). The direct consequence of this situation was that the borrower of the resources in Brazil was precluded from remitting to the foreign creditor the interest due on the loan or the principal itself.

Nevertheless, in accordance with the new rules, as long as documentary evidence exists with respect to the ownership of the foreign capital (i.e., in the name of the foreign creditor) and the indication of the number of the operation conducted via International Transfer in Reais ("TIR") through which the resources were remitted to the country, the same may be registered with BACEN, in the local currency loan registration modality, according to the terms and criteria established by BACEN. Thus, once the registrations are regularized, the borrower of the resources may remit abroad the respective interest due or the principal itself.

Remittance of Profits and Dividends to Investors Domiciled Abroad

Once the foreign capital has been registered with Central Bank of Brazil (BACEN), profits may be freely remitted to the foreign investor abroad, in proportion to its holdings in the paid-up capital of the Brazilian company and always limited to the stake registered with SISBACEN,SCE-IED Module. Remittances must also have their movement registered with BACEN and will be exempt from any taxation.

Repatriation of Investment

Amounts stipulated in the Consolidated Investment Statement are available on the BACEN SCE-IED System. However, depending on the specifics of the case at hand, Brazilian tax authorities may give a different interpretation: it may consider capital gain as the positive difference, in Brazilian currency (Real), between the sale price and the purchase cost.

Therefore, with due observance of the ownership interest of the foreign investor in the capital stock of the Brazilian company, the allocation of resources determined in the sale of ownership interests, reduction of capital for the reinstatement of shareholders or liquidation of companies, shall be registered with BACEN.

The differences in excess of amounts registered as brought into the Country or the amount as otherwise proven to be the cost of purchase of the Brazilian asset - such as the case of a premium verified on the sale of shares - will be considered “capital gain” and, as a rule, be subject to the levy of income tax at progressive rates from 15% up to 22,5%. This rule, however, is subject to many exceptions depending on some factors such as the type of asset that is being sold and the jurisdiction of the seller. This is why a thorough analysis of each individual case is essential.

BACEN may, if it deems necessary, ask for the presentation of an appraisal report, as well as other elements it considers relevant for the perfect characterization of the operation and verification of the reasonability of the amounts involved.

Foreign Personnel

Brazil adopts a policy of reciprocity regarding visas, meaning that nationals of countries that require visas for Brazilian citizens will need a visa to travel to Brazil. According to Brazilian law, Brazil must agree, on a reciprocal basis, to offer visa waivers to nationals of another country, except for the hypotheses established in the Decree 9.731 / 2019. Brazil has signed visa exemption agreements with about 90 countries.

Law 13,445/2017 defines the rights and duties of migrants and visitors, regulates their entry and stay in Brazil and establishes principles and guidelines for public policies for emigrants.

Itamaraty (the Ministry of Foreign Affairs) is the body of the Brazilian government responsible for granting visas, which occurs through the Embassies, General Consulates, Consulates and Vice consulates of Brazil abroad.

In need to extend the stay in Brazil or obtain a residence permit, the foreigner must refer to the Ministry of Justice/Federal Police or the Ministry of Labour, if the authorization is for work or research purposes.

There are different types of visas for foreigners, their spouses and economically dependent children, the most common of which are:

Visit Visa

The visit visa will be issued to foreigners traveling to Brazil and staying up to 90 days without purposes of immigration or the exercise of paid work. Visit visas can be granted for those traveling for tourism, business, transit, artistic or sports activities, study, volunteer work, or to attend to conferences, seminars or meetings, among other purposes.

Official Visa

The official visa is granted to foreign administrative staff traveling to Brazil on an official mission, either on temporary or permanent basis, representing foreign Governments or International Organizations recognized by the Brazilian government; or to any foreigners traveling to Brazil under official seal of their States.

Courtesy Visa

The courtesy visa is granted to personalities and foreign authorities in an unofficial trip to Brazil; their spouse or partner, regardless of their gender, dependents and other family members who do not benefit from Diplomatic or Official Visa for family reunification; domestic workers of foreign Mission based in Brazil or of the Ministry of Foreign Affairs; foreign artists and sportsmen traveling to Brazil for free and eminently cultural events.

Temporary Visa

It is granted to foreigners in the following situations:

- → **Temporary Visa I:** research, teaching or academic extension;
- → **Temporary Visa II:** health care visa;
- → **Temporary Visa III:** humanitarian visa;
- → **Temporary Visa IV:** as a student;
- → **Temporary Visa V:** paid work visa;
- → **Temporary Visa VI:** Working-Holiday Visa: for those who travel primarily for purposes of tourism, with the possibility of undertaking paid employment. Visa granted on the basis of bilateral agreements. There are currently agreements with New Zealand, France and Germany;
- → **Temporary Visa VII:** as a minister of a religious confession or as a member of an institute of consecrated life and of a congregation or religious order;
- → **Temporary Visa VIII:** voluntary work visa;
- → **Temporary Visa IX:** investor visa;
- → **Temporary Visa X:** visa for activities of economic, scientific, technological or cultural relevance;
- → **Temporary Visa XI:** family reunification visa;
- → **Temporary Visa XII:** artistic or sports activities visa;
- → **Temporary Visa XIII:** temporary visa due to international agreements;
- → **Temporary Visa XIV:** temporary visa due to the Brazilian immigration policy;
- → **VICAM:** Temporary Visa for foreign doctors (medical training).

MERCOSUR Ciitizens	Nationals of countries which joined the Agreement on Residence for Nationals of Mercosur, (Argentina, Paraguay, Uruguay, Bolivia, Chile, Colombia, Ecuador and Peru) may apply, at a Consular Office, for a temporary residence visa. Those who already live in Brazil can go directly to the Ministry of Justice. After two years in Brazil, holders of a temporary residence visa can request residence for an indefinite period to the Federal Police.

Labour Law

Labour Law and Social Security

The Consolidation of Labor Laws *(Consolidação das Leis de Trabalho – CLT)* is the main set of rules that regulates labor relations in Brazil. It contains a number of definitions, principles and rules designed to protect the interests of employees and workers in general.

Employee

Employee is defined as the natural person who personally provides services to another, on a habitual basis and under subordination, in exchange for remuneration. The following age criteria must be observed for the hiring of employees in Brazil:

- → from 14 to 16 only as an apprentice and it has to be provided that the employee is studying the profession or subject in which he or she intends to work;
- → for normal working jobs it´s required the minimum age of 16;
- → over the age of 18 for night, unhealthy and hazardous work.

Employer

Employer is defined as the for-profit or nonprofit entity, with or without a legal personality, that has at least one employee.

The employer, in the majority of cases, is a company, but liberal professionals, associations, etc. may also be employers.

Individual Employment Contract

Individual Employment Contract is defined as the tacit or express agreement, corresponding to the employment relationship.

The adoption of a written contract is advisable.

Contracts may be for an undefined or defined period, though contracts for undefined periods are more common, since defined period contracts are only allowed to be signed in specific situations set forth by law.

Work and Social Security Booklet (CTPS)

The work and social security booklet is obligatory and proves the existence of a written or verbal employment contract.

Right of the Employee

Working Hours of the Employee

Ordinary working hours are 8 hours a day and 44 hours a week. The law provides for shorter work weeks in certain situations (e.g. minors) and for certain professions (e.g.: railroad workers, physicians, telephone operators, journalists, bank workers, etc).

The working day will be diurnal, when it is between 5:00 a.m. and 10:00 p.m., in urban centers, with other criteria for rural areas. Nocturnal work in urban centers, occurs when the work is performed between 10:00 p.m. of one day and 5:00 a.m. of the following day.

Overtime refers to the hours worked beyond the normal limits fixed by law, collective bargaining agreements, normative sentence or individual employment contracts. Usually, it is forbidden to exceed 2 extra hours per day, but if there is a collective bargaining agreeament that can be discussed.

Meal and Rest Break

Employees who work eight (8) hours daily are ensured a break for a meal and rest of at least one hour. By negotiation with the unions, this time can be reduced to 30 minutes a day.

Workdays of up to 4 (four) hours do not require breaks, and 15 (fifteen) minutes should be granted for up to 6 (six) working hours.

Also, there must be 11 (eleven) hours of rest between the end of a working day and the beginning of another.

Vacations

All employees will have the right to vacation, after each 12month period of a valid employment contract, without prejudice to their compensation. Its duration depends on the diligence of the employee, which is liable to reduction in lieu of the employee's unjustified absences (maximum of 30 and minimum of 12 days' vacation).

During vacation, employees receive the same amount of salary as if they were working, plus a 1/3 of the salary´s amount as a bonus. In addition, employees may trade 1/3 of their vacation period in exchange for remuneration.

Wages

The Government establishes the minimum wage amount annually. In 2023, it was set to be R$ 1320.00, but States and Unions can provide for higher amounts.

Severance pay, profit sharing, pension plan benefits and their supplements, and intellectual rights are not regarded as wages.

Payment in fringe benefits or in kind is the payment method whereby the employee receives such economic goods as food, housing, the use of an automobile, credit card, payment of household bills, etc, as payment of part of his or her wage, though it should be pointed out that, according to court decisions and the law, employers are not allowed to pay the entire wage in fringe benefits.

The wage amount may be freely stipulated, provided that such stipulation is not conflicting with the labor protection provisions, collective bargaining agreements and judicial rulings. The following constitute special types of wage:

- → **Advances:** advance in money or wage advance established as a result of temporary needs;
- → Additional overtime pay: is at least 50% over the normal working hour wage and is incorporated into the base compensation;
- → **Additional night pay:** is 20% of the contractual wage due, as a rule, for services rendered after 10:00 p.m. (urban centers);
- → **Health hazard allowance:** is due to employees that render service in an environment that is considered unhealthy –10%, 20% or 40% are added to the regular wage, depending on the degree of health hazard;
- → **Hazard pay:** is due to employees that render services under highly risky safety conditions – it is 30% of the contractual wage;
- → **Additional transfer pay:** is due to any employee that is temporarily transferred by the employer to another locality and its amount is 25% of the contractual wage;
- → **Others:** commissions, bonuses, gratuities and premium bonuses;
- → **Thirteenth wage:** a mandatory bonus that corresponds to one wage of the employee and must be paid in two installments, the first between February and November 30, and the second on or before December 20 of each year. For employees that worked less than 1 year, the 13th wage is proportional to the months of service, in the order of 1/12 per month, considering a fraction of 15 days or over as a full month and disregarding smaller fractions.

Tenure

Tenure is defined as the right of an employee to remain in the job, even against the employer's wish, while there is no relevant cause expressed in law that gives rise to the employee's discharge, except when there is prove that just cause exists.

It is the law that sets forth the cases of job tenure, e.g. the tenure of union leaders and representatives, victims of accidents, committee representatives, expectant mothers and employees' representatives in the CIPA (Internal Commission for the Prevention of Accidents).

Collective Bargaining Agreements

In addition to the previously described benefits, companies must observe the rules established in the collective bargaining agreements entered into between the unions that represent the professional category.

Termination of Employees' Contracts

An employee may be dismissed with cause or without cause. The grounds for dismissal for cause are set out in the law.

Dismissal for cause allows the employer to terminate the employment contract without payment of benefits that the employee would have if he stayed on the job (the employer only pays the balance of salary and overdue vacation).

The following are inter alia, considered fair reasons for dismissal: improbity, unreasonable conduct, misbehavior, criminal conviction, drunkenness, violation of confidentiality, lack of discipline, insubordination, abandonment of the job, acts that are harmful to honor and reputation, physical offense, constant practice of games of chance.

In case of dismissal without cause, the employee will have the right to, among other things, receive ordinary amounts, including: notice period (30 days or more, depending on the duration of the contract), proportional 13th wage, vacation period, proportional vacation period with the additional 1/3 set forth in the Constitution, 40% of the FGTS deposits and any other amounts as set out in the collective agreement.

Labor Union / Trade Association Law

The core business activity of the company and the geographical area are what will determine the trade association to which a given company will belong.

The respective employee's labor union will represent all the employees of the company, with the exception of those belonging to officially recognized professional categories, such as secretaries, drivers, economists and journalists, who will be represented by their own particular unions.

As a rule, negotiations are held annually between the trade association of the company and the labor union of the employees of the same category. The collective labor agreements resulting from these negotiations are filed with the Ministry of Labor and Employment and have force of law.

Social Security

There is more than one social security regime in Brazil:

- → **The General Social Security Regime:** concerning the INSS (Brazilian Social Security Institute);
- → **Specific Social Security Regime:** concerning the social security regime that regulates public Federal, State and City government officials and those hired by government agencies and foundations;
- → **Private Social Security Regime:** the purpose of this regime is to supplement the pensions from the official social security regimes.

In general, the contribution to social security for the company is 20% of the total compensation paid, due or credited, for any reason, during the course of the month, to insured employees and free-lancers.

Employees also contribute with a percentage of their remuneration, progressive according to salary.

There are also other contributions that must be paid on the total compensations paid or credited to employees, namely:

- → **Contribution to the financing of occupational accidents:** consists of the degree that the company provides for the event of incapacity for work resulting from the environmental risks of the work. The percentage of this contribution varies from 1% (low risk) to 3% (high risk).
- → **Third party contribution:** are obligatory contributions imposed on the payroll that are earmarked for private social service and professional training entities linked to the union system, whose rates vary from 0.2% to 5.8%;
- → **Education salary contribution:** consists of a contribution to the Federal Government (União Federal) for the financing of elementary and middle school (ensino básico). The education salary rate is 2.5%.
- → **The total charges to the company correspond, on average, to 35.8% (the index for industry).** These contributions are paid directly to the INSS, which transfers the contributions that do not pertain thereto to the entitled entities.

Occupational Safety and Hygiene

As a rule, companies that have more than 20 employees must have an Internal Commission for the Prevention of Accidents (CIPA).

A medical exam is obligatory, both at the time of hiring and upon termination, which shall be at the expense of the employer. In addition, depending on the type of work performed, some employees may be subject to regular and special medical exams from time to time.

Unhealthy activities or operations are those activities that, due to their nature, condition or methods of work, expose the workers to elements that are harmful to their health, beyond the tolerance limits fixed in the law.

Hazardous activities or dangerous operations are those that, due to their nature or method of work, imply the worker's permanent contact with inflammable products or explosives, under highly risky conditions.

All companies are required to maintain their occupational medicine and safety programs renewed, annually, especially those determined by the Ministry of Labor and Employment (MTE), namely:

- → Environmental Risk Prevention Program *(Programa de Prevenção de Riscos Ambientais –PPRA);*
- → Occupational Health Medical Control Program *(Programa de Controle Médico de Saúde Ocupacional – PCMSO);*
- → Technical Report on the Environmental Conditions in the Workplace *(Laudo Técnico de Condições Ambientais no Trabalho – LTCAT);*
- → An occupational health and safety risk assessment *(Perfil Profissiográfico Previdenciário – PPP).*

Outsorcing

Outsourcing is defined as the act of transferring the responsibility for the service from one company to another.

Usually, outsourcing is applied to cleaning activities and security services, but companies can still be secondarily liable for the labor and social security obligations of the employees of the company that provides the service.

Real Estate

Ownership

Regulatory laws: The real property right in Brazil, which includes ownership, is regulated by the Civil Code (Law 10.406/2002).

- → **Real Property Rights:** Besides ownership, real property rights includes but are not limited to: the surface area, right-of-way, usufruct, the use, habitation, the pledge, mortgage and antichresis.
- → ***Establishment and transfer of real property rights:*** As a general rule, the acquisition of real property rights over property, established or transferred by acts between individuals and/or legal entities, is only legally carried into effect with the registration of the acts at the Real Estate Registry Office.
- → **Concept of ownership:** The right to use, enjoy and dispose of a thing, and the right to repossess it from whoever unjustly possesses or holds it. Ownership is presumed full and exclusive, until proved otherwise.
- → **Exercise of the right of ownership:** Shall be consistent with its economic and social purposes, so that the flora, fauna, natural beauties, ecological balance and historic and artistic patrimony are preserved and the pollution of air and waters are avoided, in conformity with that established in special law.
- → **Deprivation of the right of ownership:** The owner may be deprived of the property, in the cases of expropriation, public need or interest, or social interest, as well as in the case of imminent public danger which is always subject to just indemnification.
- → **Ownership of the soil:** Includes the ownership of the corresponding air space and subsoil, at a height and depth that are useful for its exercise. The owner cannot oppose the activities that are performed by third parties at such a height or depth where he does not have a legitimate interest to impede. It does not cover mineral deposits, mines and other mineral resources, potential hydraulic energy, archeological monuments and other property referred to by specific laws.

Purchase of Real Property

The most common method of purchase of real property between individuals and/or legal entities is the registration of the title deed at the Real Estate Registry Office.

Mortgage

Real property may be charged by way of mortgage as collateral for the debts or obligations of its owner or of third parties. The mortgaged property is subject to enforcement proceedings should the debtor fail to performance it's obligation.

The deed granting a mortgage must be registered with the Real Estate Registry Office.

Right to Construct

The owner may build constructions on his land as he wishes providing he respects the rights of his neighbors and the administrative regulations. The administrative regulations (building rules and zoning restrictions) are mainly set forth in municipal laws. Special attention should be paid to the location and authorization for the establishment of manufacturing and/or power plants which are subject to the regulations imposed by the zoning and pollution control agencies.

Usufruct

Included in the definition of ownership is the usufruct, which may be on one or more movable or immovable assets or an entire estate or a part thereof.

- → **Assignment of usufruct:** the owner may assign the usufruct to another person, continuing with the tenancy.
- → **Establishment of usufruct:** the usufruct of real property will be achieved by registration in the Real Estate Registry Office. Unless otherwise provided, the usufruct is extended to the fixtures of the thing and its extensions. The usufructuary has the right to the possession, use, administration and receipt of the fruits.
- → **Methods of exercising usufruct:** the usufructuary may usufruct in person, or by means of leasing the building, but cannot change its economic use, without the express authorization of the owner.

City Leasing

- → **Regulatory laws:** the leasing of city real estate, which includes both residential property, and nonresidential or commercial property, is, as a general rule, regulated by Law 8245/91. There are exceptions, regulated by the Civil Code and special laws.
- → **Term:** the lease contract may be adjusted for any length of time. During the stipulated term the landlord may not repossess the leased property. However, the tenant may return the property, provided he pays the fine stipulated in the contract, or if there is none, the judicially stipulated fine. However, the tenant will be exempt from a fine, if the return of the property results from the transfer by its private or public employer to render services in different localities.
- → **Sale of leased property:** if the property is sold during the lease, the purchaser may cancel the contract giving the tenant ninety days to vacate the premises, unless the lease is for a specified term and the contract contains a continuity clause in the case of a sale and is registered in the Real Estate Registry Office. Termination of lease: the lease may also be terminated by mutual agreement.
- → **Assignment of lease:** the assignment of a lease, sublease and loan of the premises, either totally or partially, depends on the prior written consent of the landlord.
- → **Rent/charge:** the parties are free to adjust the rent, though its stipulation in foreign currency or related to the minimum wage are prohibited. Preemption rights: in the case of a sale, the promise of sale, assignment or promise of assignment of the rights or payment in kind, the tenant has preference to purchase the leased property, on equal conditions to that of third parties. The landlord shall notify the tenant of the transaction by means of judicial or extrajudicial notice or other equivalent means.

- → **Repossession in residential leases:** Besides the general cases of the termination of the lease contract mentioned above, the law provides for two types of repossession exclusively for residential leases. These depend on the initial term of the lease: a) in leases agreed in writing, for a term corresponding to 30 months or more, the termination of the contract will occur at the end of the stipulated term, regardless of notification or notice. If the tenant continues in possession of the leased premises for more than 30 days without objection from the landlord, the lease will be presumed to be extended for an indeterminate period of time and the terms of the lease will continue. If the extension occurs, the landlord may terminate the contract at any time, giving the tenant a period of 30 days to vacate the property (eviction or landlord's repossession of the premises without stating the reasons); b) in leases agreed verbally or in writing with a term of less than 30 months, at the end of the established term, the lease is automatically renewed for an indeterminate period of time, and the premises may only be repossessed in cases explicitly stated in law. (with cause).
- → **Right to renewal in the leasing of premises for commercial activities:** in order to protect "goodwill", the law grants the tenant the right to the renewal of the contract, for an equal period, regardless of the landlord's consent, provided that the following requirements are cumulatively met: (i) the contract to be renewed has been executed in writing and for a specific term; (ii) the minimum term of the contract to be renewed or the sum of the uninterrupted terms of written contracts is 5 years; (iii) the tenant is exploiting its commerce, in the same field, for the minimum and uninterrupted period of 3 years.

Purchase of Property by Foreigners

The purchase of city properties can be freely made: (i) by foreign individuals and corporate entities residing or domiciled abroad, in which case the investment made in the purchase of the property is not subject to registration with BACEN; (ii) by a corporate entity based in Brazil, but controlled by foreign capital, in which case the investment made in the purchase of the property is subject to registration at BACEN, as foreign capital invested in a Brazilian company.

With respect to the acquisition of real properties located in national security and rural areas, the statutory laws contain restrictions on their purchase by foreign individuals or corporate entities, or by Brazilian corporate entities controlled by foreign individuals or corporations residing or based abroad.

Rural real property is subject to the following basic rules: a) the sum of the rural property owned by foreigners cannot exceed 1/4 of the surface area of each Municipality and persons of the same nationality may not own more than 40% of this limit; b) the surface areas are divided into modules ranging from 5 ha. to 100 ha. (according to the region of the country); c) foreign individuals residing in Brazil may freely purchase areas of up to 3 module units for undefined exploitation, provided that the aforesaid surface area restrictions are observed and it is the foreign individual's first purchase (in practice, it is recommended that the National Land Development Agency – INCRA, associated to the Ministry of Land Development, be consulted beforehand to check that the acquisition is within the surface area limit). For areas in excess of 3 and up to 50 module units, and for the second purchase operation, authorization from INCRA must be obtained, whereas for areas of between 20 and 50 module units, a land use proposal will also have to be submitted. For areas of 50 to 100 module units, approval will be necessary from the President of the Republic, together with evidence to the effect that the project is of national interest and approved by the National Defense Council. For the purchase of areas in excess of 100 module units, authorization from Congress will have to be obtained; d) foreign corporate entities authorized to operate in Brazil, or corporate entities based in Brazil controlled by individuals or corporate entities residing or based abroad, shall obtain authorization from the Ministry of Land Development, through the competent agency, in this case, INCRA; (e) foreign individuals that have Brazilian children or are married, under the partial or communal property system, to a Brazilian, are free to purchase rural property.

Tax Law

General Notes

The taxing power is shared by the Federal Government, the States, the Federal District and the Municipalities. For this purpose, a series of rules was created, which together constitute the Brazilian Tax System, namely: the Federal Constitution, the National Tax Code and federal, state and municipal legislation.

Such an allocation of taxing powers and the interplay of the rules within the Brazilian Tax System, not to mention the case law, make Brazil one of the countries with the highest compliance costs related to fiscal obbligations.

Significant Developments

The National Tax System has been constantly modified and updated. The most recent and relevant changes were the following:

- → Since the former President Jair Bolsonaro signed an executive order on transfer pricing rules with the goal of aligning them with OECD standards *(Medida Provisória 1152/2022)*, it has been was approved with amendments by Congress and sanctioned by President Luiz Inácio Lula da Silva. It is now Law 14.596/2023, and will be in force as of January 1st, 2024. The legislation is regulated by Instrução Normativa 1261, 28/09/2023 issued by the Brazilian Internal Revenue Service *(Receita Federal)*. The most significant change is the adoption of the Independent Comparable Price among other transfer pricing methods, which follow the Armth's Length principle, a benchmark of prices practiced in transactions between unrelated parties to assess crossborder transactions between related parties.
- → As part of the relief program directed to businesses affected by the COVID-19, the federal government exempted from most federal taxes companies in the events sector. Definition of which business activities are part of the events sector has been changing through recent legislation.
- → A Proposal of Ammendment to the Constituition *(Proposta de Emenda a Constituição n. 49/2019)* is currently being debated by Congress with high chances of approval. It will introduce a consumption taxation reform, abolishing five federal, state and municipal taxes. The new system is expected to create two new taxes, equilavent to VAT: one federal – Contribution on Goods and Services – CBS - and one shared by the state and municipal authorities – Tax on Goods and Services – IBS. The number of different rates charged upon the sale and consumption of various goods and services will also be reduced. A specific tax applicable to goods which are unheathly or harmful to the environment is also set to be created, and a reduced rate for essential goods and services such as health and education are expected.

Taxes on Corporate Income

Legal entities in Brazil are taxed on their worldwide income. These taxes are imposed on a federal level and can be summarized as follows:

IRPJ (Corporate Income Tax)

Assessed on the acquisition of the economic or legal availability of income (the product of capital and labor or the combination of both) and of proceeds of any nature. The rate is 15% with a surtax of 10% levied on income in excess of R$ 240 thousand (approximately US$ 46 thousand in October 2023) per year.

CSLL (Social Contribution on Net Profits)

Levied at a tax rate of 9% on taxable profits. The contribution rate corresponds to 20% in the case of legal entities considered financial, private insurance and capitalization institutions.

PIS (Contribution to the Social Integration Program)

Assessed on the monthly gross receipts of corporate entities. It may be computed in a cumulative regime, at the rate of 0.65%, or noncumulative regime, at the rate of 1.65%. In the latter case, the sum collected in certain prior operations is discounted on each successive operation and there are some deductions of the gross receipts determined by law.

COFINS (Contribution for the Funding of Social Welfare Programs)

This is also levied on monthly gross receipts and may also be computed in a cumulative regime, at a tax rate of 3% or noncumulative regime, at a tax rate of 7.6%; subject to legal limits and requirements. PIS and COFINS are determined and collected on the same tax basis.

Corporate Residence

A legal person is deemed to be a resident when its has been incoportared in Brazil and its head office is located within the Brazilian territory. This is determined with regard to the location of the company's assets and where the facts giving rise to the tax obligation occur (company's registered office and/or main place of business).

Other Main Taxes

Federal Taxes

- → **IPI** (equivalent to the Excise Tax): its taxpayers are, for example, importers and industrial companies. Its tax rate, which is applicable to the amount of each operation, varies in accordance with the product. There are a number of tax benefits to stimulate the industrial sector, as well as the construction sector.
- → II (Import Duty): is levied on import operations. This tax has variable rates according to the product being imported.
- → **IOF** (Tax on Credit, Insurance and Foreign Exchange Operations, or on Operations relating to Negotiable Instruments and Securities): in foreign exchange operations, the tax basis for the calculation of IOF is the sum in local currency received, delivered or made available. The maximum rate is 25%, currently reduced to thirty-eight hundredths of a percent (0.38%) to most transactions.
- → **CIDE-Royalties** (Contribution to The Intervention on the Economic Domain-Royalties): in remittances of payments overseas related to technical services, technical assistance, royalties, technology transfer and intellectual property licensing.This tax is levied at a 10% rate on the amount remitted abroad.

State Taxes

- → **CMS** (equivalent to VAT): is levied mainly on the circulation of goods, including those imported from abroad; interstate and intermunicipal transport services and communication services. Its rates vary from 4% to over 30% of the transaction amount, in accordance with the type of goods sold or the service rendered and according to the internal legislation of the State where the company taxpayer is located. In most cases, the rate is 18%. It is noncumulative.
- → **ITCMD** (Inheritance and Gift Tax) is assessed on the transfer of any property by will, inheritance or gift made between individuals or corporate entities. The tax base is the market value of the property donated or received as an inheritance. The rate is determined by each State up to the maximum of 8%. In the States of São Paulo and Paraná the rate is fixed at 4%. Some other States established progressive tax rates that go from 0% up to 8% (Rio Grande do Sul and Santa Catarina).

Municipal Taxes

- → **ITBI** (Inter-living Transfer Property Tax): is levied on the transfer, for any reason, by an onerous act, of real property, by physical nature or accession and in relation to security interests on real property. Its rate, which is applicable to the market value of the property, varies in accordance with the Municipality. In the Municipality of São Paulo, the rate is 3%.
- → **IPTU** (Urban Property Tax): the taxable event is the dominium utile or the possession of real estate located in the city zone of the Municipality (in São Paulo, the rates vary in accordance with the market value and use of the property, from 1% to 1,5%).
- → **ISS** (Service Tax): is levied on the provision of the services contained in the list attached to Complementary Law 116/03, regardless of whether the services constitute the core activity of the provider. The rate varies between 2% and 5% and is defined by the Municipality within this range. The Municpality entitled to this tax is the one where the establishment is located or where the service is carried out, according to each individual case.

Capital Tax and Stamp Duty

These are not provided for in the legislation.

Branch Income

Subject to the same rules set forth above. Branches in Brazil are not allowed to take deductions related to expenses paid or credited to the headquarters as royalties, technical, administrative or similar support.

Income Determination

There are currently three main regimes in force regarding the determination of income:

- → In the **"Actual income regime",** which is the standard regime, income is determined according to the annual balance sheet at December 31 or in quarterly trial balances (income determined as such must comply with the IFRS). Once the "book income" has been determined, tax legislation provides for some adjustments (exclusions and deductions from the "book income") in order to ascertain the tax base, which is then called "Actual Income".
- → In the **"Presumed income regime",** which is optional, the taxable income is determined by the application of fixed percentages over the quarterly gross revenues of the corporate entity, without any deduction, for the purposes of the calculation of IRPJ and CSLL (corporations eligible to this regime are those whose total gross receipts in the preceding calendar year were not higher than R$ 78 million, equivalent to approximately US$ 15 million in October 2023).
- → In the **"National Simplified regime",** which is also optional, the taxable base is determined by the application of fixed percentages over the monthly gross revenues of the corporate entity, without any deduction. This regime comprises the assessment and collection of the following taxes: IRPJ, CSLL, PIS, COFINS, IPI, ICMS, ISS and payroll contributions. All these taxes, depending on the business activity of the taxpayer, are asssed and collected in a single tax return/tax bill (corporations eligible to this regime are those whose total gross receipts in the preceding calendar year were not higher than R$ 4.8 million, equivalent to approximately US$ 934 thousand in October 2023).

Deductions

From the income tax determined for the month under the actual income, the tax paid or withheld at source on income included in the tax basis, and the deduction incentives related to the Workers' Food Program, Children and Adolescent Funds and Cultural, Artistic and Audiovisual Activities may be deducted. Additionally, there are some costs and expenses that are deductible for the determination of actual profit:

- → **Depreciation, amortization and depletion**: The amounts related to the decline in the value of asset items resulting from wear and tear, as a result of nature and normal obsolescence (depreciation), recovery of the capital invested, or of the resources invested in the expenses necessary to the result for more than one taxable period (amortization) and decline in the value of mineral and forestry resources, resulting from their exploitation (depletion), may be computed as a cost or charge in each taxable period;
- → **Net operating expense:** The expenses that are not computed in costs, necessary for the company's business activity, paid on the transactions undertaken are operating expenses and deductible;
- → **Payments to foreign affiliates (transfer pricing):** The respective costs, expenses and charges relating to goods, services and rights are deductible for the determination of actual profit up to the price determined by one of the methods provided by law;
- → **Taxes:** Deductible from actual profit according to the accrual basis of accounting;
- → **Other significant items:** The provisions and allowances provided by law (technical, vacation pay, thirteenth salary and provision for income tax) are deductible.

Group Taxation

There is no legal provision for group taxation; each company is taxed separately.

Tax Incentives (Including Special Tax Regimes)

Industrial Technological and Agricultural Development Programs (PDTI and PDTA), to foster the technological qualification of industries and agriculture (incentives aimed at Research and Development activities). There are tax regimes linked to the import and export of goods and tax benefits for industrialization and commercialization in certain Brazilian regions.

Withholding Taxes (IRPF)

Below is a table with some of the main rates:

Remittance Abroad Cases	Current Rate	Current rate for Tax Havens
Profits and dividends	0	0
Expenses related to personal and business travel abroad	6% *	6%
Intereset	15%	25%
Royalties, or remuneration for technical or similar services or of payment for contracts with or without technology transfer, except if there is an agreement to avoid double taxation. **	15%	25%

* This will be raised by 1% per year from 2025, ending at 9% from 2027;

** For the purposes of the application of the Brazilian tax legislation, tax havens are construed as countries or dependencies with the taxation of income at a rate of less than 20%:

Andorra, Anguilla, Antigua and Barbuda, Aruba, Ascension Islands, Commonwealth of the Bahamas; Bahrein, Barbados, Belize, Bermudas Islands, Brunei, Campione D'Italia; Channel Islands (Alderney, Guernsey, Jersey and Sark), Cayman Islands, Curacao, Cyprus, Cook Islands, Djibouti, Dominica, , United Arab Emirates, Gibraltar, Granada, Hong Kong, Republic of Ireland, Kiribati, Labuan, Lebanon, Liberia, Liechtenstein, Macau, Maldives, Isle of Man, Marshall Islands, Mauritius Island, Monaco, Montserrat Islands, Nauru, Niue Island, Norfolk Island, Panama, Pitcairn Island, French Polynesia, Queshm Island, American Samoa, Independent State of Samoa, Saint Martin, Islands of St Helena, St. Lucia, Saint Pierre and Miquelon Island, St. Vincent and the Grenadines, Seychelles, Solomon Island, Swaziland, Sultanate of Oman, Tonga, Tristan of Cunha, Turk and Caicos Islands, Vanuatu, Virgin Islands of the United States, British Virgin Islands.

Tax Administration

Is carried out by the Brazilian Internal Revenue Service (Receita Federal) and by the State and Municipal Treasuries, according to the respective taxing power.

→ **Returns:** Obligation depends on each tax and State/Municipality involved.

→ **Payment of tax:** IRPJ and CSLL Quarterly or annual, with the adjustments provided in law; IPI/ICMS/ISS/PIS/COFINS monthly; and II at the time of customs clearance.

Individual Taxes

General Notes

Individuals residing in Brazil are subject to tax on the worldwide income.

Territoriality and Residence

The tax domicile of an individual is generally construed as his or her habitual residence, provided that there is the requisite intention to maintain such a residence. There are specific criteria and conditions.

Gross Income

Product of capital, labor or the combination of both, alimonies and personal allowances in cash, proceeds of any nature (increases in net worth that do not correspond to the declared income, are also included).

Employee Gross Income

Taxed in the month that the resources are received from the paying source, by means of a deposit in a financial institution in favor of the beneficiary. This is calculated with the use of the following progressive monthly table:

Tax Basis in US$ *	Current Rate	Portion to be Deducted from the Tax in US **
Up to 409.87	0	0
From 409.87 to 548.57	7,5%	41.14
From 548.57 to 727.96	15%	69.05109.19
From 727,9696.11 to 905.27	22.5%	123.81 203.68
Over 905.27	27.5%	169.21 248.95

* US$ on October 2023.

** This deduction is not a "deductible expense" or some sort of exemption/reduction. Actually, it is just a way to facilitate the progressivity calculation.

Capital Gains and Investment Income	Income tax is due on the capital gains on the sale of property or rights, determined by the positive difference between the sales value and the acquisition cost, at the a progressive rate corresponding to 15% to 22,5%.
Capital Losses	There is no provision for the taxation or deduction in Brazilian legislation.
Monthly Deductions	Social security contributions, business expenses made by autonomous professionals, US$ 36.79 per dependent and US$ 369.50 for allowances and pensions of persons over the age 65, per month.
Deductions in Returns	Incentives for cultural and artistic activities (gifts and sponsorships), gifts and funds controlled by the Councils of Rights of Children and Adolescents, medical and education expenses, and contributions to Private Pension Plans.
Simplified Discount	The taxpayer may elect for the simplified discount, which consists in the deduction of 20% of income, limited to US$ 3246.53, in the Annual Adjustment Statement, without need for proof of the expense and indication of its type.
Personal Allowances	These may be deducted if necessary in order to comply with a judicial decision or judicially ratified agreement, including the payment of provisional alimony.
Other Taxes	→ **Social Security (INSS):** the employees' contribution to social security, discounted from their salary, is calculated by the application of the corresponding rate (could be up to 14.00% of the amount paid by the company, limited to USD 169,93), to their monthly contribution salary. For other taxpayers affiliated to the General Social Security Regime, the contribution is 20% of the contribution salary in the company level, subject to the deductions set forth by law. → **Welth Taxes:** Though provided for in the Constitution, this tax has not been introduced yet.

Bulgaria

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Bazlyankov, Stanoev and Tashev Law Office was founded in 1991 in the town of Plovdiv by the lawyers Nikolay Bazlyankov and Dessislav Tashev. In 1997 Boyan Stanoev joined as a full partner and in 2009 lawyers Ekaterina Nikolova and Diana Ilieva became partners in the law office as well.

Today BST law office is one of the biggest and most dynamically developing law firms in Bulgaria. BST law office has established traditions in Bulgarian jurisprudence and has developed anumber of legal activity in fields.

We achieved success and prestige due to our professionalism and the enterprise of our ambitious team of lawyers, also due to our exceptionally correct relationship with clients, our sticking to commitments, our individual approach in accordance with the specifics of each case, and our ambition to achieve successful solution and finalization. We provide full support in clients dealing with different administrative structures and we cooperate and help during the conducting of negotiations in favour of the client.

The process of our own development and improvement is an uninterrupted and dynamic one, with skilful seeking, acquiring and implementing of traditional and non-traditional methods and original ideas and solutions in the process of the work, as well as constant striving for and interest in the adoption of current innovations not only in the sphere of law, but in other fields too.

Bazlyankov, Stanoev & Tashev law office is specialized in ensuring reliable and good quality representation of its clients before courts of justice, state and municipal authorities in the entire country.

Legal consultations are provided for Bulgarian and foreign natural and legal persons, for branches and representatives of foreign companies in Bulgaria, for public entities and non-profit legal persons. The law office is member of the Association of European Lawyers - AEL, of the International Association of Law Firms - E-iure and of the Global Network of Independent Law Firms - ALFA International. The BST Law Office provides services in English, Spanish and Russian languages.

Commercial Law
Registration of companies
Structuring of holding groups
Share transfers
Bankruptcy and liquidation

Contractual Law
Agreements
Contracts under general conditions
Public procurement

Real Estate and Investments
Real estate deals
Consultations in Real Estate
Construction
Notary Proceedings
Pledges and Mortgages
Legal Analyses and Research

Privatization
Privatization deals
Structuring of privatization projects
Negotiations with state authoritiese

Tax Law
Tax consultations
Representation Before the Tax Authorities
Avoidance of Double Taxation

Competition Law

Intellectual property law

Law of Employment and Insurance

Civil Procedure Law

Administrative Procedure Law

Corporate Law

Regulations and Rules

Bulgarian corporate law now is codified and integrated into the Commercial Law. This act contains the most of the rules of company law – incorporation of the companies, changes in the capital /increasing or decreasing/ and the decision-making bodies, insolvency and liquidation of the company, merge of companies.

In Bulgaria, as a member state of the European Union, are in force the resolutions of the EU in the area of the corporate law and several commercial directives are implemented in the corporate legislation in Bulgaria.

Types of Companies

In Bulgaria there are different legal forms to develop business. The most frequently preferred types by Bulgarian and foreign investors are:

- → **Limited Liability Company (LTD):** is a small and the most commonly incorporated company in Bulgaria. A company with minimum capital of 2 BGN /1 euro/. The partners can be Bulgarian legal entities or natural persons, as well as foreign legal entities or natural persons.
- → **Single Limited Liability Company:** a single partner /a Bulgarian or a foreign legal entity or natural person/ possesses the whole share capital of the company, the minimum capital is 2 BGN /1 euro/.
- → **Joint Stock Company (JSC):** company with a minimum capital of 50 000 BGN /around 25 000 euro/ of which at least 25 % must have been paid at the time of incorporation. The capital is divided into shares.
- → **Single Shareholder Joint Stock Company:** there is only one shareholder, who possesses the whole share capital, divided into shares.

All these companies are limited liability companies.

Other less common legal forms are:

- → **General Partnership:** is incorporated by two or more general partners who are unlimitedly liable
- → **Limited Partnership:** is incorporated by two or more partners, some of the partners are limitedly liable to the amount of capital contributed and other partners are unlimitedly liable.

With recent changes in the Commercial law (SG No. 66/2023, effective 4.08.2023), a new form of company was regulated:

Company with variable capital – this type of company could be established by one or more natural persons or legal entities. The company is liable towards its creditors with its assets. The main difference of this type of company is that the share capital varies and the exact amount is determined each year on the regular general meeting of the shareholders by revising the annual financial statement. In order to register such a company a proof of the paid capital is not needed.

This type of company allows higher flexibility regarding the amount of shares owned, their nominal value and rights of the different classes of shareholders. All of this has to be regulated by the provisions of the articles of incorporation. The capital of the company is divided into shares, which nominal value could not be less than 0.01 BGN (approximately 1/2 of a eurocent). Against the inscribed shares, each shareholder has to pay the respective instalment, which could also be nonmonetary.

Another difference is the easier way of transferring the shares, as the articles of incorporation could provide that the transfer is done in written form (a notary certification of the signatures is not needed then). In addition, the company is allowed to own up to 50% of its own capital. The owned by the company shares of its capital could be transferred to employees of the company by decision of the general meeting of the shareholders or the manager, if the last is authorised for this by the general meeting of the shareholders. On the other hand, a prohibition for transferring shares for certain period of time could be provided in the articles of incorporation.

The legislation stipulates that a Company with variable capital could exist in this legal form as long as the enterprise has less than 50 employees (average per year) and less than 4 000 000 BGN annual turnover and/or value of the assets. If either of those criteria is exceeded, the company has to be transformed into one of the forms for capital companies. The transformation has to be done until the end of the financial year following the year of the general meeting of the shareholders on which the exceeded criteria are determined. If the transformation is not finished in this period, the company could be terminated by the district court at the request of the prosecutor's office.

As the provisions of the legislation are still very fresh and a technical availability for registering such legal person is still not available, at the moment there is no clarity as to the efficiency of this type of company and the possible obstacles in its function.

The Incorporation of a Branch

A company, duly registered in Bulgarian Registry Agency, Commercial register can open a branch or branches in a town, different from the company's registered office. The incorporation of a branch requires to be taken a formal resolution of the decision-making body, authorising the establishment of a branch in another town in Bulgaria and appointing a representative. The branch does not have a legal personality and represents an economic structure, which is managed separately than the company but cannot have a separate balance. It is inscribed in the Commercial register and information about this separate registration should be present in the branch's correspondence.

The branch of a foreign company

The regulation regarding a branch of a foreign company in Bulgaria is provided in the Commercial Code. A foreign company duly registered under the national law of the respective country can open a branch in Bulgaria. For this purpose, it is necessary to be presented documents for the registration of the Company and the decision-making body has to take a decision about the address of administration, representative, activity of the branch. It is provided that the branch has separate balance and should have, respectively reflecting on the tax issues – the branch of a foreign company is a different tax subject.

Regulations and Rules

In all of the limited liability companies /Ltd and JSC/ partners' / shareholders' liability is limited to the capital contribution. If a partner/shareholder participates actively in the management of the company in the capacity of manager/director, the one becomes liable for corporate wrong management in the event of bankruptcy.

The shareholders are not liable for the Company's debts as the company and its shareholders are considered for company law purposes as separate legal persons.

It is yet to be determined as what type of company the new company with variable capital shall be considered, as the provisions of the law are not very clear about this.

Share Capital (minimum and minimum paid in amount)

Company	Minimum €	Minimum paid in amount €
Limited Liability Company (LTD)	1	100%
Single Limited Liability Company	1	100%
Joint Stock Company (JSC)	25.000	25%
Single Shareholder JSC	25.000	25%
Company with variable capital	½ 0,01	100%

Regulations and Rules

The JSC and the Single JSC issues shares, which may be only registered, ordinary or preferred. It is common a company to issue only one class of shares, known as ordinary shares. In the articles of association of the Company are performed the rights and restrictions attaching to the shares. The shareholders who hold preferred shares would be expected to carry additional rights (for example - to receive guaranteed or extra dividends). It is accepted for the shares to be freely transferable. However, it is the article of association to provide the restrictions to be transferred shares and the way of transfer. When shares are issued or transferred, details of the shareholder are registered in the company's statutory books and a share certificate is issued. As explained above – similar is the situation for Company with variable capital as well.

Corporate Governance

Shareholders Meeting

Partners / Shareholders reserve the right to make certain decisions. Bulgarian Commercial Law distinguishes ordinary and extraordinary resolutions. As for the ordinary resolution the required majority is 50 % and for the extraordinary resolutions the required majority is ¾.

Ordinary resolutions, for example, are: approval the annual statement and the balance sheet, adoption of resolutions for reduction and increase of capital, appointing the manager, changing the corporate purpose, adoption resolutions for opening and closing of branch offices and for participation in other companies.

Extraordinary resolutions are: making amendments and supplements to the Articles of incorporation, admittance and dismissal of a partner/shareholder, transfer of the part of the company to a new member, adoption resolutions for acquisition and expropriation of real estates and real rights.

The resolutions for reduction and increase of capital are adopted unanimously by all partners /shareholders.

Different majority is required for adoption of decisions by the general meeting of shareholders of Company with variable capital. Majority of 2/3 of the represented votes (that need to be at least half of the shares of the company) is required for: making amendments and supplements to the Articles of incorporation, issuance of new shares, determining the manner of their inscription, annulling shared and expelling shareholders, transforming or terminating the company, choosing/liberating liquidator, determining his/hers remuneration and period of liquidation, choosing/liberating manager/s, determining remuneration.

Majority of 50% of the represented votes is required for: **appointing auditor, approving annual financial statement, division of profits and its payment, acquiring by the company of its own shares.**

The above stated majorities could be increased by the provisions of the articles of incorporation of the Company with variable capital.

Minimum number of broad meeting / year – Once a year. At least one shareholders meeting must be held each year in order to approve the accounts of the previous year. Both JSC and Single JSC must have a Statutory Auditor. The Board of Directors annually after the end of June composes for the previous year an annual financial statement and report for the Company's activity and presents them to the expert accountants-auditor appointed by the shareholders for examination and report.

Management

The General meeting of partners of a LLC makes the most important decisions concerning the capital, the structure, management of the company, the admittance and expelling of shareholders, the acquisition and disposing of real estates, etc.

The ruling bodies of a JSC are the General meetings of shareholders to decide the most important issues. The other bodies depend on the system of management, which has been chosen. As there are usually a greater number of shareholders the law does not require unanimity for any decisions made by the General meeting. The General meeting is not entitled to make decision for acquisition or disposing of real estates as this issue is in the scope of the Board of directors' powers.

→ **The one-level system** includes only a Board of directors consisting of 3 - 9 members which is the ruling and representative body of the company. The board chooses one of its members who, in his capacity of an executive director, solely represents the company and performs the basic actions connected with the management, but on the grounds of a relevant decision of the Board.

→ **The two-level system** of management includes a Managing Board and a Supervisory Board which requires a well experienced method of cooperation between the two boards as some of the actions should be performed by the Managing Board with the consent of the Supervisory Board which chooses the members of the Managing Board and controls them permanently. The first system is more widely used, because of its larger flexibility and simplicity, rather than the two-level system.

Manager and Executive Director (Appointment, Dismissal, Duties, Remuneration)

In the article of association of the company is provided which company body has the rights to appoint and dismiss a manager/executive director, his/hers duties. The person who will act as a manager/ executive director must sign a declaration - consent and provide specified information to the Commercial Register. By and between the Company and the manager/executive director can be concluded a management contract and to be stipulated his duties, remuneration and liability.

The General Meeting of the partners of LLC and Company with variable capital appoints and sets a manager of the company and his remuneration. The manager it is not necessary to be a partner. The owners of the share capital have the opportunity to appoint as a manager person who represents the company and binds it in its relations with third parties. The manager carries out the current management of the company and concludes agreements on behalf of the company.

The executive directors in a JSC are appointed by resolution of the members of the Board of Directors and the Board determines their remunerations. There are no specific rules on the level of remuneration and it will usually be a matter for negotiation.

The managers or the executive directors have to act in the Company interests and to take reasonable care for the Company action and not to accomplish some personal gains. The company is represented by a Manager/executive director. He/She shall organize and manage the Company's activities in compliance with the law and the resolutions of the General Meeting/Board of Directors. The manager/executive director has the rights to convene the General Meeting pursuant to Bulgarian legislation and the Article of association.

Minutes /filing with the registry of commerce and companies

Minute Book. They are signed by the Manager of the LLC and the executive director of the JSC and by the partners/ shareholders who are present at the General meeting. Only an authorized by the Board of Directors person can write the relevant information in the books.

In case of amendments and supplements to the Article of incorporation, changes concerning the capital, the structure and the management of the companies must notify the Commercial Register and an announcement for the convening of the General Meeting shall be done in the Commercial register.

The Commercial Register Act

The Commercial Register and Register of Non-Profit Legal Persons Act (Title amended, SG No. 74/2016, effective 1.01.2018) was adopted and approved by Bulgarian Parliament in 2006 and is in force since 01.01.2008. The Parliamentary approval of the act fulfilled the recommendation in the European Commission's Monitoring Report on Bulgaria from October 2005 to introduce electronic access to the commercial register and the requirements of Directive 2003/58 of the European Parliament and the European Council.

The enforcement of the Commercial register Act and Register of Non-Profit Legal Persons Act was a step forward for creation of a central electronic register and enables cheaper and faster registration as well as simplifies and secures procedures accessible through Internet.

The Registry Agency, Commercial register facilitates the procedures regarding the incorporation and changes in the companies and ensures more transparency for the partners, shareholders of the companies and the connections between natural and legal persons. The applications regarding the companies are reviewed very fast which considerably helps the various business activities. If the administrator finds that the legal requirements are not met, he/she has to draw up a motivated refusal. The refusal can be claimed to the district court upon the location of the registered office of the Company.

An indisputable asset of the act is the provision to introduce a standard centralized electronic registration system for companies and the direct and easy access to the company information.

The provisions of the Act are currently applied in practice with ups and downs as some issues regarding the Commercial register shall be clarified and solved (such as delays with the inscriptions and different requirements of each administrator).

The Commercial register Act and Register of Non-Profit Legal Persons Act provides that not re-registered by the deadline (31.12.2011) existing companies in the Commercial register shall be deemed deregistered. Where a property is found in respect of a deregistered trader, the interested persons could submit an application for restarting the liquidation after that deadline, but not later than 31 December 2022. It still remains to be resolved what would happen to properties, owned by not re-registered companies after the end of 2022.

Foreign Investmnets

Bulgarian law has set up as a general rule of complete freedom of foreign investments in Bulgaria. Bulgaria encourages the foreign direct investments. As a member state of the European Union, Bulgaria has implemented the rules and regulations of the Union, regarding the encouragement of foreign investments. In the last decades the Bulgarian Parliament has approved some legal and administrative alleviation for the investors

Registration with Government, Authorities and Permits.

Investment Encouragement Act provides regulations about the investing in Bulgaria. The law does not restrict the foreign investment process. Although some actions in connection with the foreign investment are subject to declaration or prior authorisation. The regulation of the foreign investment projects is a serious encouragement and alleviation for the investing. Some of the measures for encouraging the investments are shorter administrative procedures, financial support for certain activities and tax alleviations.

Prior authorisation is required if:

- → Any foreign investment may affect public order or security;
- → Any foreign investment related to the national defence, arms or explosives
- → Any foreign investment may seriously threaten public health
- → If the investment may lead to a serious presumption of criminal activity

The relevant ministry to certain period can provide prior authorization. The Ministry can of course request further information, if the application is incomplete, and this extends the review period. If the companies breach of the above duties, they bear sanctions under the penal and customs codes.

Transfer of dividends, interests and royalties abroad

According to the Bulgarian legislation there are no restriction for the transfer of dividends, interest and royalties abroad. Bilateral tax treaties and double avoidance tax agreements provide withholding of taxes.

Repatriation procedures and restrictions

Bulgarian legislation does not apply any repatriation procedures or restrictions

Foreign personnel (permits, etc.)

All foreign personnel require residency permits but the regime of EU citizens is much more simplified. Work permits are necessary only for the long-term work. Application for work permits is issued of the National Employment Services.

Bulgaria

Labour Law

Bulgarian labour law and the decisions of the Bulgarian labour courts regulate the employment mainly in favour of the employees. The relationships between the employees and employer and their obligations and rights are systematized and regulated in Labour Code. The access to the labour courts in Bulgaria is free and the employees are not required to pay any court fees. The employees frequently claim damages, obtained by wrongful dismissal.

Employment Contracts

Classes

The main classes of contracts are:

- → Fixed terms contract and
- → Indefinite term

These types of contracts can be concluded for part time and full-time job.

Cost of dismissal and wrongful dismissal

The Labour Code regulates the reasons for employee's dismissal. The reasons can be non-execution of duties, gross misconduct or breach of the disciplinary rules in the company. If the dismissal is not based on one of the reasons, pointed in the Labour code, the employee is entitled to claim for damages. The employer can terminate a labour contract in some cases without prior notification. But in the most employment agreements it is stipulated a prior notice period which period varies (from a month to three months).

It is frequently stipulated in the employment contract the employer to pay employee a severance indemnity for the dismissal. The legal minimum of the indemnities is equal to the fourfold monthly gross salary. It is possible the work contracts provide more favourable severance indemnities.

In addition to the payment of severance indemnity, if the dismissal is judged illegitimate, an employer can be sentenced to pay damages to the dismissed employee. The amount depends on the actual damages suffered by the employee and is determined by the court.

Employment Contracts for Directors; a special regime

Directors and managers can be appointed by the General meeting of the partners of Limited Liable Company or the Board of directors of Joint Stock Company. Their work contracts are concluded prior to their appointment. According to the Bulgarian commercial law this type of contracts is called contract for management. Their duties are defined in the article of incorporation of the company and the employer supervises their work process. The manager/director receives special remuneration for their specific duties.

If the manager/director has other work contract it may be suspended for the period of their management. After the termination of their appointment as a manager/director, the employment contract begins to operate again.

Bulgarian commercial law regulates the special regime of the procurator. The General meeting or the Board of Directors appoints a procurator – special representative and manager of the company who can acts at the same time with the manager/director

Employees' Representatives and Union Representation

Brief idea of the influence of these groups in Labour Contracts

On a national level, employees' representatives the trade unions, and employers' representatives, negotiate the provisions of new laws and the conditions of the Collective Bargaining Agreements.

In a company the trade unions and the employees' representatives connect employers and employees. Bulgarian labour law determines the certain obligations of the employers such as: providing employees' representatives with information, concerning the economic condition of the company, state of employment in the company, implementation of new technologies, and development of the working conditions of employees.

The employees' representatives must be consulted and announced in advanced for the future dismissals of employees and changes in the structure of the company, which may influence on the work process. The employees' representatives may have the right to give a statement for the dismissal of some persons with equal qualifications.

When a Labour Union representation becomes binding?

The employees and the labour representatives can organize the elections of employee's delegates who discuss the employment conditions and the dismissal.

Rights and Privileges of a Labour Union Representation inside a Company

Bulgarian labour law regulates certain rights for the union representatives, for example:

- → Right to participate in the discussion of the questions concerning the work and insurance relationship in the company.
- → Access to the information about the company concerning the positions of the employees

Labour Code grants the employee representatives and union representatives specific protection against dismissals. The working conditions of the employee representatives and the union representatives cannot be changed without their prior agreement. At the request of the employees the employee representatives can represent them in court cases.

Collective Bargaining Agreements Other Agreements

(National, regional, provincial or company level...)

Classes

Labour Code provides different types of employment agreements: *individual employment agreement and collective employment agreement.*

The labour relations between employers and employees can govern at the level of each branch or field of industry by the provisions of national, regional or company collective bargaining agreement.

Collective Bargaining Agreements binding for the labour contracts?

The Collective Bargaining Agreements are binding for all employees who signed the agreement and for all labour contracts in the case the provisions of law are not more favourable to employees than the provisions of the applicable Collective Bargaining Agreement

Wages and Other Types of Compensation

(Wages, Social Security contributions, remuneration in kind, insurance policies, pension plan)

Classes of Wages

Wages of employees can comprise of various elements such as:

- → Fixed salary
- → Incentives and Bonuses
- → Remuneration "in kind" (such as - housing, car, cell phone...)

Minimum salary in 2023

The minimum salary for 2023, which has to be paid to an employee, should be no less than 780 BGN (around 390 euro) monthly for a full-time job. It is possible employees and employers to have stipulated higher minimum salary in the provisions of the Collective Bargaining Agreement.

With amendments of the Labour Code (SG, No 14 from 2023) a new way of determining the minimum salary was adopted. As per the amendments, the Ministry council has to determine the minimum salary by 1st September of the previous year the amount is 50% of the average nominal salary for the last 12 months. The minimum salary could not be lower than the previous year. The expectation for 2024 is that the minimum salary shall be at the amount of 933 BGN (around 466.5 euro) per month. The tendency for a raise of the minimum salary is in order to meet the European standards.

Cost of Overtime Hours

The length of the overtime in one calendar year could not be more than 150 hours per employee. The employee must obtain the appropriate payment for the additional overtime work as the Labour Code provides the following payment rates:

- → Overtime work on workday has to be extra paid with 50 % of the contract salary
- → Overtime work on weekends has to be extra paid with 75 % of the contract salary
- → Overtime work on official celebrations has to be extra paid with 100 % of the contract salary.

Some Collective Bargaining Agreements may provide for different rates.

Employment Regulations

The employment regulations, collective bargaining agreements, overtime work, salaries and holidays are regulated and codified within the Labour Code.

The Labour authorities such as Ministry of labour and social cares and Labour inspectorate exert control over the application of the labour regulations.

Social Securiry

Contribution Forms (Terms and Procedures)

According to the Bulgarian Social Security Code social security contributions must be paid every month. Social security payment is divided between the employer and the employees as the percentage is:

→ The employer must pay 58 % of the social security
→ The employee must pay 42 % of the social security.

The percentage varies in connection to the amount paid for the fund "Work accident and professional illness", depending on the branch of industry the employee works in. The percentage may also vary every year upon a government decision adopted in the annual Budget act.

Social Securiry

Essential Duties of The Employer

The employers are obliged to provide their employees with safe and healthy work place.

The employers must protect their employees against all kind of accidents. The employers provide the employees with adequate tools and security training. The employees must be insured against different accidents depending on the branch of industry they work in.

The Labour Inspectorate and other authorities exert regular controls over the work conditions.

The employees in some branches of industry (for example mine industry) are protected and the Labour Code provides special health and security training depending on the nature of their activities.

When accidents occur on the work place, the employer must declare the accident. The company is obliged to hold responsibly for the damages suffered by employees.

The health contributions are as follows:

→ 3.2 % - paid by the employee
→ 4.8 % - paid by the employer

Main Regulations

Labour Code and Social Security Code comprise general regulations of health and security conditions.

Contracting and Outsourcing of Work or Services

Upon discretion of the companies some tasks within the company may be provided by consultants, agents or sub-contractors on the base of outsourcing.

Real Estate

Bulgarian real estate law is regulated mainly in Bulgarian Constitution and Property Act. The legislation regulates certain restrictions on acquisition by foreigners.

A register of transactions dealing with real estate is kept by the Registry agency – Property Register. Any kind of deed and mortgage, which is drafted by and signed before a notary must be kept in the register. The register is organized by the names of the owners of real estates, not by the real estates. Costs of real estate transactions (notary's fees, taxes and other duties are approximately up to 4.5 % of the value for a sale, 1% for a mortgage)

Types of Ownership

The ownership in Bulgaria is absolute. The title to real property can be an absolute and entire right or can comprise three separate rights: a right to use of the property, possession of real estate and the third right is disposition with the property.

The absolute entire title to real estate can belong to a single person / legal or natural entity/ or a collection of individual owners, where each of them owns a portion of the whole with no direct and precise right over a specific part of the real estate.

Bulgarian law of estate regulates some types of limited ownership:

- → Right of common
- → Right of building
- → Right of passing

The Land Register

Real property in Bulgaria is registered in special well-organized public land register. Each community is divided into section, each section into parcels. Sections and parcels are numbered in turn. The land register in Bulgaria is called Geodesy, Cartography and Cadastre Agency. Nowadays the map is not completed in full, but there are fewer and fewer properties to be mapped.

The changes in the legal status of the immovable properties (transfers of title, liens, mortgages, etc.) are booked on the registers maintained by the Registry agency – Property Register to the Registry Agency

Transfer Formalities

A transfer of title, mortgage or other change in the legal status is only enforceable against third parties as from its registration in the Property Register to the Registry Agency.

The right of ownership of real estate is transferred by a notary deed. The notary deed is a type of contract which form and content are prescribed by law. In order to be registered with the Property Register to the Registry agency, the deed, mortgages, etc. must be drafted by and signed in front of a notary within whose region the real estate is located. As the notary is under obligation to check the identity of the parties, their capacity, the authority of the representatives and the good title of the transferor, the process of execution of the notary deed offers considerable security. For all transactions with real estates, the signing in front of a notary is compulsory. Some exceptions are provided in the law: orders issued by the administration, mortgages ordered by a court, court resolutions and orders, etc.

Payment of the price - in regard of the European requirements and active legislation, together with the Measures against money laundering Act, if the price of the transferred real estate is of a total amount exceeding BGN 10,000, the price should be transferred trough a bank account.

Upon execution of the notary deed certain taxes, stamp duty and fees are due. A local tax levied upon the price agreed between the parties and included in the deed or the evaluation of the property by the tax authorities, whichever is higher, is due. The notary fee is calculated according to rates specified in the law, depending on the price indicated in the title deed. Thirdly, a stamp duty needs to be paid to the Registry agency.

Mortgages

A mortgage is established over real property to guarantee financial obligations.

According to the Bulgarian property law, the mortgage is a formal act – deed. The mortgages are registered in the Registry agency – Property Register.

The mortgage has the following consequences:

- → The owner of the real estates may dispose with his property without first paying his debt, the mortgage is in force for the new owner and the mortgage holder may seize the real property from the new owner and have it sold at auction.
- → In case the mortgage is not paid, the holder of a mortgage seizes his debtor's real property and sells it at auction.

There are two types of mortgages:

- → **Contractual mortgage:** a debtor agrees by contract to allow the creditor to register a mortgage over the debtor's property by a deed signed by a notary.
- → **Mortgage by operation of law:** this type of mortgage is established in absence of debtor's agreement under certain specific cases, determined in the statute.

Restrictions on acquisition

Bulgarian legislation regulates restrictions on acquisition real property in Bulgaria by foreign natural persons and legal entities to buy land in Bulgaria. But on the other hand, foreign natural or legal entities can buy buildings. Bulgarian legal entities with partners (hareholders foreign persons or companies are permitted to buy land and buildings without any restrictions). Amendments in the Bulgarian Constitution were adopted providing that foreign legal and natural entities may acquire land in Bulgaria under the terms arising from the accession of the Republic of Bulgaria to the European Union.

The regime of acquisition of real property (land) in Bulgaria varies, depending on the nationality of the person and the type of land. The restrictions for acquisition of real property are still in force for the foreigners with nationality from a third country (outside of the European Union and the European economic area).

Regarding the agricultural lands and forests, the restrictions provide that the foreign person should be resident in Bulgaria for more than 5 years in order to acquire ownership over such land.

Pre-emptive Rights Arise in Certain Case, Pointed in Bulgarian Law of Estate

If a co-owner decides to sell his part of the real estate, this co-owner is obliged to offer his part in the first place to the others co-owner.

Special Legal Protections for Partie

If the buyer considers that the transaction of real estate is tainted in some way, he may claim in the court the validity of his purchase. The taint – reason for petition can be:

- → An error concerning the important characteristics of the property
- → Misrepresentation: the seller is not the owner of the property, but he acts as a owner in front of seller and tricks the buyer into purchasing;
- → Violence /physical or mental / voids a sale.
- → Lack of consent
- → Contradiction to the law
- → Breach of the required form
- → Violation of rights of the creditors, etc.

The buyer may claim voidance of the sale – if the property is improper for the use, restrictions to use to such an extent that the buyer cannot use his new property fully, a prohibition to build on land.

Leases

Leases agreements are frequently concluded in Bulgaria. Real property can be rented under lease agreements.

Bulgarian contracts and obligations act regulates residential and commercial leases, the maximum lease term (10 years – not applicable for all the legal entities as commercial transaction), obligation and rights of the tenant and lesser. The tenant may be given a right to renewal of the lease, if not the owner wishes to rent to other tenant, to sell or live in the building.

Rural leases are regulated as general in the same way: automatic renewal rights, limits to the use of the land, etc.

The notary form is not compulsory for the lease agreement.

Zoning, Building Permits, etc.

Every building (residential and commercial) requires a prior permit issued by the local municipal and administrative authorities in the connection with the detailed land plan, zoning rules and regulations. Land is classified in some categories (for example: urban, farmland, forests or protected land).

The reform in the zoning, that started over a decade ago, representing the entering into force a cadastre card where each property has unique for the whole country number is already working, although it still does not cover the entire territory of the country. Leading authority for this reform and the service provided with the new cardis the state agency - the Cadastre, geodesy and cadastre agency.

Wills

A will, signed by a foreigner before a notary public in Bulgaria is recognized in Bulgaria. A will signed abroad is recognized in Bulgaria if one of the following is met:

1. The will is valid under the law of the country, where the will is executed or
2. The will is valid under the law of the country, which is generally applicable to the person at the moment of the execution of the will or at the moment of his death or
3. The will is valid under the law of the country, where the person has his domicile or permanent abode at the moment of the execution of the will or at the moment of his death.

A foreigner may also choose the applicable law. This shall be done in a separate statement in the will itself provided this statement is signed independently from the will statement.

Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession is implemented in the Bulgarian legislation and is applicable

Bulgaria

Tax Law

In response to the development of market attitudes Bulgaria carried out a number of changes within the last decades in its legislation including tax legislation. During that period major reforms have been put in place, which regulate the tax liabilities of economic subjects/local and foreign/ for their operation on the territory of Republic of Bulgaria. Now it is possible to say that Bulgarian tax legislation is in compliance with the legislation of the European Union.

Significant Development

The tax regulations of the European Union are applicable in Bulgaria and the intercommunity rules are implemented in the Bulgarian legislation.

Tax on Corporate Income

Corporate profits are levied at **10% rate.** The profits received from sale of shares and other financial instruments are not levied with tax, but only in case if the shares and the financial instruments are registered on Bulgarian Stock Exchange

Corporate Residents and Objects

The Corporate Income tax Act taxes profits of Bulgarian and foreign legal entities, which have been generated on Bulgarian territory, through a place of business or permanent establishment. This law also regulates the taxation of income of foreign legal entities and individuals such as dividends, interests, royalties.

The maximum tax rate on these sources of income is 10%. Where there is a double tax treaty between Bulgaria and the country of origin of the foreign company (individual), the treaty rates are applicable.

Other Taxes

VAT

VAT rate on the business turnover is 20 %. Generally, all supplies are taxable with the exception of explicitly designated supplies such as medicine, medical services, social services, financial services. Some services and goods are with lower taxation of 9%. Such are the tourist services, books, newspapers, goods and foods, proper for babies.

Transfer Tax (Local municipal tax payable upon transfer of ownership over real estate)

In Bulgaria this tax is applied only on transfers of real estates and vehicles. From the 2011 its rate is between 0.1 – 4.5 % of the price of the real estate included in the deed. The exact percentage is determined with a decision of the Municipal council in every municipality.

Stamp Duty

Stamp duty is paid to the Registry Agency upon the transfer of ownership over a real estate: its rate is 0.1 % of the price of the real estate included in the deed.

Property Tax

This tax is levied on the property of individuals and businesses. Taxable properties are only real estates and vehicles. The tax rate depends on the value of the property, its location and type.

Income Determination

Inventory is valued in compliance with the accounting policy of the companies, worked out on the basis of IAC and IFRS. Applicable Standards give companies the opportunity to adjust the value of the inventory with the market prices, but for the tax purposes, the effect of these transactions on the net operating profit is eliminated.

- → **Capital gains:** Gains from transfer of shares and participations are part of the operating profit of the companies.
- → **Intercompany domestic:** Dividends arising from shares or participations in Bulgarian companies and accruing to Bulgarian company or person are taxed at a 5% rate. The capitalized part of distribution of dividends is exempted from taxation. Companies or persons, which are local residents of countries of EU, are free of withholding tax on dividends if they hold at least 20% of the shares or participations and not for shorter term than a year.
- → **Foreign income:** As mentioned above, foreign income is considered as a part of the income of the local entity. Two ways of taxation are possible – application of rules of a double tax treaty /if there is such/ or of the right to a tax credit paid for identical or similar taxes in the foreign country.
- → **Deductions:** Necessarily entailed expenditures for the operation of the company are generally deductible, with some exceptions. These are expenses on cars used for management needs, gifts and entertainment and some social benefits received from employee for the account of employer. These expenses are deductible, but they are subject to a withholding tax at a 10 % rate. The tax paid is recognized as an expense for operation of the company.
- → **Depreciation and depletion:** According to the applicable accounting standards, each company can choose a method of depreciation. However, for the purposes of taxation the sum of depreciation is limited to the tax-deductible depreciation rates for each group of assets.

  Commercial and administrative buildings: 4%
  Industrial buildings and facilities: 4%
  Machinery, equipment and apparatus: 30%
  Office equipment and furniture: 50%
  Automobiles: 25%
  Other vehicles: 10%
  Intangible fixed assets not more than: 30%
- → **Net operating losses:** According to the legal provisions net losses can be carried forward for five years.

Group Taxation

There is no special tax regime for holding groups.

Tax Incentives

Taking into consideration the low tax rate in Bulgaria, tax incentives are not such an important a factor. In spite of this, there are some tax allowances for manufacturing companies.

Tax Administration

Returns: By March 31 of each year, companies are obliged to file a tax return accompanied by a balance sheet and some other statements for the results of its operation for the previous year. As of the same date the balance of the annual tax liability has to be paid too. Advance payments are required. Their size is calculated at the basis of the profit from the previous year and divided into 12 monthly instalments. For a new company or a company that was liquidated previous year in a loss position, the advance payments are quarterly on the base of actual results.

Withholding taxes on dividends, interest and royalties

Non treaty rate 10 %. Bulgaria has signed and is a party to a number of Double Tax Treaties and Double avoidance tax agreement dealing with the withholding taxes.

- → General note: The individual tax rate in Bulgaria is 10%.
- → All residents, who realize income in the territory of Bulgaria, are obliged to pay tax. Bulgarian residents are taxed on their worldwide income. Sources of individual income can be labour agreements, rendering services/ lawyers, architects, etc./, or economic activities like agriculture, capital gains and others.
- → For 2023 employees have to contribute 10.90 % of their gross salary to fund social security and 3.2 % to fund health benefits. All of these are deductible from the gross income to form the taxable base. The rates are changed in the beginning of every year.
- → Capital gains tax is levied at the source and the tax is final. This income is not included in the taxable base of the individual.
- → Personal allowances: allowances are available only for people with children up to the age of 18.
- → Tax credit is possible only for Bulgarian residents for their foreign income.

Transactions

All transactions of a total amount exceeding BGN 10,000 should be transferred via bank account, no cash payments are permitted for amount higher than this.

Cyprus

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Michael Damianos & Co LLC (the “firm” or “we” or “our”) is a boutique law firm based in Nicosia, founded in 2010 by Michael Damianos. Before practising in Cyprus, Michael Damianos qualified and worked as a solicitor at the London offices of two international law firms, where he was involved in corporate, commercial and regulatory work mainly in the energy sector.

The firm’s practice is highly international with a strong corporate, banking and finance, commercial, energy, private client, intellectual property and data protection, real estate and employment law focus. In addition, the firm undertakes work for a plethora of international clients in various industry sectors such as technology and telecoms, renewable energy, oil and gas, mining, real estate, construction, retail, entertainment and general hospitality, pharmaceuticals, shipping/leasing, fintech, prop-tech and general e-commerce.

Being an internationally focused firm, we can assist clients with their legal needs in almost 200 jurisdictions around the globe. The firm is instructed on an everyday basis by a good number of international law firms with respect to their legal needs in Cyprus

The firm’s objective and commitment is to provide the best quality, practical and cost-effective advice and services to its clients and to rapidly respond to their instructions and needs. The firm has a diverse clientele, ranging from international banks and other financial institutions to multinational organisations, international and local corporates, asset managers, high net-worth individuals and family offices, local authorities and utilities boards. With respect to geographical locations, the firm’s clientele ranges from Europe to the other side of the Atlantic, and from Asia to Australia, proving that the firm’s business is highly internationally focused. Despite the diversity of the firm’s clients, the firm recognises that each client is unique with particular business concerns and needs and, therefore, the firm exercises a personal commitment to all its clients.

In addition to the firm’s purely legal work, the firm runs a successful corporate services department. The firm incorporates Cyprus companies (along with companies in various other jurisdictions, mainly offshore) to suit its clients’ needs and provides a complete range of fiduciary/corporate services to such companies (such as the provision of company secretarial services, registered office address, company directors, company nominee shareholders and bank account opening). The firm is also able to assist its clients to establish representative offices in Cyprus and, through its associated companies, provide tax substance in accordance with their needs.

Areas of practice

Mergers and Acquisitions
General Corporate Advice
Insolvency
Capital Markets
Banking and Finance
Energy
General Commercial Work
Real Estate
Intellectual Property
Data Protection
Private Client
Employment
Immigration

Corporate Law

Cyprus is an ideal international business centre for all kinds of businesses and individuals. One should carefully consider the structure of the relevant entity before proceeding with its incorporation. There are the following legal entities/vehicles under Cyprus law:

Private Company Limited by Shares

The most common legal entity/vehicle for carrying out business in Cyprus is the private company limited by shares and the main characteristics of such a company are the following:

- The company is an entity with a separate and distinct personality from its members and the liability of its members is limited to the amount, if any, unpaid on the shares respectively held by each member.
- The minimum number of shareholders is one and the maximum number is fifty.
- Invitations to the public for acquiring shares or debentures are strictly prohibited.
- Issuance of bearer shares is prohibited.
- There is no minimum issued and paid up share capital for such companies, but some share capital must exist.
- The company must have its registered office in Cyprus.
- The company must have a secretary, who may be local or foreign, natural or legal person. It is customary for compliance purposes for the secretary to be local.
- The minimum number of directors is one and there is no maximum number. Directors may be local or foreign, natural or legal persons. However, it is suggested that the majority of directors are Cypriot residents so as to ensure that the company is managed and controlled in Cyprus in order for the Company to be considered Cyprus resident for tax purposes and be able to benefit from relevant double tax treaties.
- Meetings of shareholders and board of directors may be held anywhere in the world, but for tax purposes it is advisable for, at least board meetings, to be held in Cyprus.
- The company must have a memorandum and articles of association prepared by a lawyer in Cyprus, which must be signed by the subscribers and filed with the Registrar of Companies in Cyprus.
- The company's articles of association must provide for some restrictions for transferring shares.

Public company limited by shares

This is a more regulated type of entity and it is usually used either when the company has a large number of shareholders or when it has to be listed in a stock exchange in Cyprus or abroad. Its main characteristics are the following:

- → The company is an entity with a separate and distinct personality from its members and the liability of its members is limited to the amount, if any, unpaid on the shares respectively held by each member.
- → The minimum number of shareholders is seven and there is no maximum number.
- → The minimum number of directors is two and there is no maximum number. Directors may be local or foreign, natural or legal persons. However, it is suggested that the majority of directors are Cypriot residents so as to ensure that the company is managed and controlled in Cyprus in order for the Company to be considered Cyprus resident for tax purposes and be able to benefit from relevant double tax treaties.
- → The minimum amount of share capital is €25,629.
- → Invitations to the public for subscribing for shares or debentures are allowed.
- → Issuance of bearer shares is prohibited.
- → The Company must have its registered office in Cyprus.
- → The Company must have a secretary, who may be local or foreign, natural or legal person. It is customary for compliance purposes for the secretary to be local.
- → Meetings of shareholders and board of directors may be held anywhere in the world, but for tax purposes it is advisable for, at least board meetings, to be held in Cyprus.
- → The company must have a memorandum and articles of association prepared by a lawyer in Cyprus, which must be signed by the subscribers and filed with the Registrar of Companies in Cyprus.
- → There is no restriction in transferring shares.

Private company limited by guarantee

A company limited by guarantee is a private company in which the liability of its members is limited by the memorandum of association to the amount that the members undertake to contribute to the assets of the company in the event of the company's winding up.

This type of company is mostly used for associations, charities and for the promotion of non-profitable interests such as education, art, science and sports.

The memorandum of association of a company limited by guarantee must contain a provision stating that each of its members undertakes to contribute to the company's assets in the event of it being wound up while she/he is a member, or within one year after she/he ceases to be a member, a sum which will not exceed a specified amount.

It should be noted that the guarantee applies in relation to amounts with respect to the debts and liabilities of the company and the costs of it being wound up. Also, past members of the company are only liable for the company's debts and liabilities which occurred before they ceased to be members.

A company limited by guarantee may be incorporated with or without any share capital. A company limited by guarantee without any share capital constitutes the guarantee company in its pure form, whilst a company limited by guarantee with a share capital is a hybrid form of company which combines elements of both the guarantee and the share company.

Needless to say, this is an unusual type of company since it is not used for business purposes.

Partnerships

A partnership is a relationship between two or more persons (legal persons or natural persons) who carry out business together with the purpose of obtaining profit.

Traditionally, Cyprus law allows for general and limited partnerships, but since October 2015 the law also provides for partnerships limited by shares.

In a **general partnership** all partners are equally and jointly liable with all the other partners for all the debts and obligations of the partnership.

In a **limited partnership** one of the partners (the general partner) is liable for all the debts and obligations of the partnership while the remaining partners (the limited partners) may have limited liability up to the amount they have contributed.

In terms of a **partnership limited by shares,** which has been also defined as a partnership, having a share capital, the liability of the limited partners is limited up to the amount which remains unpaid (if any), on the shares that they hold (which is just like with companies).

An important distinction which needs to be pointed out between any limited partnership under Cyprus law and a public or private company limited by shares is that the partnership is not considered as a legal entity with a personality separate and distinct from its partners as it applies in companies limited by shares. Basically, the actions of a partnership are the actions of its partners acting in their personal capacity and in this respect the partners shall be liable in case of an action against the limited partnership.

In light of the fact that a partnership is not a separate legal entity, when taxation arises it is the partners who are subject to taxation and not the partnership per se. The typical tax treatment of a partnership is that the income of the partnership is considered as income of the actual partners. Each partner's share of profit is added to their overall income and shall be taxed accordingly as personal income/corporation tax under the applicable tax laws of Cyprus.

Cyprus international trusts

A Cyprus international trust (a "Trust") can be defined as the obligation which is placed upon a trustee by the settlor to manage the trust property for the benefit of the beneficiaries in accordance with the relevant trust deed. Trusts are commonly found in common law jurisdictions.

The settlor of a Trust and the beneficiaries must not be residents in Cyprus during the year immediately preceding the creation of the trust while the trustee, or at least one of the trustees, must be resident in Cyprus for the whole duration of a Trust (and she/he must be a licensed trustee such as a lawyer or an accountant). A Trust may last for an indefinite period of time. The settlor has the right to reserve many powers including, the powers to revoke or amend the Trust, to appoint and remove trustees and protectors, to change the law regulating the Trust or the place of its administration. The trustees of a Trust are bound by confidentiality and cannot disclose information unless they are ordered by a Cyprus Court to do so in special circumstances.

Trusts are usually set up for wealth management purposes and family arrangements, such as to hold property for minors.

It should be noted that other than Cyprus international trusts, Cyprus law allows the creation of local trusts, where the basis is similar but not identical, which is something that is beyond the scope of this note.

Foundations and societies

Foundations and societies are not really business vehicles and are only used for charitable or non-business purposes.

With respect to foundations, these are entities dedicated to a specific non-profit purpose such as, between others, the prevention of poverty or the promotion of education or health.

With respect to societies, these are entities where at least twenty people contract for the achievement of a non-profitable purpose and it does not include political parties or trade unions.

Needless to say, these types of organisations are uncommon for international businesses.

Foreign Investmnets

Cyprus offers a strategic location at the crossroad of three continents, advanced infrastructure and high quality of life. It is an ideal investment gateway to the EU, as well as a portal for investment outside the EU, particularly into the Middle East, CIS, India and China. As a member of the wider EU and Eurozone community, Cyprus offers to investors both safety and stability, as well as market access to more than 500 million EU citizens. The local infrastructure is ideally suited for business people who need to get things done due to its modern road network, extensive port facilities and its two new international airports.

One of Cyprus' strongest advantages is its human talent – Cyprus has a diverse, well-educated, highly skilled and multi-lingual workforce which provides top quality services, including accounting, auditing, tax, business administration, legal, investment and funds management. This advantage is complemented by a plethora of banks, a robust and transparent legal system based on common law, and a regulatory framework that ensures transparency and reliability in business practices. Cyprus' legal system is widely recognised as a business-friendly and effective system which is also fully compliant with the EU and international regulations against money laundering. In addition, Cyprus provides tax-efficient structures, which makes it very attractive in terms of relocation of a business and even its current employees, but also wealthy individuals due to its attractive resident non-domiciled program.

Finally, as part of a new strategy, the Cyprus government has developed a series of actions and reforms in several areas, aiming to enhance Cyprus' position as an international and sustainable high-growth business centre, further analysed below.

Registration of investment

As a main rule, there are no requirements for foreign investors to register or obtain the authorities' permission for making investments, and there are no restrictions on the foreign ownership of Cypriot shares or bonds.

Cypriot companies must submit a registration to the Department of Registrar of Companies and Intellectual Property and to the tax authorities before they start operations.

With regards to investments in real estate in Cyprus, EU nationals and Cypriot companies controlled by EU nationals can register any type of property in their name without restrictions. Non-EU nationals/Cypriot companies controlled by non-EU nationals must obtain permission from the Council of Ministers (which has assigned this power to the District

Officers of the district where the property is located) to register property in their names and there are restrictions with respect to the size and use of such property. This permission is granted as a matter of course to all bona fide purchasers unless it is considered to be against public interest. Please see the chapter regarding Real Estate for further information.

Setting up a business

A standard company takes 5-10 days to register with the Department of Registrar of Companies and Intellectual Property and the tax authorities before it is up and running.

The Cyprus government has created a Business Facilitation Unit (BFU), intended to function as a central contact point for the setting up of businesses in Cyprus by eligible companies, as explained below. The BFU's main responsibilities relate to the provision of information and assistance with the incorporation of entities in Cyprus (such as assistance with the registration of companies, business name approvals, registration with the social insurance register and registration with the tax/VAT register), as well as the provision of guidance on the required licences for operating a business in Cyprus. Additionally, it aims to facilitate and accelerate the issuance and renewal of residence and employment permits to third country nationals working for companies registered with the BFU.

Foreign employees

Nationals of other countries within the EU or European Economic Area (EEA) are allowed to work and live in Cyprus without obtaining a work permit or other permits (but notifications must be made to the authorities).

Nationals of countries outside the EU or EEA will need a permit to enter and work in Cyprus. The type of permit required depends on, among other criteria, the employee's salary, whether the employer is a company of foreign interests or not, and the type of work to be performed in Cyprus.

As mentioned above, the existing policy for the employment of third country nationals by Cypriot companies of foreign interests, which enabled Cypriot companies of foreign interests meeting certain criteria to employ third country nationals without going through the standard local labour test, has been revised and broadened. Companies eligible register with the BFU and employ third country nationals without the need to go through the standard local labour test must meet one of the following criteria:

- → the majority of the company's shares are owned by third-country nationals; or
- → in case that the percentage of the company's shares owned by a third-country national is equal or less than 50%, the company is eligible if that foreign participation has a value of at least €200.000; or
- → Public companies registered on any recognised stock exchange; or
- → Companies of international activities (formerly off-shore), which operated before the change of regime, whose data are held by the Central Bank; or
- → Cypriot shipping companies; or
- → Cypriot high-tech/innovative companies; or
- → Cypriot pharmaceutical companies or companies active in the sectors of biogenetics and biotechnology; or
- → Companies of whom the majority of the total share capital is owned by persons who have acquired Cypriot citizenship by naturalization based on economic criteria, provided that they prove that the conditions under which they were naturalized continue to be met; or
- → Cypriot Private Institutes of Tertiary (Higher) Education licensed by the Ministry of Education, Sport and Youth.

An investment criterion is additionally applicable and the company is obligated to prove an initial investment in the Republic of Cyprus of at least €200.000, which should be proven by presenting the appropriate certificates (e.g. bank statement at the time of deposit of the amount or proof of investment (purchase of office space and/or office equipment)).

The maximum cap that used to be applicable for the employment of third country nationals has been abolished. Eligible companies can now freely employ any number of third country nationals who are considered to be highly skilled, without limitation as to their profession/skills and without having to go through the standard local labour test. It is further noted that issuance of employment/residency permits has become much faster, now taking approximately only one month.

The relevant requirements are now as follows:

- → Eligible companies must ensure that 30% of their total staff is EU/Cypriot within 5 years from the inclusion of the company in the BFU; and
- → the third-country employees to be employed by an eligible company must receive a minimum gross salary of €2.500 (it is noted that third-country nationals who already hold residence and employment permits at the BCS Key Personnel level of companies of foreign interests, with a monthly gross salary of €2.000 or more, will continue until 31.12.2026, to renew their residence permit at the same employer without an increasing their payroll) and must possess either a university diploma/equivalent qualification or prove that they have at least two years of experience in a corresponding employment position. In addition, the employment contract with the eligible company must have a duration of at least two years.

Social insurance

Cyprus has intensified the efforts to conclude bilateral agreements with third countries, so that when a third-country national who has paid social security contributions in Cyprus returns for permanent residence in his/her country, he/she is able to transfer the contributions paid in Cyprus to his/her country under certain conditions.

Introduction of the digital nomad visa

A digital nomad visa has been introduced, which is essentially a residence visa enabling nationals from non-EU/EEA countries, to reside temporarily in Cyprus and work remotely from Cyprus for an employer registered abroad. The duration of the visa is for one year and can be renewed for a further two years. The current ceiling of 500 visas has been reached, but it is expected that this shall be expanded. The main conditions for obtaining the digital nomad visa are:

- → Providing evidence that the applicant has sufficient funds, i.e. a stable income to cover living expenses during the stay in Cyprus, without requiring recourse to the national social welfare system. The amount of sufficient funds is set at €3.500 (net) per month and can be proven by the employment contract or other proof of employment of the applicant and bank account statement (the above amount is increased by twenty percent (20%) for the spouse or civil partner and by fifteen percent (15%) for each child).
- → Having medical insurance in place; and
- → providing a clean criminal record from the country of residence.

If the financial supporter and his/her family reside in Cyprus for one or more periods totalling more than 183 days within the same tax year, they are considered tax residents of Cyprus, provided that they are not tax residents of any other country.

Permanent Residency

(Immigration Permit)

Non-EU investors can become permanent residents of Cyprus by applying for an immigration permit if they meet the following criteria:

- → the applicant must invest at least €300.000 in one of the following investment categories:
  - a. investment in a house/apartment, which should concern a first sale of at least €300.000 (plus VAT); or
  - b. investment in real estate (excluding houses/apartments): purchase of other types of real estate such as offices, shops, hotels or related estate developments or a combination of these with a total value of €300.000. The purchase can be the result of a resale; or
  - c. investment worth €300.000 in a Cypriot company's share capital, which has a proven physical presence in Cyprus and employs at least five people; or
  - d. investment worth €300.000 in units of Cyprus Investment Organization of Collective Investments (forms of AIF, AIFLNP, RAIF);
- → the applicant must provide evidence of a secure annual income of at least €50.000 This annual income increases by €15.000 for his/her spouse and by €10.000 for each of his/her or his/her spouse's dependent minor child. This income should derive from abroad and may include salaries or wages, pensions, dividends from shares, bank deposits interest, rents, etc., which can only be proved through a tax return declaration from the country he declares tax resident, in cases where the applicant chooses to invest in a house/apartment. In calculating the total amount of income, the spouse's income may also be taken into account; and
- → the applicant and his/her spouse must meet certain other qualitative criteria, including providing a clean criminal record certificate from their country of origin and their country of residence, if different, and generally, they should not pose a threat in any way to public order or public security in Cyprus. Additionally, the applicant and his/her dependent family members must submit a health insurance policy certificate for medical care covering inpatient and outpatient care.
- → In cases where the applicant chooses to invest as per paragraphs 1(b), (c) or (d), he/she should provide evidence of accommodation in the Republic (e.g. title of ownership or contract of sale and proof of payment for the property or rental agreement).
- → In cases where the applicant chooses to invest as per paragraph 1(a), but the number of bedrooms of the investment property cannot satisfy the needs of the dependent members of his/her family, they should indicate another property or properties which will serve as the residence of these individuals (e.g. title of ownership or contract of sale and proof of payment for the property or rental agreement).

It is noted that this type of permit does not allow the undertaking of any form of employment in Cyprus, with the exception of the applicant and his/her spouse employment as directors in a company in which they have chosen to invest under this policy. Finally, holders of this permit must visit Cyprus once every two years in order to maintain it. As mentioned above, there are also other types of residence permits to be acquired, including working permits that are not based on high investments.

Consideration of broadening of tax incentives

The tax authorities are considering the expansion/extension of a number of tax incentives that relate to either personal income of non-domicile employees or investments into innovative business/research and development expenditures.

Faster naturalisation

In a recent development the Cypriot Parliament has amended the Civil Registry Law, altering the requirements for the naturalisation of aliens with the aim of attracting specialised talent from abroad. Now, third country nationals who are highly skilled will be able to obtain Cypriot citizenship (along with their family members), provided that they have resided in Cyprus for 4 or 3 years (rather than 7 years as previously required) depending on the level of proficiency in the Greek language. In addition the law aims to provide a more flexible way of calculating the employees' period of stay in the Republic of Cyprus, by taking into account the nature of their work and any necessary absence abroad for business purposes.

Labour Law

Below is a brief overview of some of the main legislation and obligations which employers must know when employing persons in Cyprus.

Collective bargaining agreement

Many Cypriot employees are members of a trade union, and many collective bargaining agreements are in force within the Cypriot labour market. Collective bargaining agreements can apply to a "business/company" level or even to a "sector of economy" level e.g. to employees working in hotels or the construction sector. There are sectors of economy which are partly or completely covered by collective bargaining agreements such as the semi-government sector, the banking sector and the local council sector.

Collective bargaining agreements contain terms and conditions of employment, such as wages, salary increases, working hours, overtime payment, annual leave, pension etc. Although it is voluntary for an employer to enter into a collective bargaining agreement in sectors which are typically covered by such agreements, in practice, an employer that does not enter into such an agreement may face difficulty in attracting and sustaining a qualified workforce, especially if the employment terms offered by such employer are less favourable than the terms provided by the collective bargaining agreement.

Collective bargaining agreements are not legally enforceable documents. Nevertheless, due to custom and practice, and with the passage of time, where these are enforced they eventually become incorporated in the personal terms of employment of each employee and, thus, become legally binding.

The fact that collective bargaining agreements are not legally enforceable documents means that disputes arising from their violation cannot be settled in the Labour Disputes Court but are dealt with according to the provisions laid down in the Industrial Relations Code (a gentlemen's agreement between the main trade unions and employer organisations for the settlement of disputes).

The employers' obligation to inform the employees of the employment terms

According to the relevant legislation, the employer is legally obliged to inform its employees of all essential employment terms within one month from the date of commencement of employment.

Such information must be provided in writing, typically in the employment contract, an offer of employment letter or any other document signed by the employer. The employer can also make reference to any laws, regulations, orders or collective bargaining agreements, but only in relation to certain terms of employment. The law specifies only the minimum number of terms that the employee must be notified of, so the employer must consider whether it would be better to prepare an employment contract that fully reflects the terms of employment and any benefits offered.

Wages

In accordance with the Minimum Wage Limit Decree of 2022 that comes into force on 01/01/2023, the national minimum wage is determined. According to this Decree, every employee who works full-time must receive an initial monthly salary of at least €885 gross and after a 6-month continuous period of employment with the same employer, this salary must be increased to at least €940 gross. The working hours of the employees are the one in force at the time of the issuance of the said Decree. The provisions of this Decree do not apply to domestic workers, agricultural workers and shipping workers, as well as to employees for whom the Minimum Wages in the Hotel Industry Decree of 2023 is applicable.

Working hours and annual leave

The standard number of working hours in employment contracts and collective bargaining agreements is 38-40 hours per week, including small breaks but excluding lunch breaks. The law on working hours provides, amongst others, for minimum daily and weekly rest, minimum break time, annual leave, maximum weekly working hours and night work. Employees are entitled to at least 11 continuous hours of rest per day. If the daily period of work is greater than 6 continuous hours, the employee is entitled to a 15-minute break. The maximum weekly working hours should not exceed 48, including overtime. The maximum limit can only be extended if the employee consents to this and only if the employee can refuse extending this without incurring any adverse consequences.

Employees that work for 5 days per week are entitled to a minimum of 20 days annual leave (or 21 days if the company is exempted from the holiday fund contribution) and employees that work for 6 days per week are entitled to a minimum of 24 days annual leave (or 25 days if the company is exempted from the holiday fund contribution). The annual leave is paid either directly by the employer or by the Central Holiday Fund. Employers have an obligation to contribute to the Central Holiday Fund unless they obtain an exemption on the basis that they offer more favourable terms than those provided by the law to their employees.

Maternity, paternity and parental leave

Employees who have completed six months of continuous employment at the company, are entitled to parental leave after the birth or adoption of a child for a period up to 18 weeks. The parental leave is provided in the case of physical parents for children up to eight years old and in the case of foster parents within eight years from adoption for children up to 12 years old.

Employees who become parents have the following rights:

- Women are entitled to a total maternity leave of 18 weeks, 11 of which must be taken during the period beginning two weeks before the expected birth week. In case of a second childbirth, the period of maternity leave is extended to 22 consecutive weeks. In case of a third childbirth or more than three childbirths, the period of maternity leave is extended to 26 consecutive weeks. Women are entitled to a maternity grant of 72% of their insurable earnings from the Social Insurance Fund.
- Women who gave birth and are breastfeeding or have increased responsibilities for the care/raising of the child, can, for a 9-month period commencing on the date of birth or maternity leave, interrupt their employment for one hour or go to work one hour later or leave work one hour earlier. The one-hour excuse period is considered working time.
- Men are entitled to take two consecutive weeks of paternity leave within the period starting from the birth week and ending two weeks from the date on which the maternity leave ends. Men are entitled to a paternity grant of 72% of their insurable earnings from the Social Insurance Fund for the whole of the period of their paternity leave.
- Between the period starting after the expiry of the maternity/paternity leave and ending on the completion of the child's 8th year, each parent is entitled to parental leave for 18 weeks provided that the employee in question has completed six months of continuous employment at the employer.

Women are entitled to a total maternity leave of 22 weeks, 11 of which must be taken during the period beginning two weeks before the expected birth week. In case of a third childbirth or more than three childbirths, the period of maternity leave is extended to 26 consecutive weeks. Women are entitled to a maternity grant of 72% of their insurable earnings from the Social Insurance Fund.

Men are also statutorily protected against termination of employment/notice of termination of employment during the period starting from the date of the written notice of the employee for his intention to exercise his right to paternity leave until the expiry of the paternity leave. This does not apply in cases where they are found guilty of a misdemeanour, or the business at which they are employed closes down or, if they are on fixed term employment, their contract period has expired.

Non-discrimination

It is prohibited to discriminate, directly or indirectly, on the grounds of gender, racial or ethnic origins, sexual orientation, age, disability and religion (and religious beliefs).

Non-compliance with the law is punishable by a payment of a fine or by imprisonment or both. Compensation to the employee (or job applicant) may also be payable.

Termination of employment

The Termination of Employment Law provides for an exhaustive list of grounds that can be based upon for lawful termination. These are the following:

- Omission/failure of the employee to perform his/her duties in a reasonably satisfactory manner;
- the employee has become redundant;
- force majeure;
- expiry of fixed-term contract;
- completion of pension age;
- completion of retirement age; and
- the conduct of the employee has made the employee subject to dismissal without notice.

The employment legislation has a provision for a probation period of 26 weeks. In the event of termination of employment during the probation period, there is no minimum notice period. After the expiry of the probation period of an employee, termination for any reason other than one of the abovementioned grounds is unlawful. The burden of proving that a dismissal was lawful is on the employer (unless the employee resigned claiming constructive dismissal, in which case the burden of proof lies with the employee).

If a court determines that the dismissal is unjustified, the employer may be liable to pay compensation to the employee.

There are minimum statutory notice periods for both the employee and the employer depending on the duration of employment, but this does not prohibit the parties to agree longer notice periods than those provided by the law in collective bargaining agreements or the individual employment agreements.

Collective redundancies

The Collective Redundancies Law may be applicable when employees are made redundant, depending on the number of affected employees and the number of employees employed by the employer in general. This law requires that the employer is obligated to inform and consult the employees before contemplated redundancies become effective, as well as to inform the Ministry of Labour, Welfare and Social Insurance.

Transfers of undertakings

The Safeguarding of Employees' rights in the Event of Transfers of Undertakings, Businesses or Parts of Businesses Law, which implements the Directive 77/187/EEC, protects employees' rights in the event of a transfer of a business or part of a business by way of a legal transfer or merger.

In the event of a transfer of a business or undertaking, the employment rights and obligations of the employees of the business or the part of the business being transferred will automatically be transferred to the new owner of the business who will automatically assume those rights and obligations instead of the vendor for at least one year.

The relevant law imposes on the new employer the obligation to notify the employees as to the specifics of the transfer (such as the date of the transfer, the economic consequences of the transfer for the employees, etc).

Cyprus

Real Estate

Types of real estate

In Cyprus, one can either own or rent real estate, regardless of whether it is for business or private purposes.

Ownership restrictions

EU nationals and Cypriot companies controlled by EU nationals can buy any type of property without restrictions.

Non-EU nationals and Cypriot companies controlled by non-EU nationals are only entitled to register real estate in Cyprus in their name if they obtain permission from the Council of Ministers (which has assigned this power to the District Officers of the district where the property is located). This permission is usually granted unless the reputation of the applicant is questionable and it is considered to be against the public interest to grant such permission to the applicant.

Registration in the Land Registry Department

In Cyprus, immovable property is purchased pursuant to a purchase agreement, followed by a deed of transfer, which is entered into the Land Registry Department. This land register shows the identity of the owner, all registered mortgages and encumbrances in relation to the property etc. In most cases, all other burdens and easements such as right of way etc. will also appear in the register.

Property title deeds might not be available for all immovable property and in such case, the purchase contract is lodged with the Land Registry Department as an encumbrance upon the property until the title deeds for that property are issued. Once the title deeds are issued, the transfer of the property takes place.

The land register system also serves as an easy and dependable way of providing security to lenders, as the ranking of priority of lenders will appear clearly on the property's list of mortgages and encumbrances. The registration of the mortgage will protect the mortgagee's rights against the mortgagor's other creditors.

Tax Law

Cyprus offers an attractive, efficient and transparent tax regime fully compliant with EU and OECD standards, complemented by and enhanced by an extensive network of over sixty double tax treaties, and is an ideal destination in terms of tax incentives and advantages for both legal and natural persons.

Individuals

An individual resident in Cyprus is liable to tax on his/her worldwide income, irrespective of whether it is remitted in Cyprus or not. Non-resident individuals are liable to income tax in Cyprus only on income sourced in Cyprus, for example rental income.

An individual is considered to be resident in Cyprus for tax purposes if he/she is present in Cyprus for more than 183 days in the year under consideration. This 183 days' requirement can go down to at least 60 days if among other criteria the relevant individual is not a tax resident in any other jurisdiction in the world.

The tax rates for individuals are progressive starting from 20% and going up to 35% as provided in the table below:

Annual Income €	Rate %	Tax €	Cumulative Tax €
0 - 19.500	0%	Nil	Nil
19.501 - 28.000	20%	1.700	1.700
28.001 - 36.300	25%	2.075	3.775
36.301 - 60.000	30%	7.110	10.885
60.001 - above	35%		

There are various deductions and personal allowances, in relation to the above tax rates such as donations to registered charities and payments into pension/insurance and social insurance plans which reduce chargeable income and consequently, income tax liability.

A non-resident who takes up employment in Cyprus and becomes resident is permitted a 20% tax free allowance or €8.550, whichever is lower on his/her employment income.

A non-resident who takes up employment in Cyprus, earning an annual employment income exceeding €100.000 is allowed a 50% tax exemption on this income.

A non-resident who takes up first employment in Cyprus, earning an annual employment income exceeding €55.000 and commencing employment from the 1st of January 2022 and onwards is allowed 50% tax exemption on this income for a period of 17 years.

It, most importantly, should be noted that high-net-worth individuals can benefit massively from the jurisdiction's resident-non-domiciled regime. Individuals who are considered to be non-domiciled tax residents of Cyprus, can benefit from no tax on certain categories of income such as interest, rents and dividends. This has proved extremely beneficial for many high-net-worth individuals over the last few years, who have decided to take this opportunity for wealth management purposes.

Dividend income is taxed in Cyprus only against Cypriot domiciled-tax residents (individuals) at a flat rate of 17 %. Interest income is again only taxed in Cyprus against Cypriot domiciled-tax residents (individuals and companies) at a flat rate of 30% with certain types of interest being liable to a reduced rate of 3%.

Companies

A company resident in Cyprus is liable to tax on its worldwide income.

A company is considered as a tax resident in Cyprus if its management and control is in Cyprus. Non-resident companies are liable to corporation tax in Cyprus only on income sourced in Cyprus, for example rental income. The same applies to branches of foreign companies in Cyprus, unless their management and control is in Cyprus.

As from 2023, a Cyprus incorporated company is by default considered a tax resident of Cyprus provided it is not tax resident in any other jurisdiction.

The corporation tax rate is a flat rate of 12.5% which is one of the lowest in the EU and the lowest in the Eurozone, thus making Cyprus an ideal country for setting up a business.

Dividend income is exempted from corporation tax and only Cypriot domiciled-tax resident individuals pay a contribution to the state in relation to that.

Profits from disposals of securities are exempted from corporation tax and so are profits from a permanent establishment abroad (subject to certain restrictions).

There are also group loss relief benefits and losses carried forward subject to certain conditions (for up to five years).

Withholding taxes

No withholding taxes apply with respect to (a) dividends paid to non-residents, (b) interest paid from Cyprus to non-residents, (c) royalties paid from Cyprus to non-residents (with the exemption where the relevant intellectual property is used in Cyprus, in which case the withholding tax rate is at 10% noting that in the case of cinematographic films the tax rate is at 5%), and (d) income on the liquidation of a Cypriot holding company.

Tonnage tax system

An attractive tonnage tax system fully approved by the EU is in place and can be utilised, subject to certain conditions, by the shipping sector and covering three main international maritime activities, namely ship-owning, ship management and chartering. Under the tonnage tax system, no tax is imposed on profits from shipping activities other than tonnage tax, no tax is imposed on profits from the sale of ships, and no tax is imposed on dividend paid from shipping or ship management profits.

Capital gains tax and inheritance tax

Capital gains tax is only imposed on gains from the disposal of real estate, provided that such real estate is situated in Cyprus. The same goes to disposals of shares in limited companies whose main activity is the sale of real estate in Cyprus. No capital gains tax is imposed on anything else under Cyprus law.

There is no inheritance tax in Cyprus.

Hong Kong

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Oldham, Li & Nie (OLN) is a highly regarded full-service law firm, whose commitment to professional excellence has been the cornerstone of the firm since its creation in 1987. The firm possesses many years of experience practising in Hong Kong and has a diverse set of global employees, embodying the firm's East-West culture.

OLN prides itself on having a practical approach as well as an innovative and commercially-minded outlook, stemming from over 35 years of experience in the private client and corporate commercial fields and their expertise in dispute resolution and the business world.

The firm currently has over 40 lawyers, admitted to one or more jurisdictions, including Hong Kong, France, the UK (England and Wales), several US states, Australia, Canada and Japan. OLN also has a thriving China Practice, carried on from its Hong Kong and Shanghai offices.

Areas of Practice

China Practice
Dispute Resolution
Financial Service & Regulatory
Insolvency & Restructuring
Japanese Practice
Private Client
Corporate & Commercial Law
Employm
ent and Business Immigration
French Practice
Insurance
Notary
Startups & Venture Capital
Commercial Fraud
Family Law
Fund Practice
Intellectual Property
Personal Injury
Tax Advisory

Corporate Law

This article provides a broad summary of the company law in Hong Kong. It begins by explaining the different types of companies, followed by the process of establishing a company and a comparison with other business vehicles. This article then discusses the two main types of rule books for a company: articles of association and shareholders' agreement ("SHA"). Lastly, it outlines the responsibilities and rights of directors and shareholders, concluding with a brief overview of the dissolution process for a company.

Forms of companies

A company is a type of business organization created through incorporation under the Companies Ordinance (Cap. 622) (the "CO"). The five main types of companies formed in Hong Kong under the CO are: (1) private company limited by shares, (2) public company limited by shares, (3) company limited by guarantee without a share capital, (4) private unlimited company with a share capital, and (5) public unlimited company with a share capital. The most popular type of companies in Hong Kong is private companies limited by shares. If your company is formed outside Hong Kong and has set up a place of business here, it must register as a non-Hong Kong company within one month after the establishment of the place of business in Hong Kong. (section 776 of the CO).

Formation of a company

To form a private company, individuals or corporate bodies can submit a signed copy of the company's articles and an incorporation form to the Companies Registry (the "CR"). The company must be formed for lawful purposes, as applications for unlawful purposes will be rejected. There are no restrictions on the nationality of shareholders under the CO. Any individual who has reached the age of majority can incorporate a company in Hong Kong, either alone or with others. The individuals who incorporate a company are commonly known as founder members, and the process is called promotion. In most cases, the founder members also become the first shareholders and/or directors of the company.

An alternative to forming a company is purchasing a shelf company from secretarial service providers. A shelf company is a pre-established company that has not yet conducted any business activities. Once purchased, the new owner can activate the shelf company by appointing new directors and secretaries. This process is quick and straightforward, making it a convenient alternative for persons who want to begin business the soonest. There is no significant difference between a shelf company and a company incorporated from scratch, as the name and articles of association can be easily changed to meet specific requirements.

Pros and Cons of a limited liability company vis-à-vis other forms of business vehicles

Below table summarizes the main pros and cons of a company vis-à-vis a sole proprietorship and partnership:

Advantages	Disadvantages
Shareholders and directors have limited liability for company debts.	Establishment and closing of business subject to more legal requirements and therefore more time-consuming.
General partners and sole proprietors have unlimited liability.	Relatively faster and easier to establish and close a business.
A company can raise funds easily by issuing shares or borrowing through debentures.	A two-tiered profits tax rate applies: 8.25% on assessable profits up to HK$2,000,000; and 16.5% on any part of assessable profits over HK$2,000,000 (as of the date of this article).
Partnerships and proprietorships cannot issue shares or debentures.	A two-tiered profits tax rate applies: 7.5% on assessable profits up to HK$2,000,000; and 15% on any part of assessable profits over HK$2,000,000 (as of the date of this article).
A company may still continue even if shareholders and directors die or go bankrupt.	Decision-making is generally more complex and subject to a higher chance of disputes.
Partnerships and sole proprietorships come to an end once the general partners and sole proprietors die or go bankrupt.	Due to their relatively simple structure, sole proprietorships and partnerships usually have quicker decision-making process.

Restrictions on transfer of shares in private companies

Section 11 of the CO provides that the articles of private companies must: (i) restrict a member's right to transfer shares; (ii) limit the number of members to 50; and (iii) prohibit any invitation to the public to subscribe for any shares or debentures of the company.

The articles of association and/or the SHA may contain a pre-emption clause which requires a member to offer their shares to existing shareholders before selling to an outsider. If the terms are the same, existing members have the right to purchase the shares first. Additionally, the transfer must be approved by the company's directors. If the directors disapprove, the transferee's name cannot be registered in the shareholders' register, and

they cannot exercise the rights attached to the shares they have paid for. Considering the factors mentioned above, it is recommended for someone planning to transfer to make sure that the directors will give their approval before proceeding with the transaction.

Company's articles of association

A company's articles of association lay down rules for (1) the company's relationship with outsiders and (2) the company's relationship with its members. According to CO, the articles have both mandatory and optional provisions. The company can also add other provisions to its articles as long as they are in compliance with the CO. Section 86 of the CO states that once the articles are registered, they become a binding contract (1) between the company and each member and (2) between members themselves. The company can enforce the articles against each member, and members can enforce them against the company and each other.

Shareholders' Agreement

A SHA is a legal document that sets out the rules and responsibilities for shareholders in a company. It covers important areas such as share ownership, voting rights, and company management. The main purpose of an SHA is to guide shareholders through future issues. It is recommended to create an SHA at the start of a company's formation, involving the founders and covering crucial details like the business plan, investment amounts, and roles. Unlike the articles, which are public documents, SHAs are private and more suitable for addressing sensitive matters like investment amounts, governance, and share transfer restrictions. SHAs can cover various aspects of the shareholders' relationship in a more detailed manner and can address specific issues unique to the company or shareholders. Further, SHA is a private document not accessible by public through company searches. A SHA generally binds the shareholders of a company and the company but not the public.

Division of powers between shareholders and directors

A company is a legal entity that can only act through its personnel. The main personnel of a company are the members in general meetings and the directors in board meetings. Shareholders own the company, but directors manage its affairs. Shareholders do not automatically have the right to manage the business unless they are also elected as directors. However, in small companies, the separation between ownership and management is usually less clear because the founders are often also the only shareholders and directors. According to the CO, certain specific matters must be addressed in general meetings, such as changes to the objects clause, articles, name, capital, reduction of capital, and removal of directors. The directors have the overall power to run the company's day-to-day operations.

Schedule 2 of the Companies (Model Articles) Notice (Cap. 622H) prescribes the model articles for private companies limited by shares ("Model Articles"). A company has the option to adopt some or all of the provisions from the Model Articles (section 79 of the CO). According to the Model Articles, the directors manage the company's business and affairs, and they have the authority to exercise all the powers of the company. In addition to their general authority, the Model Articles also specify certain powers that the directors must exercise, including using the company's seal, appointing additional directors or filling casual vacancies, calling general meetings, allotting shares, paying interim dividends, and rejecting share transfers.

Directors' duties

Directors have certain responsibilities and liabilities that come from different sources, such as the company's constitution, case law, and statute law. If a director fails to fulfil their duties, they could face legal action and be disqualified from their position.

Below table summarizes some major duties of directors:

Act in good faith
A company director is required to act honestly and in the best interests of the company. This includes considering the interests of all shareholders, both current and future. When fulfilling this responsibility, the director should strive to achieve fair outcomes for all members, to the extent possible.
Use powers for a proper purpose
The main purpose of a director's powers should be to benefit the company. If it is discovered that their primary motive is to benefit themselves or gain control of the company, their actions may be invalidated. Even if the director acted in good faith, they can still be in breach of this duty.
Exercise care, skill and diligence
According to Section 465 of the CO, directors are required to act with reasonable care, skill, and diligence. This implies that they should demonstrate the same level of care, skill, and diligence as a reasonably diligent person would in performing the director's duties for the company.

Directors' duties

A company operates based on the notion of majority rules. Important matters like appointing or removing directors and addressing directors' misconduct are decided through voting in the general meeting. As a result, the majority shareholders have control over the decision-making process. The opinions of minority shareholders may be neglected and/or suppressed by the majority. This strict application of the majority rules can result in the abuse of power by the majority.

Accordingly, the CO provides certain statutory remedies to address wrongdoing by the company's controllers. They include but not limited to the followings:

- → Section 86 of the CO states that once registered, the articles can be enforced by the company against its members, and by members against the company and other members. This section aims to grant every member the right to sue to uphold the articles' terms. As a result, even a minority shareholder can take legal action against the company or a majority shareholder if they violate the articles' terms.
- → Under section 724 of the CO, members of a company have the right to seek legal action if they believe that the company's actions are unfairly harming their interests. This remedy also applies to proposed actions that could harm members' interests. If the court approves the application, it can make various orders, including regulating the company's affairs, restraining the harmful act, and requiring the majority shareholders or the company to buy the shares of other members.
- → Subject to the articles, shareholders cannot view company documents without permission from the directors or through a resolution in a general meeting. However, Sections 740-743 of the CO allow minority shareholders to request the court to inspect company records if they suspect misconduct by the directors or majority shareholders. Shareholders representing at least 2.5% of the voting rights or any five shareholders can make the application. If the court determines that the application is made in good faith and for a valid reason, it may grant an inspection order.

Liquidation

Liquidation or winding-up of a company is a process where a liquidator is appointed to take charge of the company and collect its assets. The purpose is to distribute these assets in a fair manner to creditors and shareholders, ultimately dissolving the company. This process can occur whether the company is solvent or insolvent. There are two modes of winding-up: compulsory winding-up, which is ordered by the court, and voluntary winding-up, which is decided by the company itself. The main distinction between the two is that compulsory winding-up involves more court supervision and control.

→ Section 177(1) of the Companies (Winding Up and Miscellaneous Provisions) (Amendment) Ordinance Cap. 32 ("CWUMPO") outlines six reasons for compulsory winding-up. The two most frequent reasons are: (1) the company cannot pay its debts, and (2) the court believes it is fair and reasonable to wind-up the company.

→ Various ways a company can be voluntarily wound-up are outlined in section 228 (1) of the CWUMPO. They are: (1) the members can pass a special resolution to wind up the company; (2) where the articles of the company have a fixed duration period that has expired or an event occurs that leads to the dissolution of the company, the members can pass an ordinary resolution to wind up the company; and (3) the directors can decide to wind up the company by delivering a winding-up statement under s.228A of the CWUMPO.

Deregistration

To begin the process, all shareholders of the company must agree to the deregistration (section 750(2)(a) of the CO). The company must have either ceased operations for more than three months or never started operating at all. A Notice of No Objection needs to be obtained from the Inland Revenue Department and a form NDR1 then needs to be submitted to the CR. Once all documents are in order, the CR will issue an Approval Letter for the deregistration application and publish a notice in the Gazette. After the notice is published, there is a 3-month period for anyone to raise an objection. If no objection is received, a final notice will be published in the Gazette and the company will be deregistered.

Foreign Investmnets

Hong Kong's Foreign Investment Climate

The Hong Kong Special Administrative Region ("HKSAR" or "Hong Kong") welcomes foreign investments and maintains a non-discriminatory stance towards both foreign and domestic investors. Hong Kong operates a free-enterprise and free-trade "laissez-faire" economic system with minimal government interference in all sectors of the economy. Companies and individuals may import or export capital at their own discretion, and profits and dividends derived from a business in Hong Kong can be freely converted and remitted.

According to the data of the 2022 annual survey of companies in Hong Kong with parent companies located outside Hong Kong released by the Hong Kong government, as of 1 June 2022, 8,978 overseas companies have regional operations in Hong Kong, 1,411 of which operating as regional headquarters.

According to the United Nations Conference on Trade and Development ("UNCTAD") World Investment Report 2023, global foreign direct investment ("FDI") inflows to Hong Kong amounted to US$117.7 billion in 2022, ranked 4th globally, behind the United States, Mainland China and Singapore. In terms of FDI stock, Hong Kong was the world's 5th largest host with US$2,090.6 billion, after the United States, the Netherlands, Mainland China and the United Kingdom.

Business Entities Available to Foreign Investors

Generally speaking, there are 5 types of companies that can be formed under the Companies Ordinance (Cap. 622) (the "Companies Ordinance"), namely (i) private company limited by shares, (ii) public company limited by shares, (iii) company limited by guarantee without a share capital, (iv) private unlimited company with a share capital and (v) public unlimited company with a share capital, out of which a private company limited by shares is the most common form of business vehicle.

No distinction is made between foreign and domestic investors in terms of the types of business structures that may be used to carry on business in Hong Kong generally.

A foreign company that intends to carry on business in Hong Kong or simply test the water before committing to an investment in Hong Kong usually makes use of one of the following forms of Hong Kong business entities:

- → **A subsidiary company in form of a private limited company incorporated in Hong Kong.** Being an independent legal entity with limited liability, such subsidiary company is liable for its own debts and liabilities. In other words, liabilities arising from the subsidiary company's business will not extend to the foreign parent company;
- → **A branch office of the foreign company in form of a non-Hong Kong company registered under Part 16 of the Companies Ordinance.** As a branch office is treated as an extension of the foreign parent company but not a separate legal entity on its own, the foreign company will remain fully liable for all the debts and liabilities of the Hong Kong branch office; or
- → **A representative office in Hong Kong.** A representative office is not treated as a separate legal entity and can only engage in a limited scope of activities. It is prohibited from carrying on business in Hong Kong and cannot enter into contracts, save and except contracts necessary for running the representative office (for instance, hiring employees, renting an office space or contracting with utility providers). A representative office has to restrict itself to conducting promotional, liaison or market research-related work on behalf of the foreign parent company. Since a representative office is not a separate legal entity, the foreign parent company will be fully liable for all the implicit liabilities for all activities of the Hong Kong representative office.

Company Directors Requirements

For an individual to become a director of a Hong Kong company, he must be at least 18 years old and must not be an undischarged bankrupt or disqualified from being a director by the court. Apart from the said requirements, there are no restrictions on the residency and nationality of individual directors.

Under the Companies Ordinance, a Hong Kong private company limited by shares must have at least 1 director who is a natural person, whereas a Hong Kong public company and a Hong Kong company limited by guarantee must have at least 2 directors.

A corporation can be a director of a Hong Kong private company. However, if the company only has 1 director, that director must be an individual but not a corporate director. On the other hand, a corporation cannot be a director of a public company, a company limited by guarantee or a member of a group of companies of which a listed company is a member.

Foreign Investment Incentives

Tax Incentives and Allowances

In terms of tax, foreign companies may benefit from Hong Kong's simple tax system and relatively low tax rates as compared to most other Asian jurisdictions. Notably, there are only three direct taxes levied under the Inland Revenue Ordinance (Cap. 112) ("IRO"), namely profits tax, salaries tax and property tax. There is generally no tax on capital gains or dividends (subject to the refined foreign-sourced income exemption regime), no estate duty, no value-added tax, goods and services tax or sales tax and no customs duties on general imports.

Furthermore, foreign investors may utilize all kinds of tax deductions and allowances in Hong Kong as there are no distinction made between foreign investors and local corporations in this respect. For instance, subject to specified conditions:

- → Under the aircraft leasing preferential tax regime, qualifying profits derived from qualifying aircraft leasing activities and qualifying aircraft leasing management activities carried out in Hong Kong can enjoy a concessionary profits tax rate of 8.25%;
- → Qualifying profits derived from qualifying shipping-related activities, i.e., ship agency, ship management or ship broking activity carried out by a qualifying shipping commercial principal in Hong Kong can enjoy tax exemption or a concessionary profits tax rate of 8.25%;
- → Qualifying profits derived by a qualifying corporate treasury centre can enjoy a concessionary profits tax rate of 8.25%; and
- → Incomes from certain qualifying debt instruments issued on or after 1 April 2018 are exempt from tax regardless of the maturity period.

Securities and Futures (Amendment) Ordinance 2021 and Limited Partnership Fund and Business Registration Legislation (Amendment) Ordinance 2021

The Securities and Futures (Amendment) Ordinance 2021 and the Limited Partnership Fund and Business Registration Legislation (Amendment) Ordinance 2021 were passed in September 2021. The said laws were made with a view to bolstering Hong Kong's position as an asset and wealth management centre, and strengthening Hong Kong's fund vehicles regime by facilitating the re-domiciliation of foreign investment funds to Hong Kong as open-ended fund companies ("OFCs") or limited partnership funds ("LPFs").

Re-domiciliation refers to the process where a legal entity changes its jurisdiction of establishment. With the re-domiciliation mechanism provided under the relevant laws, subject to the fund's documentation, investors of a fund that is going to be re-domiciled no longer need to redeem their interest in one fund and subscribe to a new fund. The fund can continue exist but simply moves from being governed by the laws of a place outside Hong Kong to Hong Kong (or the other way round).

Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Ordinance 2023

To strengthen Hong Kong's position as an asset management centre and encourage high net worth individuals to set up family offices in Hong Kong, the government enacted the Inland Revenue (Amendment) (Tax Concessions for Family-owned Investment Holding Vehicles) Ordinance 2023, which came into operation on 19 May 2023 (the "Amendment Ordinance"). The Amendment Ordinance amended the IRO to provide profits tax concessions for assessable profits of (i) eligible family-owned investment holding vehicles ("FIHVs") managed by eligible single family offices ("SFO") and (ii) family-owned special purpose entities ("FSPEs").

Under the Amendment Ordinance, the concessionary profits tax rate of 0% is offered to FIHVs or FSPEs for their assessable profits earned from qualifying transactions and incidental transactions for a year of assessment commencing on or after 1 April 2022. For an FIHV to enjoy the profits tax concession, certain conditions must be satisfied, including the following:

- → The FIHV must be a corporation, partnership or trust that is not a business undertaking for general commercial or industrial purposes;
- → The FIHV must relate to at least one member of a single family and meet the requisite ownership requirements;
- → The FIHV must be normally managed or controlled by an eligible SFO in Hong Kong during the basis period for the year of assessment;
- → The aggregate value of specified assets managed by an eligible SFO for the FIHV(s) of a family must be at least HK$240 million; and
- → The FIHV must carry out its core income generating activities in Hong Kong and meet the requirements of qualified full-time employees and operating expenditure.

The application for family office profits tax concessions does not require prior approval by any regulatory body. To obtain tax certainty, an advance ruling on a family office's eligibility for profits tax concession can be sought from the Commissioner of Inland Revenue.

Innovation and Technology Incentives

The Hong Kong government has introduced various initiatives to facilitate the growth of the innovation and technology ("I&T") industry in Hong Kong.

In 2017, the Hong Kong government has set up a HK$2 billion Innovation and Technology Venture Fund ("ITVF") to incentivise more venture capital funds to co-invest in local I&T startups in Hong Kong at a matching ratio of approximately 1 (ITVF): 2 (co-investing venture capital funds). As of October 2022, the government has co-invested in 27 local I&T start-ups through the ITVF in association with co-investment venture capital funds with an investment amount of approximately HK$200 million. This initiative has attracted around HK$1.7 billion in private investment on startups.

Addressing the need for Research and Development ("R&D") support, the Chief Executive announced the HK$10 billion Research, Academic and Industry Sectors One-Plus Scheme ("RAISe+") Scheme in the 2022 Policy Address. The RAISe+ Scheme, which was launched in October 2023, aims to fund at least 100 university research teams with good potentials to become successful startups. The RAISe+ is expected to foster collaborations between academia and industry, and to expedite the commercialization of R&D outcomes and the development of start-ups in Hong Kong.

The 2023 Startup Survey by InvestHK (a Hong Kong government department responsible for foreign direct investment) reveals that both the number of startups in Hong Kong and their number of staff have reached record highs, with a total of 4,257 start-ups employing 16,453 staff. Among the startup founders, 26% are non-locals with Mainland China leading in representation, followed by the United Kingdom, the United States, and France.

Foreign Investment Restrictions

Generally speaking, no restrictions are imposed on foreign investors in terms of owning equity in Hong Kong companies or acquiring real properties in Hong Kong.

The only exception to the above is that there are industry-specific restrictions in the television and sound broadcasting sector. In particular, the total voting control of domestic free television programme service licensees held by "unqualified" persons (i.e., persons not ordinarily resident in Hong Kong) is limited to 49%. Moreover, insofar as the holding, acquisition or exercise of voting control by an unqualified voting controller who holds more than 5% of the total voting control of a licensee are concerned, a prior approval from the Broadcasting Authority of HKSAR must be obtained.

There are no restrictions on voting control by non-Hong Kong residents for domestic *https://www.immd.gov.hk/eng/services/visas/GEP.html* television programme service licensees or non-domestic television programme service licensees.

Exchange Controls

There is no foreign exchange control in Hong Kong. Also, there is no restriction on entry or repatriation of capital, profits, dividends, interest and rental income from investments by foreign investors.

Labour Law and Talent Recruitment

The Employment Ordinance (Cap. 57) is the main piece of legislation governing the conditions of employment in Hong Kong, which specifically sets out the respective rights and responsibilities of employers and employees. It is supplemented by other labour legislation, such as the Minimum Wage Ordinance (Cap. 608) and the Employees' Compensation Ordinance (Cap. 282). The labour law in Hong Kong is relatively straight forward as compared to many other jurisdictions.

Apart from hiring the local workforce, the Hong Kong government welcomes the recruitment or employment of non-locals who possess unique knowledge, expertise or experience that are not readily available in Hong Kong. To work in Hong Kong, a foreigner must first apply for a work visa through one of the visa schemes, for instance, the General Employment Policy or the Admission Scheme for Mainland Talents and Professionals. Generally speaking, obtaining a work visa in Hong Kong is not notoriously difficult as compared to other jurisdictions and Hong Kong is considered having business friendly immigration policies.

Legal System

Under the constitutional framework provided by the Basic Law, the Hong Kong legal system is based on the common law and supplemented by statutes. The robust and well-established legal framework provides protection to investors (both locals and non-locals) in Hong Kong.

Other Initiatives

The Belt and Road Initiative ("BRI") is a national development strategy which promotes cooperation among countries and regions in terms of, among others, policy coordination, trade facilitation and financial integration. As a key link and prime platform for the BRI, Hong Kong plays an active role in the BRI in areas such as the international project financing, offshore Renminbi business, professional services as well as economic and trade coordination.

The Mainland and Hong Kong Closer Economic Partnership Arrangement ("CEPA") is a free trade agreement concluded by Mainland China and Hong Kong covering four areas, including trade in goods, trade in services, investment, and economic and technical cooperation. CEPA has opened up the Mainland China market for Hong Kong products and services, and facilitated the trade and investment between Mainland China and Hong Kong.

The Guangdong-Hong Kong-Macao Greater Bay Area (the "GBA") is a policy initiative in the People's Republic of China which aims at facilitating the cooperation between Hong Kong, Macao, and the nine municipalities of Guangzhou, Shenzhen, Zhuhai, Foshan, Huizhou, Dongguan, Zhongshan, Jiangmen and Zhaoqing in the Guangdong Province. The GBA presents an opportunity for Hong Kong companies to make inroads into the domestic market in the GBA cities. By taking advantage of the support offered by the GBA (e.g., streamlined business procedures for Hong Kong companies and more relaxed regulations in GBA cities), Hong Kong companies can ramp up their marketing efforts and expand their sales network in the GBA.

Hong Kong Employment Law Overview

Sources of employment law in Hong Kong

The primary source of employment law in Hong Kong is the Employment Ordinance (Cap. 57) (EO), as supplemented by case precedent. Other sources like constitutional instruments including the Basic Law of HKSAR, international law and codes of practice also carry weigh.

Common Law

The common law largely governs fundamental areas under employment law such as the formation of a contract of employment, the determination of employment status, the implied terms of the contract (e.g. an employer's duty to provide safe conditions of work and an employee's duties of fidelity, loyalty and confidence), etc.

Legislation

Given that common law principles comprise intrinsically permissive rules, employment contracts are assumed by the common law to be the product of free and equal bargaining.

However, because of the imbalance in bargaining power and the "take-it-or-leave-it" basis of most employment contracts, it falls to legislation to redress such shortcomings at common law. There is a plethora of labour-related legislation in Hong Kong, and those with direct relevance are as follows:

- → **Employment Ordinance (Cap. 57) (EO).** The EO, introduced in 1968, is the primary legislation dealing with labour and employment conditions in Hong Kong. It provides a basic floor of protections, benefits and entitlements. Despite the flexibility given to the parties at common law to negotiate the contractual terms of an employment contract, any term which purports to contract out certain EO provisions shall be void. Any benefits granted to employees in addition to statutory benefits would be contractual in nature.
- → **Occupational Safety and Health Ordinance (Cap. 509) (OSHO) and Factories and Industrial Undertakings Ordinance (Cap. 59) (FIUO).** The major statutory mechanisms on workplace safety in Hong Kong are enshrined in the OSHO, which applies to workplaces generally, and the FIUO, which applies specifically to industrial undertakings, e.g. construction sites.
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- → **Minimum Wage Ordinance (Cap. 608) (MWO).** The MWO, enacted in 2010, establishes a Statutory Minimum Wage (SMW) regime (i.e. an hourly wage floor). With effect from 1 May 2023, the SMW rate was raised to HK$40 per hour.
- → **Mandatory Provident Fund Schemes Ordinance (Cap. 485) (MPFSO).** Under the MPFSO, except exempted persons (e.g. domestic workers, self-employed hawkers or employees covered by certain specified retirement schemes), employees (full-time or part-time) and self-employed persons who are at least 18 but under 65 years of age are required to join the MPF scheme. Employees and employers are both required to make mandatory contributions of 5% of the employee's relevant income, subject to a minimum and maximum relevant income levels which currently stand at HK$7,100 and HK$30,000 respectively for monthly-paid employees.
- → **Anti-discrimination legislation.** There are 4 major pieces of legislation in Hong Kong that address anti-discrimination in the workplace context on the grounds of sex, pregnancy, marital status, disability, family status and race. Workplace discrimination on the ground of trade union membership is also prohibited in Hong Kong.

Employment law in Hong Kong compared with other jurisdictions

Generally speaking, employment law in Hong Kong is less comprehensive than that in many other jurisdictions, such as the European Union and the United States. There is also a general impression that Hong Kong is an employer-friendly jurisdiction. Further, notwithstanding that Hong Kong employment law is based on the UK law, key areas where the UK has enacted legislation but not followed by Hong Kong currently include: maximum work hours generally, overtime hours and remuneration, rest breaks, equal pay, etc.

There is also no collective bargaining legislation in Hong Kong and trade union recognition by employers is uncommon. Although the Hong Kong government promotes collective bargaining on a voluntary basis, it is rare where terms and conditions of employment are collectively bargained and agreed.

Employment law in Hong Kong compared with other jurisdictions

Cross-border employment and employment under a secondment arrangement become increasingly common in recent decades and the courts are frequently being called on to determine whether the law of Hong Kong governs the terms of the employment contract. However, there is no express conflict of law provision in the EO. Accordingly, the question of whether or not the EO, or Hong Kong law generally, applies to a particular employer, employee or contract of employment in Hong Kong is a question to be determined by reference to common law principles of conflicts of law.

Statutory Employment Benefits

Employee vs Independent Contractor

The table below illustrates the differences in terms of employment benefits between employees and independent contractors under the applicable laws:

	Common Law	Common Law
Employees in general	The EO generally applies to every "employee" engaged under a contract of employment, to an employer of such employee and to a contract of employment between such employer and employee. The EO does not differentiate between "temporary", "part-time", "substituted", "permanent" and "full-time" employees.	All employees, regardless of the length of service, designated job titles or working hours, qualify for the basic entitlements and protections under the EO, including the payment of wages, restrictions on deductions from wages, granting of statutory holidays, protection against anti-union discrimination, etc.
Employees under a continuous contract of employment	An employee who has been employed continuously by the same employer for 4 weeks or more, with at least 18 hours worked in each week, is under a continuous contract of employment.	More extensive benefits are available on the establishment of a continuous contract of employment. Such employees are entitled to further benefits such as rest days, paid statutory holidays, annual leave, sickness allowance, and severance payment/long service payment.
An independent contractor or self-employed person	The EO does not provide guidance on distinguishing between an employee and an independent contractor. Common law principles therefore apply. Currently there is no single or convenient test at common law for determining an employment status. What emerges is a nuanced but flexible approach in which the court develops an "overall impression" based on an examination and weighing of a range of relevant factors.	A self-employed worker or independent contractor is not entitled to the statutory benefits and protections afforded to employees under the EO. He/she is by and large responsible for his/her own safety, his/her own insurance, his/her own MPF and tax payments and the collection of job payments due to him/her.

Overview of statutory employment benefits in Hong Kong

- → **Payment of Wages.** Wages shall become due on the expiry of the last day of the wage period, and when the contract is terminated, the last day of employment. Wages shall be paid as soon as practicable, but in any case, not later than 7 days thereafter. It is not uncommon in Hong Kong where an employer would pay their monthly-paid employees on or even before the last business day of a calendar month.
- → **Statutory Holidays.** Under the EO, only statutory holidays are legally required to be granted for most types of employees. There are currently 13 statutory holidays in Hong Kong for 2023. Some employers like financial institutions offer general holidays to their employees also. There are currently 17 general holidays in Hong Kong for 2023.
- → **Rest Days.** An employee employed under a continuous contract is entitled to not less than 1 rest day in every period of 7 days. An employer must not compel an employee to work on a rest day except in the event of any unforeseen emergency. For any rest day on which the employee is required to work, the employer should substitute some other rest day within 30 days after the original rest day.
- → **Sick Leave and Sick Leave Allowance.** An employee employed under a continuous contract is entitled to sickness allowance if certain conditions under the EO are satisfied. The daily rate of sickness allowance is a sum equivalent to four-fifths of the employee's average daily wages. An employer is also prohibited from terminating the contract of employment of an employee during his/her paid sickness day, except in cases of summary dismissal due to the employee's serious misconduct.
- → **Annual Leave and Annual Leave Pay.** An employee is entitled to 7 days' annual leave with pay after serving every period of 12 months under a continuous contract. An employee's entitlement to paid annual leave will increase progressively to a maximum of 14 days according to his/her length of service.
- → **Maternity Leave and Maternity Leave Pay.** A female employee employed under a continuous contract immediately before the commencement of her maternity leave and satisfies certain requirements under the EO is entitled to a continuous period of 14 weeks' maternity leave. Maternity leave pay is paid at the rate of four-fifths of the employee's average daily wages. Subject to the exceptions of summary dismissal and probationary employment, it is an offence for an employer to dismiss a pregnant employee.
- → **Paternity Leave and Paternity Leave Pay.** A male employee employed under a continuous contract immediately before commencement of paternity leave and satisfies certain requirements under the EO is entitled to 5 days of paternity leave. Paternity leave pay is paid at the rate of four-fifths of the employee's average daily wages.
- → **Severance Payment and Long Service Payment.**

  Severance Payment: An employee who has been employed for not less than 24 months under a continuous contract is entitled to severance payment if (a) he/she is dismissed by reason of redundancy, (b) his/her employment contract of a fixed term expires without being renewed by reason of redundancy, or (c) he/she is laid off.

  Long Service Payment: An employee who has been employed for not less than 5 years under a continuous contract is entitled to long service payment if (a) he/she is dismissed for reasons other than being summarily dismissed due to his/her serious misconduct or by reason of redundancy, (b) his/her employment contract of a fixed term expires without being renewed, (c) he/she dies, (d) he/she resigns on the ground of ill health, or (e) he/she is aged 65 or above and resigns. An employee will not be simultaneously entitled to both long service payment and severance payment. Both are also subject to a maximum payment of HK$390,000.

Recent development on the abolition of MPF Offsetting Arrangement

Currently, an employer may opt to offset the severance payment or a long service payment payable to an employee by the accrued benefits paid to such employee that derives from an employer's contributions under a MPF scheme. With effect from 1 May 2025, such MPF offsetting arrangement shall be abolished.

Statutory Employment Benefits

Termination of an employment contract in Hong Kong is largely process-driven. It may be terminated by an employer or an employee through giving the other party due notice or payment in lieu of notice as required under the EO.

An employer may also summarily dismiss an employee without notice or payment in lieu of notice if the employee, in relation to his/her employment, (a) willfully disobeys a lawful and reasonable order, (b) misconducts himself/herself, (c) is guilty of fraud or dishonesty, or (d) is habitually neglectful in his/her duties.

On the other hand, an employee may terminate his/her employment contract without notice or payment in lieu of notice if (a) he/she reasonably fears physical danger by violence or disease, (b) he/she is subjected to ill-treatment by the employer, or (c) he/she has been employed for not less than 5 years and is certified by a registered medical practitioner or a registered Chinese medicine practitioner as being permanently unfit for the type of work he/she is being engaged.

Real Estate

Land tenure

Hong Kong's land law is unique due to its colonial past and historical background. It differs from China's land holding system and has incorporated some aspects of English land law. However, certain advancements have not been implemented in Hong Kong. The New Territories still follow Chinese customary laws and have indigenous characteristics like co-ownership and the Deed of Mutual Covenant ("DMC"). Additionally, Hong Kong has its own exclusive deeds registration system.

After the return of sovereignty to China in 1997, the Hong Kong Special Administrative Region ("HKSAR") was established. According to Article 7 of the Basic Law, the lands within the HKSAR are now considered as State property and are managed, used, and developed by the Government of the HKSAR. The predominant land tenure system in Hong Kong is leasehold, with leases typically granted for 75 or 99 years, and in rare cases, 999 years.

Co-Ownership

Co-ownership in property occurs when multiple individuals purchase and possess a property together. This is common in Hong Kong due to high house prices. There are two methods of co-ownership: tenants in common and joint tenancy. Tenants in common allows for transfer of interest according to will or intestacy upon a co-owner's death, while joint tenancy includes the right of survivorship, making the surviving joint tenant the sole owner.

In the case of AG Securities v Vaughan [1990] 1 AC 417, the court held that a joint tenancy requires four unities: interest, title, time, and possession. Joint tenants must have the same interest, obtained through a single conveyance, starting at the same time, and held by undivided possession. If there is no clear intention, co-ownership is presumed to be a tenancy in common (section 9(1) of the Conveyancing and Property Ordinance, Cap. 219 of the laws of Hong Kong) ("CPO").

Leases and Licences

In Hong Kong, it is important to distinguish between a lease and a licence because the Landlord and Tenant (Consolidation) Ordinance (Cap. 7 of the laws of Hong Kong) applies only to leases, whereby the tenants enjoy certain statutory benefits. In the case of Street v Mountford [1985] AC 809, the court held that "to constitute a tenancy the occupier must be granted exclusive possession for a fixed or periodic term certain in consideration of a premium or periodical payments". Exclusive possession means the occupant can use the premises without interference from others, including the landlord.

A lease agreement between a landlord and tenant sets out their respective rights and responsibilities. Unless the agreement explicitly states otherwise, common law implies certain obligations for both parties. One of the examples is the tenant's right to quiet enjoyment of the property. In the case of Yeung Wah v. Alfa Sea Ltd. [1993] HKLY 701, a landlord violated a tenant's right to peaceful enjoyment by locking him out of the flat and carrying out renovations without permission. The Court ordered the landlord to pay HK$50,000 in general damages and HK$50,000 in exemplary damages to the tenant.

Multi-storey Buildings in Hong Kong

In Hong Kong, multi-storey buildings are the most common. In a multi-storey building, ownership is typically expressed through undivided shares. When an owner purchases a flat, they will enjoy exclusive possession of their unit and will jointly own the common areas with other owners. Since the common areas are co-owned, the shares of the building remain undivided. Usually, maintenance and management fees, as well as voting rights at owners' meetings, are determined based on the undivided shares as owned by each individual owner.

A DMC becomes effective when the developer and the first unit purchaser sign it, and it applies to subsequent purchasers as well. Typically, a DMC includes restrictions that are important for individual unit occupants in a building. These restrictions vary with buildings.

In the case of Lee Yin Hong v Serenade Cove (IO) [2011] 5 HKLRD 660, the DMC prohibited keeping animals in flats without permission from the manager. Despite warning letters issued by the incorporated owners ("IO"), some flat owners kept dogs without permission. The court determined that the IO had a duty to reasonably consider and not unreasonably deny consent. In this case, the IO acted reasonably by discussing concerns about noise and mess caused by dogs with the owners, and their refusal was justified to maintain a peaceful environment for residents.

Conveyancing

Sale and Purchase Agreements

In Hong Kong, transfer of interests concerning land have to be made in writing or must be recorded in writing (section 3(1) of the CPO). This generally starts by a provisional sale and purchase agreement ("SPA"), followed by a formal SPA. The SPA transfers the legal ownership from the vendor to the purchaser. It is observed that the term "provisional" can be misleading as it may give purchasers an impression that the SPA is only provisional in nature, and that they can add any terms to the formal SPA later. However, this is not the case. Once the provisional SPA is signed, it usually becomes legally binding on both parties, until and unless it is replaced by the formal SPA. Further, additional terms can only be included in the formal SPA if they comply with the provisional SPA, unless the other party consents to it. In general, when a residential property is being bought or sold, the purchaser usually pays the ad valorem stamp duty when they sign the formal SPA. If the formal SPA is signed within 14 days of the provisional SPA, the stamp duty must be paid within 30 days of signing the formal SPA.

In the case of *To Hu Sing v Cheung Kwai Chuen and Others* [2020] HKCFI 2747, the court ruled that the Plaintiff must complete the sale of their properties to the 1st and 2nd Defendants according to their provisional SPA. The Plaintiff's attempt to use the "escape clause" was deemed ineffective as they did not provide the whole amount of money as required under the clause and failed to invoke the clause by the agreed completion date. The court ordered specific performance to complete the transaction.

Proof of title

In Hong Kong, when buying or selling land, the vendor must fulfil two duties: "proving" title and "giving" title. "Title" refers to the right of ownership over the land. The vendor must provide certified copies of title deeds (dating back at least 15 years) to prove title before completion (section 13 of the CPO). The duty to give title arises only upon completion and, in general, requires original title deeds (section 13A of the CPO).

It is generally the duty of the purchaser's solicitors to inspect the title deeds supplied and, if needed, raise requisitions on title with the vendor's solicitors. Title defects like mortgages and government orders can be found in public records, but others may not be easily identifiable. In the case of *Wong Chim-Ying v Cheng Kam-Wing* [1991] 2 HKLR 253, a flat was registered under a woman's name. Her husband paid for it and they both resided there with their children. The wife later sold the flat and left, but the husband refused to leave the flat. The buyer, who was aware of the husband's occupation, did not ask about his legal or equitable rights to the property. The Court concluded that the buyer had constructive notice of the husband's ownership and was required to transfer the title of the property to him.

Assignment and Completion

An assignment transfers beneficial ownership from the vendor to the purchaser. In Hong Kong, a legal estate in land can only be created, extinguished, or disposed of by deed, as stated in section 4(1) of the CPO. Hence, an assignment is executed through a deed. When the purchase pays the purchase price, the assignment is completed. In Hong Kong, completion is normally accomplished by solicitors' undertaking. Stamp duty on assignment must generally be paid within 30 days from its date of execution. At present, the stamp duty for an assignment for residential property is $100 (if the preceding SPA has been stamped).

Stamp Duty

The stamp duty for conveyance transactions is currently being reformed. The Chief Executive of HKSAR has proposed measures in the 2023 Policy Address to make stamp duty more favourable for the housing market. To implement these proposals, the HKSAR Government has introduced the Stamp Duty (Amendment) (Residential Properties) Bill 2023 ("Bill"), which is awaiting approval from the Legislative Council ("LegCo"). To ensure the effectiveness of the Bill before it becomes law, the HKSAR Government has issued the Public Revenue Protection (Stamp Duty) (No.2) Order 2023 ("Order"), which will be valid for a maximum of four months starting from 25 October 2023. The HKSAR Government aims to have the Bill passed by the LegCo before the Order expires. As of now, the situation is as follows:

- → **Ad Valorem Stamp Duty ("AVD").** The AVD is calculated based on the higher value between the stated consideration or the property's value. A new flat rate of 7.5% (reduced from 15%) will apply to any residential property transaction executed on or after 25 October 2023 and which is subject to AVD at Part 1 of Scale 1 rate.
- → **Special Stamp Duty ("SSD").** The resale period during which a 10% SSD can be charged is reduced from three years to two years. The new resale period will apply to any residential property transaction executed on or after 25 October 2023 and which is subject to SSD.
- → **Buyer's Stamp Duty ("BSD").** BSD may apply to any residential property transaction in which the purchaser is not a Hong Kong permanent resident acquiring the property on his/her own behalf. The new BSD rate of 7.5% (reduced from 15%) will apply to any residential property transaction executed on or after 25 October 2023 and which is subject to BSD.

Deeds Registration

The deeds registration system is established under the Land Registration Ordinance (Cap. 128 of the laws of Hong Kong) ("LRO"). It is a public record system for registering deeds, conveyances, judgments, and other realty instruments. To protect one's property rights, the owner of a registerable interest in land must register a document that proves their interest. According to section 3(1) of the LRO, instruments are prioritized based on their registration dates, except for those registered within one month of execution, which are prioritized based on their execution dates (section 5(1) of the LRO).

Nevertheless, the deeds registration system only serves as conclusive proof of the existence of deeds and determines their priority. It does not guarantee their validity. To ensure a good title, a purchaser must examine the relevant title deeds dating back to the root of the title and make sure the title chain is unbroken and complete. As a result, the duties of proving and giving title exist in Hong Kong.

Tax Law

The Hong Kong tax system is relatively simple. There are only three major income taxes levied under the Inland Revenue Ordinance (the "IRO"): profits tax, salaries tax and property tax.

Profits Tax

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Persons (including corporations, partnerships, trustees and bodies of persons) carrying on any trade, profession or business in Hong Kong are chargeable to tax on all profits arising in or derived from Hong Kong from such trade, profession or business, save and except profits arising from the sale of capital assets. Income originating or derived from a place outside Hong Kong is typically not subject to taxation because of the territorial principle of taxation adopted by the Hong Kong Inland Revenue Department, subject to the refined foreign-sourced income exemption ("FSIE") regime as discussed below. Generally speaking, there is no distinction between residents and non-residents in terms of liability to profits tax in Hong Kong, except when Comprehensive Double Taxation Agreements / Arrangements ("CDTA") are concerned.

Effective from 1 January 2023, the Inland Revenue (Amendment) (Taxation on Specified Foreign-sourced Income) Ordinance 2022 (the "Amendment Ordinance") came into effect. The Amendment Ordinance deems certain offshore passive income (including interest, dividends, disposal gains from the sale of equity interests, and Intellectual Property ("IP") income) received in Hong Kong by a constituent entity of a multinational enterprise group to be sourced from Hong Kong and subject to profits tax. However, exemptions may apply if the taxpayer complies with economic substance (for interest, dividends and disposal gains) or nexus approach (for IP income) requirements, or participation exemption conditions (for dividends and disposal gains). Furthermore, in order to align with the latest European Union ("EU") requirements, the refined FSIE regime will be further amended to cover foreign-sourced disposal gains of all other types of assets in addition to equity interests. Following the gazettal of the Inland Revenue (Amendment) (Taxation on Foreign-sourced Disposal Gains) Ordinance 2023 on 8 December 2023, the latest amendments is to be implemented in Hong Kong from 1 January 2024.

Profits Tax Rate

Under the two-tiered profits tax rates regime, the profits tax rate for the first HK$2 million of assessable profits is 8.25% for corporations, and 7.5% for unincorporated businesses. Profits exceeding HK$2 million are subject to the standard rates of 16.5% for corporations and 15% for unincorporated businesses. As an anti-avoidance measure, a "group of connected entities" can only nominate one entity within the group to benefit from the two-tiered tax rates for a given assessment year.

Losses made in an accounting year can be carried forward and set off against future taxable profits of the same taxpayer. However, there is currently no group tax loss relief in Hong Kong.

Exemptions and Deductions

Certain sums are excluded from the computation of assessable profits, including but not limited to dividends received from a corporation which is subject to Hong Kong profits tax, and amounts that have already been included in the assessable profits of other persons chargeable to Hong Kong profits tax.

Generally speaking, all outgoings and expenses are allowed as deductions to the extent that they have been incurred in the production of profits that are chargeable to tax, including but not limited to:

- → Rent paid by any tenant of land or buildings that is occupied for the purpose of producing assessable profits;
- → Tax of substantially the same nature as tax imposed under the IRO that is proved to the satisfaction of the Commissioner of Inland Revenue to have been paid in a territory outside Hong Kong in respect of assessable profits;
- → Bad and doubtful debts incurred in any trade, business or profession provided to the satisfaction of the assessor to have become bad during the basis period for the year of assessment (subject to certain conditions);
- → Expenditure incurred in the repair of any premises, plant, machinery, implement, utensil or article employed in the production of assessable profits; and
- → Qualifying expenditure incurred or qualifying payment on research and development activities.

Salaries Tax

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Persons (including corporations, partnerships, trustees and bodies of persons) carrying on Salaries tax is charged for each year of assessment on every person in respect of his income arising in or derived from Hong Kong, which generally includes Hong Kong-sourced income from (i) any office or employment of profit, and (ii) any pension. The source of income from employment is to be determined by taking into account all the relevant facts, with particular emphasis on the place where the employment contract is negotiated, entered into and enforceable, the residence of the employer, and the place where the employee's remuneration is paid. An employee's residence, domicile or citizenship is generally not relevant in determining his salaries tax liability in Hong Kong, except when CDTAs are concerned.

Generally speaking, a person who (i) renders all his services outside Hong Kong in a year of assessment, or (ii) renders services in Hong Kong during visits for not more than a total of 60 days for a year of assessment will have no liability to salaries tax (commonly known as the "60-day rule").

Chargeable and Non-chargeable Income

Chargeable income from any office or employment is deemed to include, among others, all wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite and allowance, and the rental value of any place of residence provided by an employer to an employee. The employee can elect to have this rental value to be deemed to be equal to 10%, 8% or 4% (depending on the type of accommodation provided) of the total income paid by the employer to the employee after deducting outgoings and expenses (excluding expenses of self-education), thereby reducing the employee's salaries tax liability if his rent allowance exceeds 10%, 8% or 4% (as the case may be) of his total income.

Jury fees, severance payments and long service payments (up to the amount of severance payments or long service payments that are required to be paid by the employer under the Employment Ordinance (Cap. 57)) are not assessable to salaries tax.

Salaries Tax Rate

Salaries tax is computed at progressive rates on the net chargeable income (i.e., assessable income – deductions – allowances), or at standard rate on the net total income (i.e., assessable income – deductions), whichever is lower. The current progressive rate ranges from 2% to 17% (as listed in the table below) whereas the standard rate is 15%.

Net chargeable income	Rate %	Tax HK$
On the first HK$50,000	2%	HK$1,000
On the next HK$50,000	6%	HK$3,000
On the next HK$50,000	10%	HK$5,000
On the next HK$50,000	14%	HK$7,000
Remainder	17%	-

The Inland Revenue Department will first demand payment of provisional salaries tax during the year of assessment and then make adjustments in the following year. Any provisional tax paid for a year of assessment is applied first against the salaries tax payable on the income for that year and if there is excess, the excess is applied against the following year's provisional tax liability. The IRO provides for several grounds under which a taxpayer may apply for the holdover of the whole or part of the provisional salaries tax, for instance, when a taxpayer's net chargeable income for the year of assessment for which provisional tax was charged is, or is likely to be, less than 90% of the net chargeable income for the preceding year.

Deductions and Allowances

Taxpayers may claim deductions under salaries tax, such as (subject to a cap on the maximum amount for each type of deduction):

- → Donations made to approved charitable organizations;
- → Home loan interest;
- → Elderly residential care expenses;
- → Mandatory contributions to the Mandatory Provident Fund ("MPF") or Recognized Occupational Retirement Scheme;
- → Qualifying premiums paid under a voluntary health insurance scheme policy for an insured person;
- → Qualifying annuity premiums and tax deductible MPF voluntary contributions;
- → Expenses of self-education; and
- → Tax reduction for domestic rents.

Further, allowances are granted to taxpayers of salaries tax provided that the applicable conditions are satisfied, such as:

- → Basic allowance (for single persons) or married person's allowance (for married couples);
- → Child allowances;
- → Dependent parent or grandparent allowance;
- → Dependent brother or sister allowance;
- → Single parent allowance;
- → Disabled dependent allowance; and
- → Personal disability allowance.

Property Tax, Rates and Government Rent

Property Tax

Property tax is charged on every person who owns any buildings and/or land in Hong Kong (except government and consular properties), at a standard rate of 15% of the net assessable value of such buildings and/or land for each year of assessment. The net assessable value is computed by rental income less irrecoverable rent, rates paid by the owner, and a statutory allowance for repairs and outgoings of 20% currently.

Property occupied by an owner for self-use is not subject to property tax, as no rental income is receivable in respect of such property.

Rates and Government Rent

Property is also subject to rates charged at 5% of the assessed rateable value for each property. "Rateable value" is the estimated annual rental value of a property at a designated valuation reference date. Although both the property's owner and occupier are liable for payment of rates, in practice, the responsibility for payment will depend on the terms of the agreement between the owner and occupier of the property. In the absence of any agreement to the contrary, the liability for rates rests with the occupier.

Most privately owned land in Hong Kong is held by way of a government lease under which all owners of such land have covenanted to pay a rent to the Hong Kong government in return for the occupation or use of the land leased. Generally speaking, government rent is charged at 3% of the rateable value of the property annually.

Personal Assessment

As mentioned above, the IRO provides for the levying of three separate direct taxes – salaries tax, profits tax and property tax. In case where a taxpayer has income chargeable to profits tax and/or property tax on top of salaries tax, subject to eligibility conditions, the taxpayer may elect for personal assessment under which his income subject to salaries tax, property tax and profits tax are first combined, and concessionary deductions and personal allowances will then reduce the combined taxable income to arrive at the net chargeable income. The net chargeable income will then be taxed at the progressive rates applicable to salaries tax.

Personal assessment would be able to reduce a taxpayer's total tax liability in certain situations, in particular, when the taxpayer has incurred tax loss for profits tax and has income chargeable to salaries tax and/or property tax.

Joint Assessment

Subject to eligibility conditions, a married couple may elect for joint assessment, under which their income assessable to salaries tax will be aggregated, and married person's allowance (as opposed to basic allowance) and other allowances will be deducted from the couple's joint total income. Joint assessment can be advantageous for a married couple if the assessable income of one spouse is less than his or her tax allowance.

Stamp Duty

Ad Valorem Stamp Duty ("AVD")

AVD is chargeable on, among others:

- → Transfer of stock which are required to be registered in Hong Kong, at 0.2% on the amount of stated consideration of the transaction or the market value of the Hong Kong stock, whichever higher; and
- → Transfer or sale of immovable property situated in Hong Kong, at a maximum of 15% of the stated consideration or value of the residential property (whichever higher) and a maximum of 8.5% of the stated consideration of the non-residential property.

Buyer's Stamp Duty ("BSD")

BSD is payable for an acquisition of any residential property on or after 27 October 2012 if the purchaser is not a Hong Kong permanent resident ("HKPR") who is acting on his/her own behalf, at a flat rate of 7.5% (for instruments executed on or after 25 October 2023) or 15% (for instruments executed on or after 27 October 2012 but before 25 October 2023).

Special Stamp Duty ("SSD")

SSD is payable for acquisition of any residential property on or after 20 November 2010 if such property is disposed of within 36 months (if the property was acquired on or after 27 October 2012 and was disposed of before 25 October 2023) or 24 months (if the property was acquired on or after 20 November 2010 and disposed of before 27 October 2012, or was acquired on or after 26 October 2021 and was disposed of on or after 25 October 2023), at a maximum rate of 20% (if the property is disposed of within 6 months or less).

Personal Assessment

As of July 2023, Hong Kong has established CDTAs with 46 jurisdictions, including the People's Republic of China. The CDTAs dictate the jurisdictions' authority to tax profits and outline provisions for granting credits if profits are subject to taxation in both jurisdictions to the CDTAs, thereby prevent double taxation and fiscal evasion, and foster cooperation between Hong Kong and other international tax administrations by enforcing their respective tax laws. Only residents of Hong Kong or of the other jurisdictions to the CDTAs as defined under the CDTAs will be affected by the CDTAs.

Other Taxes

There is generally no estate duty, no value-added tax, goods and services tax or sales tax and no customs duties on general imports in Hong Kong.

Italy

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Cajola & Associati has a tradition of excellence as to the quality of the legal services provided to our clients. Established in Milan in 1966 by Avvocato Alberto Cajola, Cajola & Associati is a domestic and international general legal practice.

Our clients are public and privately held industrial, commercial as well as financial businesses, involved in complex corporate and financial transactions and dispute resolution proceedings.

The firm has a wide experience in all legal aspect of life of companies since their incorporation and start up of their businesses including the negotiation and settlement of joint venture agreements, supplies of goods and services, agency, distribution and franchising agreements, as well as equity based and asset based transactions and their related tax aspects. Our team of professionals have developed a specific expertise in takeovers and mergers, and in the buying and selling of businesses. The firm practice is also concerned with issues of domestic & cross border contracts, corporate, corporate finance, banking, taxation, corporate restructuring, real estate and construction, intellectual and industrial property, information technology, aviation and EU Law. As well, the Firm assists its clientele on subject matters involving regulatory compliance and periodic mandatory filings before the main public bodies (UIC, ISVAP, CONSOB and Banca d'Italia etc.).

Cajola & Associati also provides specialized and general legal representation in any kind of civil and commercial disputes and litigations on matters as such as tax law, labor law, social security law, agency, distributorship, as well as intellectual and industrial property rights, advertising, media law, transport & insurance, product liability and arbitration.

In the area of Intellectual property, our team of IP lawyers deals with major cases relating to the enforcement and prosecution of trademark and patent rights, copyrights, industrial design and web domain name rights on behalf of both domestic and foreign IP right-holders. Moreover, the Firm advises and represents companies and individuals on legal matters regarding properties and estates situated in Italy or affected by domestic law.

We provide legal counselling and representation on any aspect of the areas of labour, Employment & industrial relations regulating relationship with personnel.

Our primary commitment has always been the devotion to giving legal assistance and representation of the highest quality to our clients. We accomplish this purpose within the perspective that legal problems are essentially business problems for our clients. Our assistance consists in giving them practical advices and fast responses, anticipating their needs.

Corporate Law

Regulations and rules

Since 1 January 2004, Italy has enacted new rules for company formation, start up, organization and administration[1]. This reform has brought Italian company law into line with that of other most advanced countries, introducing simplifications and greater flexibility for corporate decision-making. The new rules have replaced those, which had been in place for 60 years.

The key element of the reform is self-regulation, which allows companies vast powers to establish specific rules in their By-Laws and Articles of incorporation, without too many strict, pre-defined mandatory requirements. Other examples of flexibility can be found in the many financial tools available as well as in the different corporate governance forms.

The reform amended and supplemented portions of the Italian Civil Code and modified Italy's Unified Text of provisions on financial intermediation, which now include specific provisions for listed companies[2].

Overall the 2004 reform successfully introduced changes to the structure of limited companies which simplify and speed up the procedures for establishing a business, new financial instruments for companies to create special categories of shares and new rules providing greater flexibility and choice in corporate governance.

Corporate responsibility for groups clarifying issues related to liability, transparency and publicity.

1 Legislative Decree No. 6/2003

2 Civil code, Articles 2257 through 2510 and Act No. 58/1998, known as "TUF". TUF has been significantly amended by means of Act No. 262/2005, which provides rules aimed to safeguard savings.

Types of business associations and liability of shareholders

Prospective foreign investors wanting to set up a business in Italy with a more permanent presence other than establishing a mere representative office or a branch may decide to incorporate a company.

By considering doing so, they will need to choose the most suitable organizational structure in accordance with the nature of their businesses.

Foreign investors are free to adopt any of the forms of business entities available to Italian citizens. The type of entity chosen will largely depend on the strategy to be adopted, as well as on management, financial and taxation considerations.

Capital Companies and Partnerships

Types of business associations may be classified in two categories created by the law, depending on the circumstance that they are organized on a stock capital basis *("società di capitali"* or capital companies) or on a personal basis *("società di persone"* or partnerships).

The difference between the two categories is that only the capital companies are regarded as having a legal entity entirely separate and distinct from the individuals who compose it, with the capacity of continuous existence or succession and having as capacity that of taking holding and conveying property.

A capital company's liability is normally limited to its assets and the stock or quota holders are protected against personal liability in connection with the business of the company

There is an exception to the above distinction that is represented by a rarely used business association structure, the so called *"società in accomandita per azioni"* or Partnership Limited by Shares that is a form of company organized on a stock capital basis, where two category of shareholders exist: Those who enjoy the shield of corporate privilege of this business association and do not respond on a personal basis for the obligations of the limited share partnership *("soci accomandanti")* and those who are instead entrusted with the management of the company and are as well personally liable for the obligations *("soci accomandatari").* The main types of business associations provided for in the Civil code are the following.

Capital Companies

Only the Corporation *(Società per Azioni)* and the Limited Liability Company *(Società a Responsabilità Limitata)* possess full and separate legal identity. Foreign investors usually choose one of these two structures to minimise potential liability exposure. S*ocietà per Azioni* and *Società a Responsabilità Limitata* may be deemed respectively close to the Public and Private Companies in United Kingdom, as well as to the Corporation and Limited Liability Companies in the United States of America. Capital companies are:

Limited Liability Company *("Società a Responsabilità Limitata – S.r.l.")*

Small or medium-sized enterprises may adopt the Limited liability company form to run their businesses in Italy.

This form of business association - with a minimum capital contribution required of € 10,000[3] - enjoys a great degree of internal flexibility in terms of management and control that makes it attractive to closely held enterprises. This flexibility leaves the stockholders free to develop their organizational structure and to some extent their own management rules and principles.

Stockholders are not personally liable for debts of a Limited liability company, unless the following circumstances concur altogether:

- → Sole Stockholder Company
- → Insolvency of the company
- → Stock contributions have not been fully paid in, rules concerning payment of the stock or rules regarding duty of legal publicity have not been observed[4]

In the above circumstances, the stockholder is personally liable for debt of the company.

The contribution of a stockholder may be cash, property and services as long as a contribution can be financially evaluated. Participation of a member is a quota that cannot be represented by shares.

3 Civile code, Article 2463.

4 Civile code, Articles 2462 and 2464.

Corporation *("Società per Azioni – S.p.a.")*

In a Corporation, the capital holdings of members are represented by shares. The Corporation has the same major features as the corporate form in most other countries.

A Corporation is governed by the shareholders at the general meeting, by the directors and the board of statutory auditors. Its statutory regulation provides that circulation of corporate capital is a relevant factor in order to classify:

- → Companies without outstanding shares held by public investors (Closely Held Corporations)
- → Companies with outstanding shares held by public investors, namely, companies issuing stock shares that are traded on regulated markets or circulating in the market on a relevant scale, that means circulating among Italian issuers with net capital not less than € 5 million and with a number of shareholders or bondholders greater than 200). Specific rules are provided for these public companies[5]

There is a minimum capital contribution required of € 50,000[6].

Partnership Limited by Shares *("Società in Accomandita per Azioni – S.a.p.a.")*

Very rarely used[7], this structure has the same features of Limited partnerships and stock companies.

Their share capital consists of stocks and shareholders are divided into two groups: general partners, who manage the company and have unlimited, collective and contingent liability; and limited partners, whose exposure to debt is limited to the shares each underwrote, and who cannot carry out management activities within the company.

In case of plurality of Directors, the appointment of a new director is subject to the approval of the other Directors[8].

5 Civil code, Article 2325bis and TUF.

6 Civil code, Article 2327.

7 Save for a noteworthy exception, that is "Giovanni Agnelli & C. S.a.p.a.", the holding company of "Fiat Group".

8 Civil code, Article 2457.

Partnerships

Partnerships are not legal entities distinct from its members, although they may acquire property and assume obligations in their own trade name. They are:

- → **Simple Society *("Società semplice"):*** Rarely used, the main feature of this business structure would be used for the exclusive purpose of non commercial economic activities, such as for instance the management of small real estate property or agricultural activities.
- → **General Partnership *("Società in Nome Collettivo"):*** The partners have unlimited liability for the partnership's obligations[9]. A general partnership may not have a corporate partner. An SNC may transact business, acquire, hold property, sued and be sued in its own trade name. It must operate under a business name that includes the name of one or more or the partners and indicates the partnership relationship. No minimum level of capital contribution is required, and contributions may be in the form of cash, property or services. The consent of all partners is required for the transfer of a partnership interest. Partnership profits and losses are distributed in proportion to each partner's contribution, unless otherwise stated in the partnership agreement. Any stipulation in the partnership agreement limiting the extent of a partners' losses is void.
- → **Limited Partnership *("Società in Accomandita Semplice"):*** A Limited Partnership must be composed of at least one partner with unlimited liability and at least one partner with liability limited to the extent of the partner's capital contribution[10]. The partner with limited liability may not participate in a partnership management. Several Court decisions have held that a corporation may not be a partner in a partnership management. Trade name of the partnership must include the name of at least one general partner and indicate that is a limited partnership. Unless stated differently in the partnership agreement, the interest of a partner may be transferred only by the votes of partners representing a majority of the partnership's capital. In general, provisions relating to General Partnerships apply to limited partnerships as well.

9 Civil code, Article 2291

10 Civil code, Article 2313.

Share capital (Minimum and Minimum paid in amount)

11 Civil code, Article 2468.

→ **Amount of stated capital in corporations (s.p.a.) and capital contributions:** The minimum amount required is € 50,000. Nevertheless companies existing on January 1, 2004 does not have to comply with such new rule until their duration stated in the By-Laws elapses. As a condition of the incorporation, shareholders must subscribe the entire stated capital. Shareholders shall pay upon subscription at least 25% of the stated capita (if there is a sole shareholder, deposit of the stated capital as a whole is required). The term for restitution to the company of the percentage deposited in the bank for subscription of the shares has been reduced to 90 days. If the shares have not been entirely paid in, it is not possible for the company to increase its stated capital.

→ **Amount of stated capital in limited liability companies (s.r.l.) and capital contributions:** The minimum amount required is € 10,000. In case of simplified or reduced capital S.r.l. companies, the minimum amount upon their inception can be between € 1 and 9,999, however each year 20% of the profit achieved must be accounted for in a specific statutory reserve until an amount of € 10,000. The same rules concerning the entire subscription of the stated capital, the payment of the 25% of the stated capital and the eventual contributions in kind apply. Differently from corporations contribution of a quota-holder may be also intellectual property and labour services as long as the contribution may be economically appraised. Contributions by members of limited liability companies cannot be represented by shares, nor they can be publicly traded. If the Articles of incorporation do not provide differently, participation of the members is determined in proportion with the contribution. The Articles of incorporation may provide for granting to single members of special rights relating to the management of the company or the distribution of profit[11].

Classes of shares

12 Civil code, Article 2355bis.

13 Civil code, Article 2437sexies.

Stock shares in Corporations - Corporations are generally authorized according to their By-Laws to issue different classes of stock, which may differ in their right to dividends, their voting rights and their right to share.

The i of shares with no par value is now allowed in Italy. Shares may be linked to a fraction of the stated capital, as well as it is possible for Limited liability companies. The only requirement is to make express reference about it in the By-Laws.

Nominal shares are transferable upon authenticated signature. Bearer shares are transferred with delivery of the certificate. Power to exercise corporate rights is transferred upon signature. If the share transfer is conditioned the acceptance by either the other shareholders or the Board of Directors, By-Laws shall provide that in the event that such acceptance is denied:

→ The company and/or its shareholders undertake to purchase the share; or

→ The seller has a right to withdraw at expense of the company and/or its shareholders[12].

In order to be enforceable stock transfer restrictions must be mentioned on the stock certificate.

Issue of redeemable shares is now permitted[13]. Redeemable shares may be relevant in the event that participation in the stock capital is connected to a specific relationship from outside the company.

In case of assignment of shares, the transferor is jointly and severally liable with the transferee for a period of three years from the date of the transfer for payments still due on the shares.

Principal classes of shares

The following are the principal classes of shares:

- → **Common Stock:** Full voting rights, save for those shares issued for specific corporate business activities
- → Stock having different rights If there is specific provision in the By-Laws it is possible to create categories of stock having different rights even with reference to a predetermined and actual level of losses
- → **Stock and other instruments for to the benefit of employees:** The extraordinary general meeting has the power to determine assignments, rules, rights, eventual expiration terms and facility for repurchase
- → **Non-voting Stock:** They have no voting rights. Such shares may be only issued by companies whose shares are traded on the Stock exchange for an amount of stock capital not greater than 51%.
- → **Stock of participation to a determined business:** Financial instrument of participation, whose rights must be specifically predetermined.

A corporation may authorize – not more than 51% of stock capital – specific stock without voting rights, with restricted voting rights, with limited or subordinated voting rights[14].

Stock for the benefit of employees or issued pursuant to services or work carried out by shareholders or third parties may carry the right to vote on specific arguments of particular interest for the rights of the stock itself and a member of the controlling board may represent them.

The mandatory deposit with consequent prohibition of withdrawal of the shares for a corporate meeting has been eliminated.

14 Civil code, Article 2351.

Shares representing assets dedicated to specific business

Corporations may dedicate and link a proportion of the stock,(not more than 10% of the stock capital), to the results of a determined area of business (with the exclusion of business activities with a reserved statutory regulation)[15]. To that extent, a corporation may:

- → Set up one or more assets specifically dedicated to the realization of a specific business (a single business or an entire business activity to be carried out along with the main business activity of the company).
- → Establish that financial resources necessary for carrying on the activity have to come from the specific business itself

The purpose of this regulation is to allow for split management and and to enable different activities and businesses to be valued independently. Possible purposes are:

- → **Disposition of assets:** Setting up of a separate corporate entity internal to the company, without the need to deal with rules and regulations of the Civil Code applicable to de-merge of companies, therefore without bearing related costs (i.e. investment of corporate equity in financial speculations aimed at risk diversification). Where there is provision in the By-laws offsetting out the criteria for calculation of income and expenditure for the specific business, the issuance of stock directly linked to results of the specific business is permitted.
- → **New contributions and need of new resources for developing a new project:** Separate accounting for the specific business activity is mandatory (Contributors may decide on the basis of the substance and the content of the single project or operation).

15 Civil code, Article 2447bis.

A specific resolution of the Shareholders Meeting is necessary in order to bind some assets to a specific business. The meeting shall determine:

- → The object of the business
- → Assets involved
- → Financial and economical business plan (in order to determine congruity, criteria of management, expected result, guaranties etc.)
- → Contributions specifically undertaken and financial instruments issued for the operation
- → Appointment of an auditing company in case the corporation issues equity securities publicly traded and offered to non professional investors
- → Rules of accounting of the specific business.

The resolution must be filed with the Companies Registry. Actual creditors may file an objection within two months from the filing.

Debt Securities

Corporations are allowed to issue debt securities offered to the market for subscription. The decision to issue debt securities as a financial instrument, may be led by the:

- → Preference of raising financial resources without granting new subjects the right to vote and without altering corporate control
- → Necessity of financing projects or operations, which only need a temporary financing
- → Circumstance that the purchase of equity stock is not a soundinvestment during a particular period of time.

Issuance of equity security instead may sound convenient for raising permanent resources, acquiring new resources without paying additional financial costs, or financing the stock capital without being subject to statutory limitations provided for the issuance of debt securities.

Unless otherwise provided by either the certificate of incorporation or the bylaws, the Board of Directors may adopt the resolution for issuance of debt securities. The extraordinary general meeting may vote for issuance of convertible bonds. To be enforceable, the resolution of issuance must be entered in the minutes of the meeting and must be filed in accordance with the regulation established for By-Laws amendments[16].

The threshold for the issue of debt security has now been raised to an amount equal to twice the aggregate of the stock capital, of the legal reserve and of the available reserves as shown on the last approved balance sheet. It would seem possible to make reference to the subscribed stock capital and not to the stock capital paid in, since the law is silent in this respect. The following situations are not subject to the above limitations:

- → Bonds issued in excess that are subscribed by professional investors subject to prudential control in accordance with specific regulations and that are traded among non professional purchasers (situation where bond subscribers are liable for the solvency of the company).
- → Bonds backed by first mortgage over real estate owned by the company up to 2/3 of their value
- → Authorization by governmental authority.

Rules and regulations concerning convertible bonds has not changed (extraordinary General Meeting + stated capital increase for an amount equal to the shares to issue in conversion). Stated capital must be entirely paid in.

17 Civil code, Articles 2410 and 2436.

Corporate governance

17 Civil code, Articles 2257 and 2258.

18 Civil code, Article 2473.

19 Civil code, Article 2386.

20 Civil code, Article 2704.

Corporate governance in Limited Liability Companies

In Limited Liability companies, the By-Laws may contain a provision that management is undertaken by a:

→ Sole Director

→ Board of Directors, whose members exercise their actions jointly. In this case statutory rules regulating management of partnerships apply to Limited Liability Companies[17]. Therefore:

1. Unanimous consent of all the Directors is required for company's actions.
2. Single Directors cannot carry out any action on their own, save when there is necessity to avoid damage to the company.

→ Board of Directors, whose members may act individually. In this latter case:

1. Each Director may exercise her/his office individually
2. The power to manage the company belongs to any stockholder with unlimited liability.

Certain company's actions (annual financial reports drafting, merger or de-merger plan and capital increase plan drafting) may only be exercised by the Directors altogether, by way of majority quorum or the different quorum that the By-Laws of the company may set forth[18].

In Limited Liability companies, even if Directors exercise their activity jointly, it cannot be said that the Board is a collective body. In fact there may be a provision in the Articles of Incorporation of Limited liability companies establishing that Directors' resolutions must be adopted by way of written consultation or by way of express written consent (even via fax or e-mail if bearing signature). The statutory provisions of consultancy and of written consent imply that an action is undertaken by a single Director and that resolutions are adopted without the need for a meeting of the Board of Directors.

Corporate governance in Corporations

In Corporations, different models of corporate governance may be adopted. By-Laws may regulate more freely the internal organization of the Board competent for management, its functioning, the circulation of information among its members and the members of the Board of Auditors. If By-Laws do not provide otherwise the model of corporate governance and control applied is still represented by the traditional system.

→ **Traditional System:** The reference model is the traditional system (General Shareholders' Meeting, Board of Directors, Executive Committee, Board of Auditors and external auditing when required by the Law). Under the new system, the accounting control previously attributed to the Board of Auditors is now attributed to an external Auditor or an Auditing Company. A Provision of the Civil Code establishes that the office term for appointed directors is the same office term set of directors appointed by the time of their election[19]. In case of conflict of interest, the executive director shall refrain from undertaking operations and shall empower the Board of Directors for their enforcement. If a resolution would have not been approved without the vote of the director in conflict of interest, such resolution may be challenged within 90 days, and during this period of time operations carried out with bona fide third parties are valid. Directors and members of the Board of Auditors *"...must act with the same professionalism and diligence required by the nature of the action undertaken"*[20]. Such standard does not require Directors to be necessarily experts on accounting, finance and any other sector of management and governance of the enterprise, rather it means that their decisions shall be informed and pondered, based on knowledge and on a calculated risk, and not on irresponsible and negligent improvisation.

→ **Dualistic System (German tradition):** It may be established on By-Laws that governance of the company is exercised by the Management Board, which is appointed by the Supervisory Board (with the exception of the first election resulting from the certificate of incorporation). Management Board can assign specific executive powers to one or more of its members. Rules regulating relationship between Board of Directors and the Executive Committee, and directors in general apply to this corporate model. Management Board cannot remain in office for more than three consecutive fiscal years. It may be however be confirmed and removed for "good cause" by the Supervisory Board. General rules apply to individual claims against members of the Management Board, as well as to claims raised by the Supervisory Board against them. When the resolution is adopted by 51% of its members, the member of the Management Board against whom the claim has been raised, is automatically removed from office. The Supervisory Board, which exercises general supervision over activity of the company, is elected by the General Shareholders' Meeting (with the exception of the first election resulting from the certificate of incorporation). Both effective (those holding office) and supplemental (substitutes) members are elected. Supplemental members are those who replace effective members in case one or more of these latters resign or cannot otherwise attend her/his duties. Its membership has to be no less than three. Their office lasts three fiscal years. At least an effective and a supplemental member have to be auditors members of the Roll of Auditors. It is not possible to be member of the Management and of the Supervisory Board at the same time. The Supervisory Board exercises supervision over:

1. Compliance with legal and accounting rules and regulations
2. Corporate operations, reporting any unlawful act.

Moreover, once a year the Board reports to the Management Board. Members of the Supervisory Board share joint and several liability with members of the Management Board for acts and omissions of the latter, whenever the activity of supervision of the Board could have avoided damages.

→ **Monistic System (British Tradition):** By-Laws may set forth that a Board of Directors have the duty of corporate management, but a Committee appointed internally will be appointed for the purpose of supervising the management. This system of governance must be explicitly set out in By-Laws. There is a close connection between the Board of Directors and the Committee for supervision of the management, in fact only those who have been previously elected members of the Board of Directors may serve as members of the Committee. The Board of Directors set the number of members for the Committee (not less than three, if the company solicits investment at large). Half of the members at least must be independent, and further standards and by ethical codes are set by business associations or by legal entities of management of trading markets. It is not allowed to serve at the same time as member of the Committee for supervision of the management and as member of any other Executive Committee. Further, it is not permitted for a member of a Committee for supervision of the management to have specific assignments, powers or offices regarding the management of the company. At least one director, among members of the Committee for supervision of the management must be an auditor member of the Roll of Auditors. The same powers and duties of the Board of Auditors are attributed to the Committee.

Shareholders Meetings and amendments to the By-Laws

The General Meeting may be called at any place within the municipality where the company has its own registered office, unless the Bylaws provide otherwise.

The Meeting has to take place once a year within the 120th day after closing of the corporation's fiscal year. By-laws may set a longer period of time not exceeding 180 days for companies required to file a consolidated tax return and when there is a specific need in connection with structure and business activity of the company. In this latter case Directors have to make mention of the deferral in their report[21].

The following powers previously reserved to the extraordinary general Meeting may be assigned to the Board of Directors, to the Board of Auditors or to the Management Board, if any:

21 Civil code, Article 2428.

- → Issue of non convertible bonds or of financial instruments without voting rights
- → Merger with a wholly owned company
- → Creation or suppression of secondary offices
- → Attribution of powers of attorney
- → Capital reduction due to a shareholder's withdrawal
- → By-Laws amendments in compliance with statutory regulations
- → Transfer of the registered office within the national territory.

Companies without outstanding shares held by public investors may avoid formalities and requirements established for the call of the meeting (notice on the Official Gazette 15 days before the meeting).

By-Laws may allow calls through means of communication that guarantee the effective knowledge of the call at least 8 days in advance on the date scheduled (Certified letter with receipt, fax are proper means; some doubts about e-mails with automated reading receipt message).

Shareholders are not allowed to call the meeting solely on arguments concerning the competence of Directors.

Upon petition by 10% of the Shareholders, the Tribunal may also call the general meeting, but only if the management did not call it without justification.

Quorum and majorities for the resolution of the Shareholders Meetings of a corporations are different among closely held and publicly traded corporations. They may be summarized as follows.

First Call

Companies without outstanding shares held by public investors (closely held corporations):

- → **Ordinary General Meeting:** In order to effectuate corporate business a quorum of 50% of shares entitled to vote must be represented. Unless Bylaws provide otherwise, shareholder actions must be approved by the majority of shares represented at the meeting and entitled to vote. Call formalities need not to be observed if the meeting is attended by:
  1. Shares representing the entire capital
  2. The majority of Directors
  3. The majority of members of the Board of Auditors.

  Absentees must be given immediate notice about adopted resolutions. Participants may claim they have not been sufficiently informed on the argument
- → **Extraordinary General Meeting:** Unless Bylaws provide otherwise a quorum of 50% of shares entitled to vote must be represented and shareholder actions must be approved by the majority of shares represented at the meeting and entitled to vote.

Companies with outstanding shares held by public investors (publicly traded corporations):

- → **Ordinary General Meeting:** Same rules as above
- → **Extraordinary General Meeting:** A quorum of 50% of the shares (entitled or not to vote) must be represented and shareholders' actions must be approved by 2/3 of the shares represented at the meeting.

22 Civil code, Article 2369.

Second Call

If the above quorum required for the first call of the shareholders' meeting are not met, the meeting has to be recalled on another day, within 30 days.

Companies without outstanding shares held by public investors (closely held corporations). Only resolutions on arguments to the order of the day of the first meeting may be adopted, with the following quorum:

- → **Ordinary General Meeting:** No minimum quorum required
- → **Extraordinary General Meeting:** A quorum of more than 1/3 of the shares must be represented and shareholder actions must be approved by 2/3 of the shares represented at the meeting.

By-Laws may increase quorum required, but not for annual financial reports approval, appointment and revocation of corporate management[22].

A quorum of at least 1/3 of the shares representing the stated capital is required for passing a resolution on the following arguments:

1. Change of the corporation's purpose
2. Modification of form of business association, anticipated winding up, extension of duration for the company
3. Revocation of the winding up procedure
4. Transfer of the registered office abroad
5. Issue of preferred stock.

Companies with outstanding shares held by public investors (publicly traded corporations): Same quorum set above for those companies which do not solicit investment at large, with the exception of those Extraordinary General meetings with calls subsequent to the second one, where a quorum of at least 1/5 of the shares must be represented to effectuate corporate business.

Company's decisions and Quota-holders Meetings in Limited Liability Companies

23 Civil code, Article 2479.

24 Civil code, Article 2479.

The powers and attributions of stockholders are set forth in Bylaws[23]. Stockholders shall decide on issues brought to their attention by one or more directors or by 1/3 of shareholders, and on the following matters:

- → Balance sheet approval and dividend distribution
- → Election of Directors
- → Election of Board of Auditors and/or external Auditor
- → Amendments to articles of organization
- → Resolutions concerning substantial modification to the corporate purpose or concerning relevant modification to the rights of stockholders[24].

There are no specific formalities for adoption of a company's decision. However, there must be a writing wherein the will of stockholders, the matter subjected to decision and consent of stockholders are certified.

The written decision must be reported in the Book of Stockholders' Decisions. This rule evidences that decisions over company's operations do not have necessarily to be adopted by a collective body as long as the above requirements are met.

In order to adopt company's resolutions a quorum of 50% of the stock must be represented[25]. Shareholder actions must be approved by the majority of the stock represented at the meeting, save for those actions concerning:

- → S ubstantial modification to the corporate purpose.
- → Relevant modification to the rights of stockholders.

The above actions must be approved by 50% at least of the stock of the company.

It is important to remark that extraordinary meetings are not required anymore for Limited Liability Companies.

The Articles of incorporation of Limited liability companies set forth rules for the call of quota-holder Meetings, with the formalities necessary to ensure information about the arguments subject to discussions (fax and e-mails are proper means of transmission). In absence of specific provisions on the matter, the call must be delivered via registered letter with receipt sent to stockholders at least 8 days before the date set for the meeting. No formalities are required when the entire stock is represented at the meeting and all the Directors and Auditors are either present or informed and no one objects that the discussion over the matter should not take place[26].

25 Civil code, Article 2479.

26 Civil code, Article 2479bis.

Decision-making bodies

Qualification and powers of Directors

The management of the company exclusively belongs to the directors, who perform the actions necessary to the achievement of the corporate object. In corporations, the management of the company may be entrusted to non shareholders. It cannot be entrusted to entities other than individuals[27].

If more than one person is entrusted, they constitute the Board of Directors. The Board of Directors selects the chairman among its members, unless she/he is appointed by the Shareholders Meeting.

If the By-Laws or the Shareholders Meeting allows so, the Board of Directors may delegate its functions to an executive committee composed by one or more of its members. The Board of Directors set out the content, the limits and the modalities for the exercise of delegated powers. Even when delegates, the Board of directors may always give guidelines to the delegated bodies and bring back anytime power delegated.

On the basis of the information received, the Board of Directors assess the adequacy of the corporate organization, management and accounting structure of the company; it reviews the strategic and industrial plans of the company assessing as well the general trend of the management.

Not all of its functions can be delegated, as for instance the drawing up of annual account, the decisions about issuance of debt securities, the power to increase the stock capital etc[28].

The delegated bodies take care that the organizational, administrative and accounting structures are adequate to the nature and the size of the company and report to the board of Directors and to the Board of Auditors as the By-Laws set forth and at least every six months, on the general trend of the management and on its expected evolution, as well as on most relevant transactions entered into by the company or by its subsidiaries.

27 Civil code, Article 2380bis.

28 Civil code, Articles 2420ter, 2423 and 2443.

The directors are required to act being informed. Each director may request the delegated bodies to report to the Board about the management of the company.

The powers of representation granted to the directors by either the By-Laws or the Shareholders Meeting are of general character.

Liability of Directors

The directors are liable to:

- → The company, if they have not exercised due care over the general management of the company, they have not done what they could for preventing damages to the company to occur, and they have not fulfilled their duty with the professionalism and diligence required by the nature of the action undertaken. A claim of their responsibility may be promoted by resolution of the General Shareholders' Meeting. With reference to the balance sheet, without previous notice, a claim of responsibility may be carried out during discussion about balance sheet approval by shareholders representing 1/1000 of the stock capital and within the five years subsequent to their removal from office. Outside the General Shareholders' Meeting, even a minority of shareholders may make the claim (1/5 of the stock capital for companies which do not issue capital of risk and 1/20 of the stock capital for the others)
- → Creditors of the company, whenever the preservation of the stock assets is not guaranteed and the stock assets are not sufficient to satisfy their credits. In case of bankruptcy, the claim for responsibility may be initiated by the bankruptcy administrator, and in case of extraordinary administration, by the extraordinary administrator.
- → The single shareholder or the third may carry out a claim for damages within five years.

Fiduciary duties

As the provisions of the Civil code sets forth, the Directors of a company are required to perform their mandate and to carry out their duties with the diligence of a good *pater familias*[29]. They must fulfil the duties that the law and the By-Laws establish with the diligence required by the nature of the appointment and by their specific skills. Directors are jointly and severally liable to the company for damages arising from the non observance of such duties, save for functions vested solely in the executive committee or in one or ore executive directors.

They are in any event jointly and severally liable if, being aware of prejudicial acts, the directors did not act as they could to prevent their performance or to either eliminate or reduce their harmful consequences.

Liability for acts or omissions of directors does not extend to that director who, being without fault, has had her/his dissent entered without delay in the minute book of the meetings and resolutions of the Board of Directors and has immediately given notice to the Board of Auditors.

Restrictions on Directors

Interdicts, bankrupts and those who have been sentenced to a penalty entailing interdiction even though temporary, from public office or incapacity to exercise managerial functions, cannot be appointed as directors and if appointed they forfeit their office[30].

Also, according to the provisions of the Civil Code[31], directors cannot act as unlimited liability shareholders in competing ventures, neither can they carry on a concurrent business activity on their own or on behalf of third parties, nor as directors or general managers in competing ventures, unless with explicit authorization by the General Shareholders Meeting.

29 Civil code, Articles 1710 and 2392. The standard refers to the diligence that a normally diligent director would use under the same circumstances.

30 Civil code, Article 2382.

31 Civil code, Article 2390.

The directors must inform the other directors and the Board of Auditors of any interest they have on their own behalf or on behalf of third persons in a specific transaction of the company, by specifying its nature, terms, origin and relevance.

In case of interest by a managing director, she/he must abstain from the transaction remitting it to the Board of Directors and giving notice about it at the first appropriate Meeting.

The relating resolution by the Board must adequately justify the reasons and the convenience of the transaction for the company.

32 Civil code, Article 2386.

Removal of Directors

Removal of a director can be effected by a resolution from a Shareholders Meeting.

In case of corporations, when in the course of the fiscal year a vacancy of one or more directors occurs, the others provide for their replacement by resolution approved by the Board of Auditors provided that the majority is always constituted by directors appointed by the Shareholders Meeting.

If vacancies of the majority of the directors appointed by the Meeting occur, those who remain in office shall call the Shareholders Meeting to provide for filling the vacancies[32].

In case of Limited liability companies, there are no specific provisions that the civil code sets forth. Consequently, provisions of the By-Laws have to regulate replacement of the directors.

Company's decisions and Quota-holders Meetings in Limited Liability Companies

The Meeting for approval of the annual balance sheet has to take place once a year within the 120th day after closing of the corporation's fiscal year. By-laws may set a longer period of time not exceeding 180 days for companies required to file a consolidated tax return and when there is a specific need in connection with structure and business activity of the company. In this latter case Directors have to make mention of the deferral in their report[33].

33 Civil code, Article 2428.

34 Civil code, Article 2403.

Auditors in Corporations: the Board of Auditors

Only one out of the three or five of the effective members (and one of the supplemental members) of the internal Board of Auditors must be an auditor member of the Roll of Auditors; other members may be chosen among members of other professional categories or among professors in juridical or economical sciences.

According to the statutory provision of the Civil Code[34], the Board of Auditors exercises a control of Law and Bylaws regulation compliance and over principles of fair management. In other words its duty is to exercise administrative and legal control, while duty of control over accountancy, which characterized the activity of the Board, has been eliminated.

Members of the Board of Auditors have to attend both the Board of Directors' and the General Shareholders' meetings, as well as meetings of the Executive Committee. They are removed if they do not attend without justification two consecutive meetings during a fiscal year. The supervisory board must meet at least each 90 days and may meet through the use of electronic means (e.g. videoconferences).

When some shareholders report an unlawful action by Directors, the Tribunal cannot intervene if the General Shareholders' Meeting substitutes members of the Board of Directors and of the Board of Auditors as a whole, and elect new members of adequate professionalism for curing eventual illegality.

35 Civil code, Article 2399.

36 Civil code, Article 2412.

37 Civil code, Articles 2399 and 2409quinques.

The following cannot be elected members of the Board of Auditors:[35] those who are in the condition listed on Article 2382 (Insanity etc.), parent and relatives within the 4th degree of company's Directors, Directors of the company, parent and relatives within the 4th degree of either controlling or controlled company's Directors; those who are bound to either the company or to controlling/controlled companies by an employment relationship, a continuative consulting relationship, a remunerated service activity, or by other economical interested relationship that affect their independency.

Among other duties, members of the Board of Auditors have also to certify that a bond issuance does not override legal limitation[36].

Accounting Supervision

Supervision over accounting has to be exercised by an external auditor, who cannot be member of the Board of Auditors. His appointment may be mentioned in the Certificate of incorporation or he may be elected by the General Shareholders' Meeting.

Accounting supervision over companies with outstanding shares held by public investors has to be exercised by an auditing company.

Accounting supervision over companies without outstanding shares held by public investors and required to have consolidated financial statements may be exercised by an auditor.

Accounting supervision over companies without outstanding shares held by public investors and not required to have consolidated financial statements may be exercised by an auditor as well. In this latter situation, however, By-Laws may provide that accounting supervision is exercised by the Board of Auditors, whose members shall be in this case only auditors members of the Roll of Auditors.

The auditor is elected by the General Shareholders' Meeting, takes his office for three years and may be removed only for "good cause". His activity of control consists in:

- → Drafting a specific auditing report
- → Communicating to the Supervisory Board about the existence of any fact deemed to be blamed.

The auditors are required to:

- → Verify quarterly during the fiscal year regularity of accounting and fairness of accounting methods applied
- → Express with specific report an opinion over the annual balance sheet and the consolidated balance sheet
- → Document the activity carried out on a specific book as provided by statutory regulation on mandatory bookkeeping.

The auditing activity is in conflict with the office of member of the Supervisory Board of:

- → The company
- → Controlling/controlled companies

and with other activities listed in the relevant provisions of Civil code[37].

Auditors in Limited Liability Companies

In a Limited Liability company, an external Auditor and the internal Board of Auditors exercise accounting supervision. Election of the Board of Auditors is mandatory whenever:

- → The stated capital of the company is in the amount equal or superior to the minimum amount (€50,000) of stated capital required for Corporations
- → Thresholds set forth in Civil Code, Article 2435bis, allowing a company to file simplified annual financial reports are exceeded for two consecutive years[38].

If the above thresholds have not been exceeded for two consecutive fiscal years the company is not compelled to maintain the Board of Auditors.

Rules of the Civil Code regulating election and functioning of the Board of Auditors of Corporations apply to Limited Liability Companies as well.

38 Civil code, Article 2477.

Corporate governance issues for Publicly Traded Companies

Pursuant to the general principles indicated by CONSOB (which is the Italian Security Exchange Commission), the managing bodies of publicly traded companies must adopt rules ensuring substantive and procedural transparency and the fairness of the business transactions with related parties and disclose them in the management report. For this task, they may be assisted by independent experts on the basis of the nature, value or characteristics of the business transaction.

The above provisions apply to business transactions directly entered into or through subsidiaries and regulate such transactions in terms of powers, decision, reasonableness and documentation. The supervising body exercises its control over the transaction and has to report to the Shareholders Meeting.

Foreign Investmnets

Registrations and Permits

There are not specific statutory regulations in Italy providing limitations on foreign investment in the Country. In principle, foreign investments as well as domestic investments can be forbidden only for reasons of public order, public health or other general principles of law.

- → **EU Citizens and EU companies:** In accordance with the general principles of EU, foreign EU citizens and EU companies enjoy the same treatment and protection of law as domestic ones.
- → **NON EU Companies:** As long as the reciprocity of treatment with another Country is observed, foreign companies are generally allowed to operate, to maintain representative offices or permanent establishments, to incorporate subsidiaries and to participate to domestic business concerns in Italy.

Transfer of dividends, interest and royalties abroad

Transfer of dividends, interest and royalties abroad is not restricted. As tax statutory regulations set forth, foreign citizens with fiscal residence in Italy or companies incorporated in Italy or foreign companies without fiscal residence in Italy but having there a permanent establishment, are taxable subjects in Italy and have to pay taxes in accordance with the relevant tax statutory regulations applicable.

Definition of permanent establishment substantially matches the definition that Article 5 of the OECD Model Convention (double taxation) establishes.

Dividends, interest and royalties paid to foreign citizens or foreign companies without fiscal residence in Italy, but with a permanent establishment, are taxed through a withholding tax.

Withholding taxes on foreign investments (dividends, interest and royalties)

There are three main withholding taxes applicable at source on certain payments: dividend withholding tax, withholding tax on interest, and withholding tax on royalties.

Dividend withholding tax

Dividends received from the 1st of January 2012 by individuals outside the scope of a business activity are subject to a 20% withholding tax in settlement of whereby they concern non qualifying holdings. Qualifying holdings consist of shares (other than savings shares)

and any other investment in the capital or equity of a company to which voting rights are linked in the ordinary Shareholders'

Meeting exceeding 2% or 20%, if the securities are traded on a regulated market, or 5% or 25% in other cases.

Dividends received from the 1st of January 2012 by individuals outside the scope of a business activity regarding a qualifying holding in Italian companies are not subject to withholding tax, whereas those regarding foreign companies are subject to a 20% withholding tax on account for the taxable portion of profit – i.e. 49.72% of the total (with a consequent filing requirement and deduction of any credit for taxes paid abroad), net of any withholding tax applied in the foreign country. In applying the withholding, account is taken of double taxation agreements which could provide for the reduction or elimination of the tax.

If dividends are distributed to a foreign company resident in a State under a privileged tax regime (tax havens), they shall be subject to taxation in full, unless the taxpayer receives a positive response to an opinion request (interpello) from the Revenue Agency.

From the 1st of January 2012, dividends received by parties other than individuals not resident in Italy are generally subject to a 20% withholding tax in settlement. However, whereby non resident parties are companies or entities subject to corporate income tax in the countries entered in the so-called white list, the rate is equal to 1.375%.

Reduced rates are possible under any tax treaties, Italy has concluded with the recipients' country of residence.

The withholding tax is not due, in line with the EU Parent-Subsidiary Directive, for dividends paid by Italian resident corporations to its EU parent company. The benefit is subject the parent's current ownership dating back at least one year, of no less than 25% of the Italian subsidiary's share capital.

Withholding tax on interest

Interests on current accounts and deposit accounts with banks, as well as bonds and similar securities, received by people resident in Italy for tax purposes is subject to a withholding tax of 20%, generally applied on account (gross interest is included in taxable income and the withholding is deducted from the gross tax). However, whereby the interest is received by residents outside the scope of a business activity, the withholding tax is applied in settlement and interest is not part of the overall taxable income.

Interests on current and deposit accounts, as well as bonds and similar securities, received by non-residents is not subject to any withholding tax, with the exception of persons resident in tax havens, for whom a 20% withholding tax applies.

In compliance with the EU Interest and Royalties Directive, withholding tax is not due on interest paid by companies resident in Italy for tax purposes or by permanent establishments in Italy of companies resident in the European Union to (i) resident companies, or (ii) permanent establishments of companies resident in other Member States of the European Union. In accordance with the Directive, the benefit is applicable if requirements concerning minimum holdings are fully met.

The withholding tax rate may be reduced under any tax treaties Italy has concluded with various foreign countries.

In line with the provisions of the EU Directive on Interest and Royalties, the withholding tax on interest payments is not levied if these payments are made by Italian resident companies or by Italian permanent establishments of EU resident companies to affiliated (i) companies resident, for tax purposes, in another EU Member State or to (ii) permanent

establishments of companies resident, for tax purposes, in another EU Member State. In line with the above-mentioned Directive, the benefit is applicable if certain shareholding requirements are satisfied.

Withholding tax on royalties

Royalties paid to Italian resident corporations, or to Italian permanent establishments of non-resident corporations, are not subject to withholding tax. In principle, royalty payments to non-Italian residents are subject to a 30% final withholding tax. Under certain conditions, the tax base may receive a 25% flat deduction.

The withholding tax rate, if due, can be reduced under any tax treaties Italy has concluded with various foreign countries.

In line with the provisions of the EU Directive on Interest and Royalties, the withholding tax on royalty payments is not levied if these payments are made by Italian resident companies or by Italian permanent establishments of EU resident companies to (i) companies resident, for tax purposes, in another EU Member State or to (ii) permanent establishments of companies resident, for tax purposes, in another EU Member State. In line with the above-mentioned Directive the benefit is applicable if certain shareholding requirements are satisfied.

Tax treaties

To avoid double taxation, Italy has concluded tax treaties with the following Countries:

Albania	Georgia	Mexico	Sweden
Algeria	Germany	Morocco	Switzerland
Argentina	Greece	Mozambique	Tanzania
Australia	Hungary	New Zealand	Thailand
Austria	India	Norway	The Netherlands
Bangladesh	Indonesia	Oman	Trinidad & Tobago
Belgium	Ireland	Pakistan	Tunisia
Brazil	Israel	Philippines	Turkey
Bulgaria	Ivory Coast	Poland	Ukraine
Canada	Japan	Portugal	United Arab Emirates
China	Jugoslavia	Romania	United Kingdom
Cyprus	Kazakhstan	Russia	U.S.A.
Czechoslovakia	Kuwait	Senegal	Uzbekstan
Denmark	Lithuania	Singapore	Venezuela
Ecuador	Luxembourg	South Africa	Vietnam
Egypt	Macedonia	South Korea	Zambia
Estonia	Malaysia	Soviet Union	
Finland	Malta	Spain	
France	Mauritius	Sri Lanka	

The treaties generally provide more favourable tax treatment of Italian non-residents than the treatment provided under local Italian law. Most of these treaties are based on the OECD Model Convention.

EU Parent-Subsidiary Directive

Italy has fully implemented the EU Parent-Subsidiary Directive for the abolition of double taxation on corporate profits generated by an EU subsidiary, and distributed to an EU parent resident in another EU Member State[39].

According to the rules on taxation of dividends, dividends received by Italian parent corporations are 95% exempt from IRES regardless of the size of the underlying shareholding, and of the relevant holding period.

Dividends paid by Italian subsidiaries are exempt from withholding tax, provided that the EU parent corporations hold, for an interruptive period of one year, a direct shareholding of at least 25% in the Italian subsidiaries. Italy has not yet implemented the Directive 123/2003 regarding, amongst the other, the reduction of the relevant threshold to 20%.

39 EU Directive No. 435/90.

EU Merger Directive

Italy has fully implemented the EU Merger Directive regarding the tax ramifications arising from mergers, divisions, transfers of assets and exchange of shares between EU-resident corporations[40].

In line with the EU Merger Directive, Italian tax law specifies the conditions under which income, profits and capital gains from the above indicated business reorganizations - occurring between Italian and other EU-resident corporations - are deferrable.

40 EU Directive No. 434/90.

EU Directive on Interest and Royalty Payments

The EU Directive on Interest and Royalty Payments provides for the abolishment of withholding tax on payments of certain interest and royalties between corporations resident in different EU Member States[3].

The benefit of the exemption from withholding tax on payments made in favour of EU beneficiaries is subject, amongst the others, to the following conditions:

- → The recipient is the beneficial owner of the interest and royalties payments. To this end, the recipient is regarded as the beneficial owner only if it receives the payment for its own benefit and not as an intermediary, such as an agent, trustee or authorised signatory, for some other person.
- → The interest and royalties payments are made:
  1. By a company which directly holds at least 25 per cent of the voting rights in the ordinary shareholders meeting ("Voting Rights") of the company which receives the payment
  2. To a company which directly holds at least 25 per cent of the Voting Rights in the company which makes the payments
  3. To a company whose Voting Rights are directly held for a percentage not less than 25 per cent by a third company which also directly holds said minimum percentage in the company which makes the payments and in the company which receives the payments.
- → The minimum 25 per cent stake at point (ii) above is held without interruptions for at least 12 months.

For the purposes of the exemption, the beneficial owner of the payments shall have to attest its residence through a certificate issued by the Tax Authorities of its State of residency.

The implementing Decree provides that the exemption is applicable on interest accrued or royalties payable as from January 1, 2004.

In addition, the Legislative Decree introduces a withholding tax of 30% on payments made to non-Italian residents deriving from licences of industrial, commercial and scientific equipments.

41 EU Directive No. 434/03. See also the implementing Legislative Decree No. 143/05.

Repatriation procedures and restrictions

Capitals, dividends, interests and royalties are freely transferable to and from Italy, and foreign citizens and business concerns are not subject to any restrictions on their repatriation. Transfers exceeding € 10,329.14 must however be notified to the Italian Foreign Exchange Office in accordance with the statutory regulations on money laundering.

Foreign Personnel

Foreign citizens can enter our territory for tourism, for study, for family reunification and in order to integrate into the labour market, within the limits established by entry flows.

Entry of foreign nationals coming from the European Union

It is regulated by the Schengen agreements which made it possible to build a common area of free movement among the signatory States and eliminated border controls. In this case, the foreigner who holds a permit of residence, is exempt from a visa for stay not exceeding three months, upon the condition that he does not enter Italy for subordinate work, for self-employment or for apprenticeship.

Entry of third-Country nationals

The foreigner must hold a visa that authorizes his entry and that must be sticked on his passport or on another travel document. Some States are exempt from the obligation of visa for tourism. Visas are issued by Italian embassies and consulates in the country of origin or in the country in which the foreigner is regularly residing.

The foreign national who legally enters Italy must apply for the permit of residence within eight working days. This document will bear the same reasons for stay as those stated in the visa.

Purpose of entry and visas

It is possible to legally enter and stay in Italy for:

- → **Tourism:** in order to enter into our Country the foreign national must show a valid passport upon crossing the border. This kind of permit does not allow to perform a job.
- → **Study:** a visa for study can be applied for at the Italian Embassy in the foreigner's country of residence. Its validity is equivalent to the length of the course he/she intends to follow; in any case, it must not exceed one year.
- → **Family reunification:** it is possible be granted this permit when the applicant is a regularly residing foreigner who holds a residence card or valid permit of residence for subordinate work, for self-employment, for asylum or for religious reasons: its duration must not shorter than one year.
- → **Work:** upon his entry into Italy, the foreign national must hold a visa for work that is issued keeping into account entry flows quotas established by decrees that are issued every year. Permits for work relate to subordinate work, self-employment and seasonal work.

In order to establish a permanent, fixed-term or seasonal subordinate work relationship with a third-country national who resides abroad, the Italian or regularly residing foreign employer must submit a ad hoc request for authorization, bearing the name of the person, to the "Single Desk for Immigration" that is competent in the place where the job will be performed.

The foreign national who intends to carry out an industrial, professional, craftsmanship or commercial permanent self-employment job, or intends to establish a joint-stock or partnership company or to take up posts in a company must possess the moral and professional requirements that law requires from Italian citizens for performing their activities.

The foreign national who is already on the Italian territory for any other reason, on certain occasions and within the limits established, can perform a job activity by applying for the conversion of his title of residence to the competent local police headquarters *(Questura).*

The holder of a permit of residence for study or training can perform:

- → A subordinate job, once he has obtained the authorization from the competent Single Desk for Immigration and the conversion of his permit of residence
- → A self-employment activity after the requirements for self-employment entry have been tested and after the permit of residence has been converted
- → The holder of a permit of residence for seasonal work can perform permanent subordinate work, and having his permit of residence subsequently converted, only if the previous year he had got a permit of residence for seasonal work and, upon its expiration, he has gone back to his country of origin.

Labour Law

Overview

Employment relationships are regulated by the Constitutional principles, the provisions of the Civil code, those of the so-called "Statute of Workers" *("Statuto dei Lavoratori")*[42] and by other statutory regulations.

Terms and conditions of employment are also periodically established by the so called Collectively Bargained Labour Agreements (CCNL) that have been entered for the different professional categories.

In case of conflict between the provisions of an employment contract and the provisions of law, those of law always prevail.

In addition, the Italian Constitution contains several general principles of labour law. Among these are Article 1 that states that "Italy is a democratic Republic founded on labour", Article 4 that sets forth "the Republic recognises to every citizen the right to work", Article 35 "the Republic protects work in all its forms and applications".

Some more specific constitutional principles of law, largely used by the Courts, are:

- → Article 36 about fair remuneration, maximum working hours, weekly and annual paid vacation
- → Article 37 about protection of women and minors on the job
- → Article 38 about social insurance for old age, illness, invalidity, industrial diseases and accidents
- → Article 39 on Freedom of Association
- → Article 40 on the right to strike.

Among the relevant statutory regulations, the Parliament passed on May 13th, 2014 a new statutory regulation, officially referred to as Act N° 78/2014, which amends some of the statutory regulations currently governing the Italian labour market.

This new Job Act comes as a partial amendment to the Matteo Renzi's Law Decree No. 34 which was enacted on March 20th, 2014.

41 Act No. 300/70.

The current types of employment relationship

There is no general requirement for an employment contract to be in writing. Statutory law sets forth that contracts of employment are deemed to be for an indefinite period of time, unless the statutory regulations provide otherwise[42].

The Job Act provides for fixed terms employment contracts. These contracts are subject to the following rules:

- → The 20% Rule: Any company in Italy will only be able to have 20% of their workforce on fixed terms contracts.
- → Exempt from this regulation will be employers with under 5 staff members and those companies operating in the research field.

42 Act No. 230/62.

If a company is over the 20% limit then:

→ The 20% Rule: Any company in Italy will only be able to have 20% of their workforce on fixed terms contracts.

→ Exempt from this regulation will be employers with under 5 staff members and those companies operating in the research field.

The 20% limit number will be calculated from January 1st of the year the Fixed Term contract employees were taken on.

Regarding renewal of Fixed Term contracts the following "4 x" rule applies:

→ Fixed Term Contracts can only be extended 4 times within any given 24 month period including any renewals or extensions of contracts.

Italian Employers will no longer be required to provide a technical, organizational and productive reasons for hiring staff with fixed term contracts or for renewing or extending them.

With the new Labour Decree public and private companies operating in the scientific research field will be able to renew Fixed Term Employment Contracts on an indefinite basis – even beyond the 36 month period limit set for all other companies.

Women on fixed term contracts will be entitled to the same maternity leave rights as permanent female employees. In addition, women on fixed term contracts – who have taken maternity leave in the midst of their contract – will have their maternity leave counted as 'working months'.

Regarding apprentiship contracts, companies in Italy with more than 50 employees cannot have more than 20% of their workforce employed on apprenticeship contracts. A written training schedule is a requirement for all apprenticeship contracts.

Overview

Unions can freely negotiate collective agreements at provincial, regional and national levels. Collective agreements and accords must be registered with the National Council of Economy and Labour - CNEL within 30 days after they have been entered by the parties.

The provisions of the collective agreements are binding for the employers of the category of workers falling into the agreement[43] and prevail over the employment agreement that the employer and the employee have entered, save for those contractual provisions more favourable to the employee.

The so-called economic agreements are instead those covering some categories of self-employed (i.e. commercial agents, some doctors working for the National Health Service, etc, also known as *lavoratori parasubordinati).*

Collective bargaining can regulate all aspects of the employer-employee relationship, except those that the law sets forth.

Collective agreements do not entitle the workers' representatives to any co-determination right, but only to the right to be informed and consulted about the most important decisions of the company.

43 Act No. 936/86.

Suspension of the employment contract

A provision of the Civil code4 establishes the suspension of the employment relationship, occurring under the following circumstances:

- → Industrial accident sustained by the worker
- → Her/his illness
- → Maternity of the worker (two months before and three months after childbirth).

Sick employees are entitled to retain their job position and seniority, as well as their salary for a period of up to six months or more, depending on their job category and the related applicable CCNL.

44 Civil code, Article 2110.

Discharge

A preliminary distinction must be made between fixed-term and indefinite term contracts. As far as fixed-term contracts are concerned, termination is automatic at the end of the specified duration or on completion of the specified task[45].

Nevertheless, according to the provisions of Civil Code, the employer may terminate the contract earlier for "just cause"[46].

The Civil Code provides that each contracting party (the employer and the employee) of a contract of indefinite duration can terminate it, provided the notice period is respected, or without any notice in case of just cause[47].

According to domestic Law an employee can be dismissed for the following reasons:

- → Just cause *(Giusta Causa)* meaning a serious breach of the employee by her/his duties or other behaviour that prevents the working relationship to be carried forward
- → Justified grounds *(Giustificato Motivo)* meaning with that either:
  1. A subjective reason that is a breach by the employee of his /her duties, which is not as substantial as to constitute Just Cause. The breach may consist, for instance, in failure to follow important instructions given by the management, material damages to machinery and equipment, low performance (the grounds for dismissal being "subjective reason")
  2. An objective reason whereby the employer needs to reorganize its own business structure or the workforce through redundancies.

Dismissals must always be in writing and detail the reasons for dismissal. Failure to do so makes the dismissal ineffective. Should the employee believe to have been unfairly dismissed, he/she can challenge the decision in court and the employer must observe the following rules:

If the company employs up to 60 workers in total throughout Italy, or up to 15 in a single working unit, the employer may choose between reinstating the dismissed employee or paying an indemnity (between two and half, and six months' pay).

Under all other circumstances, the employee is entitled to reinstatement and compensation for damages amounting to five months' salary at least. Failure to reinstate an unfairly dismissed employee usually results in an award of 15-month salary plus compensation for damages against the employer.

Employees dismissed for reasons other than Just Cause are entitled to a notice period. Employers may exempt the employee from working during the notice period by paying him/her an indemnity equal to the salary payable during the notice period. Such an indemnity is liable to social security charges.

45 Act No. 230/62.

46 Civil code, Article 2119.

47 Civil code, Articles 2118 and 2119.

Under the provisions of the "collective dismissal procedure", whenever redundancy involves five employees at least within a 120 day period of time and an employer with fifteen or more employees, the company must preliminary consult with the trade unions.

Termination without grounds is limited to trial periods, domestic workers, employees who have reached retirement age and directors.

Dismissals on the grounds of political opinion, trade union membership, sex, race, language or religious affiliation are null and void. Furthermore, members of workers' committees may not be dismissed or transferred for one year following termination of their duties on the committee without the authorization of the relevant regional trade union organization. This provision applies to directors and domestic workers as well.

Dismissal on the grounds of pregnancy, if the dismissal takes place between the conception and the end of the female employee's statutory period of absence on confinement leave or unpaid leave, until the child reaches one year of age, is also expressly prohibited.

Dismissal on the grounds of marriage is also prohibited. Protection against unfair dismissal of managerial employees is regulated by collective agreements.

In case of unjustified dismissal, remedies are different according to the size of the firm: employers having more than 15 employees (or five in the agricultural sector) in anyone establishment, branch, office or autonomous department, and employers having more than 60 workers, wherever located, are required to reinstate the dismissed employee, and to pay damages at a rate of not less than five monthly salary payments.

Alternatively, the employee can refuse reinstatement and request payment of damages equal to 15 monthly pay. If the employer invites the employee to return to work and the employee does not take up the offer within 30 days, the contract is automatically terminated. Where there are fewer than 15 employees in a unit or fewer than 60 employees in total, the employee unfairly dismissed has no right to reinstatement, but is entitled to compensation ranging from 2, 5 to six times the monthly pay.

The employees of charity, union or political organizations are not entitled to be reinstated (Law nr. 108/90).

The contract of employment may also be terminated by the resignation of the employee, provided a notice period is respected. However, an employee may resign with immediate effect in circumstances that Civil code Article 2119 specifies, like:

- → Non-payment of wages or social security contributions
- → Closure of the enterprise
- → Failure to be included within the category or grade corresponding to the work effectively being undertaken
- → Refusal to grant due holidays
- → Unilateral changing of the employee's duties with a corresponding reduction in wages
- → Offences by the employer against the duty to safeguard the physical and psychological well-being of the employee (Civil code, Article 2087)[48]

Specific provisions of statutory law[49] on collective dismissals, provides for special procedures of information and bargaining with unions before terminating contracts, and special indemnities for the employees that are to be made redundant, according to EU directives.

48 Civil code, Article 2087.

49 Act No. 223/91.

Suspension of the employment contract

For any termination of the contract of employment, on whatever ground, even for dismissal for just cause or resignation, the employee is entitled to receive from the employer a severance payment, which is usually referred to as "TFR - Trattamento di Fine Rapporto".

TFR is deemed to be a part of salary, must be set aside every year and kept by the employer, based on the formula of 7,5% of every year's salary, plus revaluation according to a composed index of 75% of price index increase +1,5%[50]. The TFR may be partially paid off in advance, upon occurrence of the following two conditions:

- → The employee has reached eight years of service
- → She/he intends to purchase her/his household's residence, or needs to withdraw the TFR for health care, extended leave for child care or educational leave[51].

50 Act No. 297/82.

51 Act No. 63/00.

Equality

The Italian Constitution[52] sets forth the principle of equality of all citizens before the law "without difference of sex, race, language, religion, and political views, personal and social position".

Italy has also ratified the International Agreement of Economic, Social and Cultural Rights (New York, 16 December 1966)[53].

Statutory law also sets aside any agreement or action by the employer, constituting discrimination for reasons of sex, race, language, religion, political opinion.14 Equality between men and women at work is specifically recognised and guaranteed by the Law[55].

Other provisions of statutory law provide for affirmative action to encourage equal opportunity for women in accessing to employment and during employment. Dismissals for discriminatory grounds as such as political and union views, religion, participation in union activities are prohibited[56].

Likewise, dismissals for discriminatory reasons, such as race, sex, language, political and union views, and religion are null and void and requires always the reinstatement of the dismissed worker[57]. Other kinds of discrimination as such as age discrimination, handicap discrimination and AIDS base discrimination are forbidden[58].

A law on sexual harassment at work does not exist, though, there is case law on unfair dismissal based on this ground. The Constitutional Court has ruled that equality is a fundamental right of foreigners as well.

For citizens of European Union member Countries, Article 48 of the EEC Treaty abolishes all discrimination at work, wage and other conditions of work. Law nr. 40/98 establishes equality between other foreign workers legally resident in Italy and Italian workers.

52 Italian Constitution, Article 3.

53 Through the enactment of Act No. 88/77.

54 Act No. 300/70.

55 Act No. 903/77.

56 Acts No. 125/91 and 604/66.

57 Act No. 108/90.

58 Acts No. 104/92 and 135/90.

Social Security System

The *"Cassa Integrazione Guadagni"* is a State fund within the scope of the National Social Security Institute. It was established in 1954[59], with a view to protecting the workers' earnings in the event the enterprise has difficulties.

The Italian social security, managed by INPS, is compulsory and provides comprehensive benefits for all employees. The social security costs, which are calculated on gross earnings, are jointly financed by the contributions of employees and employer.

Employers have to pay two-thirds of contributions and employees are responsible for the remaining third. As far as wage compensation funds are concerned, domestic labour law sets forth special provisions for guaranteeing workers wages in case of a temporary lay-off or temporarily reduced company activity not attributable to the employer or to the employees or caused by the general economic situation.

59 Act No. 788/54.

A Wage Compensation Fund *("CIG – Cassa Integrazione Guadagni")* is available to industrial workers. The employer provides 80% of gross wage for hours not worked, and is subsequently reimbursed by INPS.

An Extraordinary Wage Compensation Fund *("CIGS - Cassa Integrazione Guadagni Straordinaria")* helps to secure employment once production resumes in a restructured, reorganized or converted company.

Only companies employing 15 or more employees are eligible for CIGS. Compensation equals 80% of the worker's gross wage for hours not worked, and is payable in a 12 month continuous period.

The *"Cassa Integrazione Guadagni"* is mostly used in cases of suspension or temporary reduction of business activity of a company for reasons beyond market fluctuations and includes suspension of activity in the building industry due to weather damages.

Pension System

The Italian compulsory state pension system is financed by social contributions paid by the employer during one's working life, and is based on actuarial fairness.

The retirement age ranges between 62 and 67 years.

Retirement in the private sector is possible for workers after 20 years of contribution and at 67 years and 10 months of age.

It is possible to retire anyway, if 42 years and ten months for males and 41 years and ten months for females of social security contribution have been achieved. Alternatively, up to 2021, workers can retire when the sum of their age (62) and their total number of years of pension contributions (38) adds up to 100, or having contributed 42 years and ten months for male workers and 41 years and ten months for female workers.

The reform includes incentives for workers who decide to continue working, although currently eligible for a public pension. Such incentives provide for a compensation equal to 32.7% of the salary of the worker who has decided to continue working.

Integrative pension schemes in Italy are voluntary for workers and companies alike. The law guarantees freedom for individuals to subscribe to supplementary pension schemes, while leaving companies are free to choose whether to set up their own funds.

Nearly all funds are based on a fixed contribution rate. Regarding disbursement, beneficiaries can generally withdraw up to 50% as a lump sum then the entire or remaining amount as an annuity.

Severance pay scheme

In 2005 a new statutory regulation was enacted[60] to the purpose of redefining, starting from January 1, 2008 the entire statutory regulation applicable to supplementary pension schemes for employees of private companies. The main features of the new regulation are the following:

60 Legislative Decree No. 252/05.

- → Increasing the amount of financing flows dedicated to supplementary pension schemes
- → Harmonization of the supervision system applicable to the entire supplementary pension sector
- → New taxation regime applicable to pension funds
- → Monitoring of the management of the financial resources arising from the workers contribution
- → New financing system though the contribution by the employee of its severance pay (so called "TFR").

Specifically, the statutory regulation provides that the employee is entitled to choose within a six months term, at his discretion, as whether:

- → Leaving the accrued severance pay within the employing company; or
- → Contributing it to a pension fund.

If such six months period elapses without any election by the employee, the accrued severance pay shall be contributed by the employing company to the pension fund mentioned in the relevant labour agreement based on his/her implicit consent.

Italy

Real Estate

Types of ownership

Real estate law is governed mainly by the Italian Civil Code, and by special laws for specific issues. Real estate development projects and renovation works require approval by local authorities entailing administrative licenses and permits. Real estate assets may be:

- → Stand-alone assets
- → Part of a joint property ('condominio'). Specific provisions of the Italian Civil Code (ICC) apply to assets forming part of a co-property
- → Part of a going concern. Rules relating to the transfer of a business apply. There are four titles for classifying real estate assets:
  1. Full ownership
  2. Long lease
  3. Lease of business
  4. Usufruct and Right of Common.

Land Registers

The databases of real estate registration in the Land Registers *(Conservatoria dei Beni Immobiliari and Catasto)* make available to the general public all the information regarding any real estate transaction. As a result, the information on the Registers is - by operation of the law – deemed to be known to all, making contractual rights so registered enforceable against any parties. Registration of a conveyance deed takes place at the Land Register of the province where the real estate property is located and regards the title and a short summary of the registered deed.

Transfer formalities

The agreements for purchasing or selling real estate properties, and creating or transferring real estate rights, must be in writing. These agreements are enforceable following registration with the local Land Register. A real estate sale in Italy is void unless the seller holds a valid administrative building concession for the property. Purchase contracts can be:

- → Preliminary contracts
- → Final contracts
- → Forward sale agreements.

Preliminary contracts are the most common since both parties must fulfill certain conditions (eg, the satisfactory outcome of the necessary title searches) before entering into the final contract.

Construction

Recent Legislative Decree 20 June 2005 no. 122 has provided for a regulation aimed to protect purchasers of real estate under construction.

Real estate under construction are deemed those buildings for which the construction permit has been released and whose building procedure is ongoing or those building whose construction procedure is at stage which does not enable the release of the fitness for use certificate. In particular the above mentioned Legislative Decree provides for:

- → The obligation of the construction company to file a performance bond for an amount equal to the amount paid by the purchaser, the obligation for the construction company to deliver an insurance policy aimed to cover the purchaser from eventual risks for defects showed up following the execution of the purchase contract; specific provisions to be inserted in the purchase contract;
- → A specific regulation for situations of financial crisis of the construction companies
- → The creation of a fund aimed to provide the reimbursement of the purchasers which have suffered a loss upon bankruptcy of the construction company.

Leasehold types and formalities

Residential agreements

Specific provisions regulate residential rental agreements and apply to all properties except those seen as having historical, artistic, archaeological or ethnic significance. There are two general types of rental agreements:

- → Unregulated agreements: the parties can determine the rental rate and any periodic increase. These agreements run for four years, renewable, with some exceptions, for additional four-year terms
- → Regulated agreements: these must comply with the standards terms and conditions, national and local, of standard agreements negotiated between landlords associations and the main tenants associations.

In both cases, tenants may terminate their agreement at any time, but must give six-months prior written notice to their landlord. Clauses and agreements either indicating a term exceeding that set by law, or a rental rate higher than that declared in the written and registered rental agreement, or in the standard agreement, are null and void.

Rental agreements for commercial properties

Rental agreements for commercial properties follow separate specific rules. Commercial properties include those for industrial, commercial, tourist, business, workshop or similar use. Commercial rental agreements must be for a minimum term of six years, or nine years for hotels and similar businesses.

These are automatically renewed for another six, or nine- year term, unless either party gives the other twelve months, 18 months for hotels, prior written notice of its intention to leave. Also, a landlord can deny renewal upon expiration of the first contractual term if he/she needs to use the property:

- → As his/her own domicile
- → For productive activity carried out by himself/herself or by a close relative
- → To carry out substantial restructuring of the property.

The rent is set by the parties, subject to any periodic increase required by law. If the landlord terminates the rental agreement other than for just cause, he/she must give the tenant compensation for the loss of goodwill, equaling 18 months' rent, or 21 for hotels leases. Compensation doubles if the landlord then rents out the same property within one year to someone in the same or a similar business as the original tenant. There is no right to compensation if the property is for:

- → Businesses without direct contact with the general public
- → Professional business or temporary activity
- → Secondary properties in railway stations, ports, airports, highways, service areas, hotels and tourist resorts.

Any provisions or agreement limiting the contractual term set by law or introducing terms favoring the landlord in violation of the rent control *(equo canone)* law are null and void.

Real estate investment funds

The regulatory framework for real estate funds sets out:

- → Terms and conditions for real estate assets contribution to closed-end real estate investment funds
- → Terms of real estates assets contributions from, or sales of real estates assets to, managing company shareholders of the relevant fund, or companies affiliated with the managing company.

The investment fund can hold, at most, real estate of its managing group equaling 60% of the fund's aggregate value. It can take up loans amounting to 60% of the value of the real estate assets held. Also, it can hold interests in real estate companies active in construction.

Real estate investment funds

Type of Acquisition Vehicle

The acquisition of real estate assets is through a special purpose vehicle.

Limited liability companies *(S.r.l. - Società a responsabilità limitata)* are used especially for tax reasons.

Security Package

A customary security package in a real estate acquisition would include:

- → Pledge on the shares or quotas of the vehicle
- → Mortgage for the acquired estate
- → Pledge on the bank accounts of the company holding the estate
- → Pledge on the VAT receivables for the tax authorities.

Also, under Italian banking law, mortgages granted to secure mortgage loans are not subject to claw back action if mortgage registration takes place at least ten days before the bankruptcy declaration.

Financial Assistance Rules

Italian law prohibits financial assistance from a company to a buyer for the latter's acquisition or subscription of the company's shares.

This applies to all types of limited liability companies, making it illegal to directly use the target's assets to finance the acquisition or to secure the loan received by the buyer.

This provision remains in full force after the updating of Italian company law in 2004. With the 2004 Company Law, merger-based leverage buy-out transactions are legal in Italy, subject to compliance with the Italian Civil Code. This applies to mergers between companies, one of which has incurred debt in order to purchase a controlling stake in the other, if, as a result of the merger, the latter's assets are an implicit guarantee or source for the repayment of the debt.

Certain formalities apply when implementing a merger between an acquiring company that has incurred debt and the target company.

The merger plan must indicate the sources of funds available to the company after the merger for meeting its obligations. The directors must show that the surviving company has sufficient funds to repay the acquisition debt and file a business and financial plan giving details of such sources.

Due diligence checks

Due diligence verifications in real estate transactions cover various items relating to:

Encumbrances, restrictions on the seller's freedom of sale

Before purchasing real estate, prospective buyers should conduct an appropriate ownership (cadastral) search to ensure against encumbrances, in particular of mortgages or easements.

Archaeological restrictions

Italy's Ministry of Culture1 has a pre-emptive right to the sale or transfer of any real estate property in Italy with historical or archeological value or significance.

Perspective purchaser of real estate properties with historical or archeological value or significance must notify the Ministry of any transfer or sale involving such properties. Statutes or contractual provisions may also establish such pre-emptive rights.

Town planning restrictions

Each Italian municipality decides the permitted use of real estate properties under its jurisdiction in keeping with local laws and regulations.

Inter vivos (inherited) property deeds, involving partition of co-owned so-called *diritti reali* (rights enforceable against third parties), are null without a certificate from the local authorities stating the property's intended destination. The certificate is mandatory for establishing or transferring any real estate rights, irrespective of type or destination. It must mention the intended destination of the property in accordance with local area regulations. Any subsequent change in the destination or use of the property requires the local authorities' advance approval. The certificate provides any prospective buyer with information on the terms, conditions and limits applying to the property under sale.

Constructions Permits

These are required only for:

- → Construction of new buildings
- → Urban restructuring
- → Restructuring works modifying the structure, size and/or use of a property.

Other real estate works do not require prior authorization if the relevant local authorities receive administrative notice.

Environmental Issues

Italian environmental regulations are for public safety.

Some provisions relate to reclaiming polluted land or facilities. If pollution levels exceed the legal threshold, the owner or occupier of the polluted property or the party responsible for the pollution is liable.

He/she must bear all the costs necessary for reclaiming the area or implementing specific safety measures preventing future pollution. The reclamation process must respect administrative procedures and periodical reviews. Failure to implement the reclamation plan may result in fines and even criminal liability.

Disclaimer

While this chapter has endeavoured to go into length about the basic requirements imposed on companies in Italy by the current legislation, this is only intended to provide a glance at the legislation. Any business interested in setting up in Italy is advised to first consult legal and accounting professionals for individual advice and not rely on the content of this chapter.

Corporate Income Tax (IRES)

Corporate income tax (IRES) is regulated by the Unified Text on direct Taxes ("Testo Unico Imposte Dirette")[61]. Italian resident corporations are subject to IRES on their worldwide income. Non-Italian resident corporations are subject to IRES only on Italian source income.

As of January 1, 2004, the imputation system previously in force has been abolished and replaced with the so called 'partial exemption' method, under which corporate profits are subject to income tax at the level of the company and partially exempted at the level of the shareholders. In addition, other significant measures have been introduced, e.g. reductions in corporate income tax, the participation exemption regime and the domestic tax consolidation regime.

61 1 Act No. 917/86.

Taxable persons, tax rates and taxable period

Corporate Income Tax (IRES) applies to resident and non-resident corporations. Resident corporations are subject to IRES on their worldwide income, so-called 'unlimited taxation'. Non-resident entities are subject to IRES only on income considered sourced in Italy, 'limited taxation'.

Resident corporations include Corporations *("Società per azioni - Spa"),* Limited liability companies *("Società a responsabilità limitata – Srl"),* and Partnerships limited by shares *("Società in accomandita per azioni- Sapa").*

Resident corporations also include companies formed under foreign jurisdictions which, for most of the taxable period, have their statutory office, place of effective management, or main object of their business in Italy.

Resident partnerships not limited by shares, are not subject to IRES. Such partnerships, namely *"società in nome collettivo - Snc",* or *"società in accomandita semplice - Sas",* are considered transparent entities. For tax purposes, their income is attributed to the partners and subject to tax accordingly.

For IRES purposes, the taxable period coincides with the company's financial year, as provided by the law or by the articles of association. Otherwise, the taxable period coincides with the calendar year. IRES is levied at a flat rate of 24%[62].

62 Act No. 917/86.

Regional tax on business activities (IRAP)

Regional tax on business activities, *"Imposta regionale sulle attività produttive – IRAP"*, is a local tax applied on the value of the production generated in each taxable period by persons carrying out business activities in a given Italian region. Non-Italian resident corporations are subject to IRAP only on the production generated through Italian permanent establishments. Rates may vary, though they range around 3.9%.

Indirect taxes - Value Added Tax (VAT)

The Italian value-added tax (VAT) system conforms fully to European Union VAT rules. In principle, the system ensures that VAT is borne by the ultimate consumer only and that, at the upper level, input VAT is deducted by the suppliers of goods and of services. VAT is charged on any supply or service deemed to be made or rendered within the Italian territory. The ordinary VAT rate is set at 22%[63].

63 Act No. 633/72.

Transfer tax

Transfer tax *("Imposta di registro")*, is due on specific contracts if formed in Italy, and contracts including those formed abroad, regarding the transfers or leases of business concerns or immovable properties situated within the Italian territory. The taxable base and rates depend on the nature of the contracts and on the status of the parties.

When transferring immovable properties, cadastral and mortgage taxes also apply.

These are due for formal transcription in the public registers. The tax base matches that of the transfer tax, with tax rates set respectively at 1% and 2%.

Transfer tax, cadastral and mortgage taxes are imposed as a lump sum of €129.11 on transfers of immovable properties subject to VAT. Alternatively, transfer tax rates may vary from 4% up to 15% depending on the type of real property.

A transfer tax of 3% applies ordinarily to purchases of companies' business branches.

Municipal tax on real estate

Any owner, resident or non-resident, of real properties located within Italian territory must pay annually the municipal tax on immovable property, *"Imposta Municipale Unica - IMU)"*. This tax is levied at two rates 0.4 % on the value main residences and 0.76% on the value of most other properties. Local authorities can slightly change these rates within their district by + or - 0.2%, by issuing local regulations.

The main residence *(Abitazione principale)* reduced rate of tax (0.40%) is only applicable to actual, habitual abode *(Dimora)* of the taxpayer and his family, provided this appears on public records *(Residenza anagrafica)*.

For most residential units, IMU tax will be levied on a statutory property value, calculated by multiplying the land registry income (as it was in the official Italian land registry records for the relevant property on 01.01.2012) by 5 and then by 160. Different figures apply to offices, factories and shops.

Inheritance tax and gift tax

On December 24, 2007 new rules were enacted to regulate inheritance and gift taxes[64].

The inheritance and gift tax is imposed on the value of the share of each beneficiary. The rates vary depending on the relationship between the deceased and the beneficiary, as well as the non-taxable threshold amount.

Inheritances of spouses and direct descendants or ascendants are subject to inheritance tax at a rate of 4% on the amount exceeding €1,000,000 per beneficiary.

Transfers to brothers or sisters are taxed at 6% on the amount exceeding €100,000 per beneficiary.

Transfers to relatives up to the fourth degree or relatives-in-law up to the third degree are taxed at 6% on the entire amount of their inheritance.

Any other transfer is taxed at 8% on the entire amount.

64 Act No. 244/07.

Poland

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The primary objective of EWRA Sp. z o.o. is to provide top-level services to the B2B sector, while respecting business relations. What sets us apart is our long-term experience and expert knowledge. We do not rely on risky innovations because what we value most is the safety of our clients. We offer individual approach and tailored solutions, and our offer includes only what we are truly knowledgeable about and what we have been doing for years.

Corporate Law

Trading companies

Trading company is the form of cooperation with a view to making a profit at least two people, except Limited Liability Company and joint-stock company, which can be set up by a single entity, as far as the founder of the company itself is not a one-man Company Ltd. The company is formed as a result of conclusion of the agreement, in which the partners undertakes to strive for common purpose by contribution of assets and possibly by cooperation in another specified manner.

The most important in personal companies are members, their qualifications and work they carry out. Partners of such company, as a rule, are liable for obligations with all their assets.

In capital companies, the emphasis is on the equity supplied by shareholders, on which the functioning of the company is based. Shareholders are not responsible for the company's obligations.

Through a branch a foreign entrepreneur can lead business activity in Poland inasmuch as it is performed in the country of its headquarters. While having representation in Poland allows foreign entrepreneur to do activities only to the extent of company's advertising and promotion.

An important difference between business activity in the form of a partnership and capital company is how the profits generated by the company are treated by income tax. Taxpayers in companies (with the exception of limited joint-stock partnership) are only shareholders of these companies with income of a share from the company which is not a legal entity. Depending on whether the partner is a natural or legal person, income from participation in a partnership will be combined with other shareholder's income taxed with income tax from natural (PIT) or legal (CIT) persons. Income of capital company (as well as the limited joint-stock partnership) is subjected to tax at the level of the company.

In capital companies and in a limited joint-stock partnership there is a requirement for shareholders to pay up share capital (in a limited liability company it is PLN 5,000, in a joint-stock company - PLN 100,000, in a limited joint-stock partnership - PLN 50,000). In personal companies, however (with the exception of the limited joint-stock partnership), due to the lack of share capital, shareholders may freely determine the amount of their contributions. These contributions do not need to be in cash, they can rely on the provision of services by a member.

A general partnership is a partnership. It can be created by natural and legal persons, with each partner being responsible for the company's obligations without limiting his or her entire assets, jointly and severally with other partners and with the company. Partnership agreement should be concluded in writing, otherwise it may be considered invalid. A professional partnership is a partnership created by partners for the purpose of pursuing a profession in a partnership running an enterprise under its own business name.

A company may be established for the purpose of performing more than one liberal profession, unless a separate law provides otherwise. Persons qualified to pursue the following professions may become partners in the partnership: advocate, pharmacist, architect, civil engineer, auditor, insurance broker, tax adviser, stock broker, investment adviser, accountant, physician, dentist, veterinary doctor, notary, nurse, midwife, legal adviser, patent attorney, property appraiser and sworn translator. Partner shall not be liable for: obligations of the company, which arose in connection with the performance by the other partners professional services in the company and commitment of the company following the acts or omissions of persons employed by the company on the under a contract of employment or other legal relationship, which were subjected to the leadership of another partner for the provision of services related to the subject of the company's activities.

Limited partnership can be created by at least two people, one of which is a limited partner (responsible for the liabilities of the company only to the so called totals limited partnership in case other person has not brought any contribution to a company) and the other general partner (responsible for obligations of the company with all its assets). Limited partnership agreement should be concluded in the form of a notarial deed.

A limited joint-stock partnership is a partnership which purpose is to operate a business under its own business name, at least one partner of which is liable to the creditors for the obligations of the partnership without limitation (the general partner) and at least one partner is a shareholder. Agreement of the Limited Liability Partnerships is the Statute. Statute of a public Limited Liability Partnerships should be drawn up in the form of a notarial deed. This is the only form of the partnership, in which you have to raise the initial capital.

Limited liability company may be created by natural or legal persons or legal irrespective of nationality and place of establishment. The limited liability company has legal personality. The agreement of an LLC must be written in the form of a notarial deed.

The exception is when the registration of the company takes place via the Internet. Liabilities of an LLC corresponds to the company - an exception is when the Board of this company fails to submit an application for a declaration of bankruptcy in good time, the Board is also liable with personal property.

A joint-stock company has the most complex construction. Its contract is the statute created in the form of a notarial deed. Its partners are shareholders who hold certain amounts of shares authorizing them to receiving a designated part of the dividend. Liabilities of the company are the sole responsibility of the company.

Foreign Investmnets

The main basis for doing business in Poland is the Act of 2 July 2004 on Freedom of Economic Activity In Poland, business activity can be carried out in forms similar to those existing in other European countries. Among the available activities can be distinguished:

- → Trading companies, divided into:
  1. Capital company (company with limited liability and joint-stock);
  2. A partnership (general partnership, partnership, limited partnership, joint stock partnership limited by shares);
- → Branch of a foreign entrepreneur;
- → Delegation of foreign entrepreneurs;
- → Individual business activity (including within a civil partnership).

In Poland there is a principle on freedom of establishment. Means that everyone has the right to take the business activities of their choice. This rule is not of absolute character, because the rules sometimes allow only some of the parties to carry out certain activities, or indicate additional restrictions as to the subject matter of your business.

Subject limitations

On the same basis as Polish citizens (and therefore for example in terms of the form of business), the business activity may be taken and performed by physical persons, legal, and other organizational units having legal capacity of the Member States of the European Union, Norway, Iceland and Liechtenstein; from States not party to the agreement on the European Economic Area, on the basis of the agreements concluded by those States with the European Union and its Member States, as well as other citizens of countries other than the afore mentioned, if you hold in Poland a permanent residence permit, residence permit a long-term resident of the European Union, a temporary residence permit (in certain circumstances, provided for in the law on aliens), refugee status, subsidiary protection, permission to stay humanitarian or consent for tolerated stay, a temporary residence permit and are unmarried, with Polish citizen residing in Poland, a temporary residence permit in order to carry out business activity, use temporary protection in Poland, in possession of a valid Card of the Pole.

Object limitations

In terms of object limitations, the most important are those imposing an obligation on the entrepreneur to obtain a prior administrative decision authorizing him to undertake a given activity. Licences are issued in the areas of business activity that have special importance due to the safety of the State or citizens or other important public interest. The requirement to obtain a license concerns among others the activity of:

- → exploration, pre-production development stage of hydrocarbon and permanent minerals under mining ownership, mining exploration or recognition of the underground storage complex of carbon dioxide, the extraction of minerals from deposits, underground tank-less storage of the substance, the underground storage of waste and underground storage of carbon dioxide;
- → producing and trading of explosives, weapons and ammunition as well as products and technology for military or police purposes;
- → manufacturing, processing, storage or handling, transmission, distribution and marketing of fuels and energy,
- → protecting people and property;
- → running a casino.

Another manifestation of the subject limitation of economic freedom is the requirement for the entrepreneur to obtain an approval, license or consent (hereinafter collectively "permits"). The permit allows to take and execute a specified business activity if the entrepreneur commits to the law requirements (eg. activities in the field of collective water supply or collective wastewater volume) .

The permit is granted to the entrepreneur after it had been determined that he or she meets the conditions set out in the Act. These conditions may include, inter alia, the protection of human life and health, safety and public order, a State secret and the specification of the business activities covered by the permit.

Acquisition of real estate by foreigners

The acquisition of property right by a foreigner or the right of perpetual usufruct of real estate and the acquisition or placing of shares or stocks by a foreigner in commercial companies established in the territory of Poland which is the owner or user of perpetual real estate located in Poland requires the authorisation of the Minister of Internal Affairs.

The obligation to obtain permit exists, if by the acquisition of shares in a company, the owner or perpetual user property, the foreigner takes control of it. The necessity also exists when the company is already controlled, and shares or stocks are acquired or included by the foreigner who is not a partner or a shareholder of the company.

In the case of a commercial company, such a company is considered to be controlled, in which the foreigner or foreigners have directly or indirectly more than 50% of votes at the meeting of shareholders or at a general meeting or have a dominant position according to provisions of The Commercial Companies Code.

Minister of Internal Affairs may grant a permit to foreigner in order to acquire real estate or the acquisition of shares, if there is no probability of threat of national security or public order, as well as when it shows, that the circumstances confirming his ties with the Republic of Poland.

Antitrust

When running a business activity in Poland, it is necessary to take into account the applicable antitrust regulations, which may constitute some restrictions for foreign investments.

Intention of concentration should be notified to the President of the Antimonopoly Office (the "UOKiK"), if the aggregate global turnover of the participating entrepreneurs in the fiscal year preceding the year of notification filing year exceeds the equivalent of 1 billion euros, or total turnover on the territory of Poland of entrepreneurs participating in the concentration in the fiscal year preceding the year of the declaration exceeds the equivalent of 50 million euro. The Act of February 16, 2007, on Competition and Consumer Protection predicts situations in which the requirement of notification is off, namely when the entrepreneur's turnover, over which control is acquired has not exceeded, on the territory of Poland, in any of the the two financial years preceding the declaration the equivalent of 10 million euro or the linking applies to entities belonging to the same group.

Exchange controls

Foreign exchange transactions with foreign entities are allowed in principle. Polish law imposes specific obligations on entities that make settlements in foreign currency. Restrictions on the freedom of making settlements in foreign currency is subject to among others exports, sending and forwarding by residents to third countries national or foreign means of payment for access to or extension of business activity in these countries, the acquisition by residents, both directly or through other entities shares and shares in companies established in the third countries, as well as the placement of shares and shares in such companies, the disposal by residents, both directly and through other entities in the third countries securities, opening by residents, both directly and through other entities, accounts in banks and branch offices of banks established in the third countries.

There are certain limitations to performing activities related to settlements in foreign currency with abroad. Namely, residents and non-residents exceeding the State border are obliged to report in writing to the Customs authorities or the border guard authorities, imports into the country and exports abroad among others, national or foreign means of payment, if their value exceeds the total of the equivalent of 10.000 euro. Residents and non-residents are required also to make money transfers abroad and in the country related to the foreign exchange trading through the authorized banks or national payment institutions or branches of EU institutions If the amount of the payment or the settlement exceeds the equivalent of 15.000 euro.

Withholding tax

Income disbursed in Poland on shares in the profits of legal entities, interest, licence fees and remuneration for the services of intangible assets are subject to withholding.

As a rule, the withholding tax rate on dividends is 19%, with double taxation treaties may provide for a lower rate (5%, 10%, 15%).

Interests and licence fees are subjected to 20% withholding tax in Poland, the agreement for the avoidance of double taxation may provide for a lower rate (5%, 10%, 15%). Interest and licence fees may be in some cases exempt from withholding tax in Poland, if you are paid by a capital company located in Poland for the companies established in the territory of another than Poland EU/EEA country or Switzerland. However, it is necessary to hold a current certificate of tax residence of the recipient.

Payments for intangible services, such as consulting services, advertising, data processing, are subject to 20% withholding tax, subject to the provisions of agreements to avoid double taxation. It is possible not to charge 20% withholding tax, if the paying agent has a current certificate of fiscal residence.

Labour Law

In Poland it is possible to employ on employment contract or civil law contract. The provisions of the Polish labor code relate only to persons who are employed on an employment contract. Persons employed under a contract of civil law contract (e.g. contract of mandate, task-specific contract) are not considered as employees and do not apply to the provisions of the labor code.

Work on the basis of an employment contract means that the work is done under the supervision of the employer, at the place and time specified by the employer, that the employer is obliged to pay the remuneration. The name of the contract does not matter, but its content. Which is important, because replacing of civil law contract by employment contract , even though the above conditions are fulfilled, may result in negative consequences for the party employing such persons in accordance with the provisions of the law.

Employment contract types

All foreigners, EU and non-EU residents, may be employed under the same type of contracts as Polish citizens. There are three types of employment contracts in Poland:

- → Employment contract for a trial period
- → Employment contract for definite period
- → Employment contract for indefinite period

Employment contract for a trial period can be concluded on up to 3 months.

This type of contract may be preceded by employment contract for a definite or indefinite period. Employment contract for definite period may be concluded for a maximum of 33 months. You can conclude up to three such contracts in a row. It should be remembered that a contract that exceeds 33 months or is the fourth contract in a row will be treated as a contract concluded for an indefinite period.

Employment of foreigners

It is possible to employ foreigners in Poland who holds work permit. This document is issued at the request of employer by the competent local authority (Voivode). The procedure for issuing such permit takes about 3-4 weeks.

Different rules apply to citizens of the Republic of Armenia, Republic of Belarus, the Republic of Georgia, Republic of Moldova, the Russian Federation and the Ukraine. Citizens of these countries can perform work in Poland for a period of not more than 6 months during the 12 consecutive months without a work permit. In this case the employer must only submit the employment Declaration of the intention to employ a foreigner in relevant employment office. In addition, the foreigner must have a document confirming his right to stay in Poland.

A work permit is not required for the citizens of the European Union, the countries of the European Economic Area and Switzerland. The inhabitants of these countries can perform work under the same conditions as Polish citizens. However, if a foreign national (EU citizen) is planning to stay in Poland for more than 3 months, he or she should register at the regional office.

Employment contract

The employment contract should specify the parties to the contract, type of contract, date of its conclusion, as well as working conditions and remuneration, including in particular:

- → type of work
- → the place where the work is performed
- → remuneration corresponding to the type of work, detailing the components of remuneration,
- → time of work
- → the date of commencement of employment

In addition, the employer has to inform the employee in writing, no later than within 7 days from the date of conclusion of employment contract about:

- → the standard daily and weekly working time binding the employee
- → the frequency of wage payments
- → the length of the annual leave to which the employee is entitled
- → the length of the period of notice binding after termination of employee's work
- → each collective agreement covering employee

If the employer is not obliged to set work regulations, he or she should additionally inform the employee about night hours, place, date and frequency of payment of wages and the procedure of confirming the arrival and presence of employees in the workplace, as well as the procedure of justifying their absence from work.

Wages

Wages in Poland must not be lower than the minimum wage fixed every year by the Council of Ministers. In 2018. Minimum wage is PLN 2100 gross.

The employer is obliged to establish which insurance type is the person employed by him or her subjected to, and also employer has the obligation to report to the insurance and contributions for these people in the term specified by a law. The employer is obliged to pay monthly social security and health insurance premiums as well as income tax advances. The tax advance must be paid by the 20th day of the next calendar month. The social security contribution should be paid by the 15th day of the next calendar month.

The amount of income tax from individuals and contributions due in Poland, depends on the income level. If this income does not exceed PLN 85528.00 income tax is 18%, and if the income is higher than PLN 85528.00 tax is PLN 15395.04 and 32% of the excess over income of PLN 85528.00.

Termination of contract

There are 3 methods of termination of employment contract in Poland:

- → Termination by mutual consent
- → Termination with notice
- → Termination without notice

The employer may terminate the employment contract without notice:

- → In the event of a serious breach of the employee's basic duties by the employee
- → If an employee commits an offense, which prevents further employment at the given job position - if the crime is obvious or has been declared final by valid court decision
- → If the employee, due to his fault, loses license required to perform work on the given post
- → if the employee is unable to work as a result of the disease:
  1. for a period longer than 3 months - if the worker has been employed at given employer for less than 6 months
  2. longer than the total period of collecting wages and social and sickness benefits from this account, as well as receiving a rehabilitation allowance for the first
  3. 3 months - if the employee has been employed by a given employer for at least 6 months or if the incapacity to work was caused by an accident at work or occupational disease
- → If an employee has justified absence from work with other than the above reasons, lasting longer than 1 month

The employer may terminate the employment contract without notice:

- → If he or she received a medical certificate stating the detrimental effect of the work performed on the health of the employee, and the employer, within the period specified in the medical certificate, did not transfer the employee to another position appropriate to his state of health and the corresponding professional qualifications
- → In case of a serious violation of the basic obligations of the employer, in this case, the employee is entitled to compensation in the amount of salary for the notice period.

An employee with whom a contract of employment has been terminated without notice in violation of the provisions on termination of employment contracts is entitled to claim:

- → Restoration to work on previous conditions,
- → Compensation

Upon the return to work or compensation, the labor court decides. A labor court may fail to take into account the employee's request for dismissal as ineffective or reinstatement if he determines that it is impossible or pointless to take such a request into account; in this case, the labor court shall decide on compensation.

Notice period

Employment contracts can be terminated by notifying each party. Notice period depends on the period of employment. Periods of termination of contracts for a definite and for an indefinite period are:

- → 2 weeks if the employee has been employed for less than 6 months,
- → 1 month, if the employee has been employed for at least 6 months
- → 3 months, if the employee has been employed for at least 3 years

In the case of a contract for an indefinite period, termination by the employer should include justification for termination. Polish law does not provide a directory of acceptable reasons for termination of employment, however, indicates that the reason for this must be real, specific and understandable to the employee. This is very important, because many court disputes between the employee and the employer result precisely in this area due to the insufficiently specified reason for terminating the employment contract to the employee. In the case of contracts for a trial period, notice periods are:

- → 3 business days if the trial period does not exceed 2 weeks
- → 1 week if the trial period is longer than 2 weeks
- → 2 weeks, if the trial period is 3 months

Time of work

In Poland the working time should not exceed 8 hours per day and an average of 40 hours on average five-day work week. For work performed beyond normal working time employee is entitled to additional compensation. Other systems, which allow to extend daily working time, can be entered, but this depends on the fulfilment of specific conditions which are mentioned in the Polish labor code.

Holiday

The employee is entitled to annual paid leave of 20 days-if the employee has been employed for less than 10 years or 26 days if the employee has been employed for at least 10 years. The periods of employment include,for example the time spent at university

During the employee's inability to work, the employee retains the right to remuneration. The salary is due in the amount of 100% or 80% of the normal salary depending on the cause of the incapacity to work. The employer is obliged to pay remuneration for the first 33 days of inability to work in a given calendar year. If the incapacity to work lasts longer, the employee is entitled to sickness benefit paid by the social security institution (Social Insurance Institution - ZUS) for a period of up to 182 days.

In Poland employee can be given so called unpaid leave. A period of unpaid leave is not counted into the period of employment.

Health and Safety

The employer is obliged to protect the health and life of employees by ensuring safe and hygienic working conditions. In particular, the employer is obliged to organize work in a way that ensures a safe and hygienic working conditions, provide employee training regarding occupational safety and health before allowing it to work and conducting periodic training in this regard, training in the field of safety and health at work to the extent necessary to perform the obligations incumbent on it duties, familiarize employees with the principles of safety and health at work concerning the activities performed by them.

Violation of workers' rights under provisions or rules of occupational health and safety may give rise to criminal or non-pecuniary liability.

Temporary employees

The employment of temporary employees is regulated by a separate act - of July 9, 2003 on the Employment of Temporary Agency Workers. In accordance with the Polish law of the employment, temporary contract shall be understood as:

- → Seasonal, periodical or occasional work; or
- → Work that the employees of the user's enterprise would not be able to do on time; or
- → Work that falls under the responsibility of the employee of the user's enterprise who is absent.

The Act adopted the characteristic for temporary employment of three entities: employee, temporary employment agency and employer:

- → The temporary employment agency runs a contract with the employer's enterprise, specifying the employment rules for the temporary employee;
- → The temporary employment agency employs a temporary employee;
- → Temporary employment agency appoints a temporary employee to perform temporary work for the employer's enterprise.

It should be noted that the temporary worker remains an employee of the temporary employment agency. But, it is the employer's enterprise that instructs the temporary worker, and then oversee its operation.

It should be noted that unless the legislation provides otherwise, the provisions of the labor law concerning the employer and employee shall apply by analogy to temporary employment agencies, temporary agency worker and the employer's enterprise (with some exceptions).

Real Estate

The transparency of the law on real estate in Poland ensures the functioning of the land registers on the basis of the judicial register run also in electronic form.

The main law regulating the ownership and other rights in rem in immovable property is the civil code and the law on land registers and mortgage. Polish system of law in addition to ownership provides, so called, lease, use of the perpetual usufruct, tenancy and rental as legal titles to utilization of property.

The right to property, servitudes and perpetual usufruct are disclosed in land register, for real estate. The registry is the legal guarantee for the buyer of real estate, that the rights registered exist.

Employment contract types

Ownership right is the most complete ownership title. The owner may own and use, profit and revenue, encumber, transfer, and disposal of property, subjected only to the statutory restrictions.

Ownership of the land in the space above and under the ground, however, specific provisions authorise exceptions in this respect. The property may be subjected to co-ownership.

In addition to the traditional forms of real estate's transfer (e.g., sale, donation, inheritance), property can be purchased by the passage of time, by acquisitive prescription. Depending on whether the possesion of real estate is in good or bad faith, ownership can be obtained after twenty or thirty years.

Right of perpetual usufruct

The right to usufruct provides substantially similar rights as the right of ownership. Usufructor can pass a perpetual or impose their law, as well as protect his or her title to the property through legal action on the same conditions as the owner. Perpetual usufructor can freely build on the property, and each built design becomes usufructor-owned perpetual. Perpetual usufructor pays annual fees for the usufruct to the State Treasury. The right to perpetual usufruct may be granted for a maximum of 99 years and not less than 40 years, with the law to extend for an additional period of from 40 to 99 years.

Use	The property can be ordered to use, which gives the holder the right to use and collect the profits, but does not affect the ownership title in other way.
Servitudes	There are land servitudes and personal servitudes. Servitude encumber the real estate on which it was established. Establishment of servitude is recorded in the land register.
Rental	By the rental agreement, the lessor agrees to give the lessee thing to use for specified or not specified period of time, and the lessee agrees to pay the lessor the agreed rent (art. 659 § 1 of the Civil Code). The lease of real estate or premises for more than a year should be concluded in writing. In case of not using this form the agreement is considered to be concluded for an indefinite term. During the duration of the contract the lessee shall be obliged to use things in the way provided in the contract, and in the absence of such provisions in the contract itself how to use should correspond to the characteristics and purpose of things. Lease of real estate provides a contractual right to use it for a definite or indefinite period period of time in return for rent. In contrast to the ownership, lease does not provide full legal title to the property. The Civil Code contains specific rules on renting. Those policies apply to the rental of all types of premises; However, they are further modified by the law on the protection of the rights of tenants, which apply to privately-owned dwellings.
Lease	This agreement, in which the lessor agrees to give the ground to a legal or natural person to use and beneficial use for definite or indefinite period, and the lessee is obliged to pay to the lessor the agreed rent (article 693 of the Civil Code). A lease concluded for more than thirty years after that time is considered to be concluded for indefinite term. The lessee should execute their right in accordance with the requirements of the normal economy and cannot change the destination of the subject of lease without the consent of the lessor. Without the consent of the lessor lessee may not give the subject of the lease to a third party to use it or sub-lease it.
Property register. Land register	Land register is the main source of information regarding legal status of the real estate entered in it. In accordance with Polish law, it is assumed that entries made in the register are correct and consistent with reality. Since the register is publicly accessible, no one can claim that he or she did not know the legal status of the property. Currently, as a rule, all properties already have electronic access to the land register. The content of the land register is also available in the district court, where person can obtain extracts from the documents (upon request), and also view the documents relating to the property.

It is obligatory to enter every transfer transaction of legal title to the property in the land register. However, there may be some gaps in the content of some land registers to this day Land register is divided into four sections:

- → **Section one:** regarding property identification (i.e. parcel numbers, area), as well as rights related to this property,
- → **Section two:** legal title to the real property (ownership or perpetual usufruct)
- → **Section three:** restricted ownership (charges other than mortgages) and personal rights and claims regarding real estate, e.g. lease agreements, pre-emption rights
- → **Section four:** mortgages

Land and property register

Land and property register is carried out by the municipalities for the purposes of spatial, planning, determination of real estate in the land register, and for statistical and tax purposes. From the point of view of investors, records in land and property register are especially important when the property is not covered by the spatial development plan. In this case, records regarding land and property register concern decision whether the property was classified as an agricultural area with certain restrictions on the transfer of ownership.

Real Estate transfer

The transfer of real estate rights can take place in various ways, however, the most common is the sale of real estate. The choice of how to transfer the rights to the property depends on the business or legal factors.

In the case of transfer of the property, it is necessary for the conclusion of the agreement in front of notary in the form of a notarial deed. The conclusion of the contract may be preceded by a contract conditioning the transfer of rights to real estate in the future, so-called preliminary agreement. After fulfilment of the conditions precedent, the parties must then conclude final transfer agreement.

Termination of contract

Property tax shall be subjected to:

- → land,
- → buildings or parts of them and
- → buildings or their parts related to running a business activity (held by ntrepreneurs).

The height of the real estate tax rates shall be determined by the Council of the individual municipalities. However, maximum rates of property tax is limited by law.

Poland

Tax Law

Polish tax system distinguishes between12 types of taxes, including:

9 direct taxes

- → Corporate income tax (CIT)
- → Personal income tax (PIT)
- → Civil law transaction tax
- → Property tax
- → Tax on means of transportation
- → Tax on inheritance and charitable donations
- → Agricultural tax
- → Forestry tax
- → Tax on owning dogs

3 indirect taxes

- → Value-added tax (VAT)
- → Excise tax
- → Gambling tax

19% CIT is the primary tax on income of legal persons. Taxation with income tax on income of legal persons is governed by the law of 15 February 1992, on income tax of legal persons. CIT taxpayers are:

- → Limited liability companies, joint stock companies and other legal persons;
- → capital partnerships in organization;
- → limited joint-stock partnerships located or having the Management Board on the territory of the Republic of Poland;
- → partnerships without legal personality located or having the Board in another country, if in accordance with the provisions of the tax law of that other Member State are treated as legal persons and shall be subjected to the State tax from
- → the total of their income regardless of the place of their achievement;
- → organizational units without legal personality, except for civil partnerships, express, partnerships and limited partnerships;
- → tax capital group.

The taxable amount is the sum of income derived from capital gains and income from other sources of revenue. In special cases the taxable amount can be revenue. Income sources on CIT:

- → **Capital gains:** dividends, other income actually derived from the participation in the profits of legal persons and limited joint-stock partnership (SKA), the value of the property received in connection with the liquidation of a legal person or SKA, income from disposal of shares of the companies, income from transfer of claims previously acquired by a taxable person, income from property rights such as copyright or related proprietary rights, licenses, trademarks and know-how, income from securities, derivative financial instruments,
- → **Other income, including from operating activities:** other income including the sale of goods and the provision of services, etc.

The income from the sources of income is the excess of the sum of revenue from this source of revenue over costs to obtain them, achieved in the fiscal year. If costs exceed total revenue, the difference is the loss of revenue.

Tax deductible expenses are costs incurred in order to achieve or maintain or secure a source of revenue that are not excluded by statute from the tax-deductible cost category. Taxpayers are required to document the costs. The cost of the tax are also expenditures for abandoned investments. The rules contain a list of more than 60 items that are not considered costs for tax purposes.

Expenditures for the acquisition or creation of certain assets are not recognised directly to the cost of obtaining revenue. With respect to these components to the deductible costs include depreciation and amortization. The basis for depreciation is, in principle, the acquisition cost or production cost of amortised component. The regulations provide the following depreciation methods:

- → linear method (as a rule);
- → degressive method - means higher costs in the initial depreciation period (possible for some components: boilers and power machines, basic and specialized machines, devices and apparatus, technical devices, movable and equipment as well as means of transport with the exception of passenger cars);
- → one-time depreciation (for up to 10 thousand PLN);
- → individual rate (for used or improved tangible assets, for example: non-residential building used more than 5 years can be depreciated over 40 years less the full number of years that have elapsed since the date of their putting for the first time to use of entry into the register of fixed assets and intangible assets carried on
- → by the taxpayer, except that the depreciation period shall not be less than 10 years).

Depreciation is not subjected to:

- → Land and right of perpetual usufruct;
- → Expenditures incurred in their acquisition are the cost of the tax at the time of consideration of disposal.

Rates and periods of depreciation for tax purposes may differ from accounting depreciation.

Dividends paid by a capital companies located in Poland are subject to 19% tax at source (tax gets the company paying the dividend); dividends paid between Polish companies - are not subjecedt to the CIT again at the level of the shareholder.

Agreement for the avoidance of double taxation provide for a lower rate of withholding tax for dividends (5%, 10%, 15%), after the fulfilment of the relevant conditions (inter alia the company paying the dividend should have recipient residence certificate).

There is a possibility of exemption of dividends from tax, if the payment of dividends is made to a company subjected in Poland or in another Member State of the European Union, the European Economic Area or the Swiss Confederation, taxation by income tax on its total income, regardless of where the income is earned. The condition for applying the exemption is the uninterrupted two-year holding period of the company receiving the dividend of the required 10% (in the case of a Swiss company - 25%) of shares in the capital of the company paying the amount due.

Legislation provides for a number of CIT exemptions, both subjective and objective.

For example, exempt from tax are investment funds, pension funds, non-profit organizations, church organizations, companies operating in special economic zones after the fulfilment of the relevant conditions. Moreover, CIT is not subject to the agricultural activity, with the exception of income from special departments of agricultural production.

PIT

Taxation by income tax of natural persons' income shall be governed by the law of 26 July 1991 on income tax from natural persons (Journal of laws of 2018 r. pos. 1509, as amended) and the Act of 20 November 1998 on a flat-rate income tax of some revenues by individuals, which deals with the taxation of among others, leading non-agricultural economic activities, income from lease, sublease, tenancy, subtenancy or other similar agreements, if such agreements are not concluded in the non-agricultural activities. The tax shall be subject to the natural persons who are residents on the territory of Poland. Natural persons who do not have place of residence in Poland, are subjected to tax only on income on the territory of the Republic of Poland. Source of revenue subjected to PIT:

- → service relationship and employment relationship, including co-operative employment relationship), retirement or disability pensions;
- → activity carried out in person;
- → non-agricultural business activity;
- → Special departments of agricultural production;
- → the lease, sublease, tenancy, subtenancy and other contracts of a similar character;
- → monetary capital and property rights;
- → paid disposal of, among other things, real property or parts thereof and real property interests, movables;
- → the activities carried out by a foreign controlled company;
- → other sources.

Natural persons in Poland are subjected to personal income tax calculated, as a rule, according to a progressive tax scale. Tax rates are differentiated by the income earned, understood as the total revenue less the tax deductible costs obtained in the tax year. In 2018, the personal income tax is calculated using the following tax scale:

Basis for calculating tax in PLN		**Tax is**	
Over	Up to		
	85.528	18%	Minus the amount decreasing tax
85.528		PLN 15395,04 gr + 32% of the excess over PLN 85528	

Natural persons running business activity shall be taxable according to the scale.

At their request, these persons can tax their income with a 19% flat tax, taking into account the limitations of services for the existing / former employer and management service benefits.

Depending on the size of the business, after fulfilling certain conditions, the taxpayer may submit an application of simplified forms of taxation, i.e.:

- → tax on registered income (tax is calculated without deducting tax);
- → tax card (tax is determined by the tax office depending on, among others, the nature of the business).

The taxpayers of income tax from natural persons can benefit from a range of tax breaks, including among others, from:

- → The deductible contributions to compulsory social security paid in the country and, under certain conditions, paid abroad;
- → Internet concessions (with significant limitations for taxpayers who settle online tax relief in previous tax years);
- → Deductibles
- → Relieves for individual retirement protection account
- → The deductible contributions to compulsory social security paid in the country and, under certain conditions, paid abroad;
- → Child tax credit;

VAT

VAT is a tax on goods and services, which is main source of State's income. The taxpayer calculates and pays to the competent tax office. VAT is, as a rule, the difference between the VAT obtained from the sale of goods to customers (output tax) and VAT paid at purchasing goods (input tax).

Subjects wishing to engage in taxed activities by VAT in Poland are required to submit the registration before the implementation of the first taxable steps. If taxpayers wish to make intra-Community transactions, they should be registered as VAT taxpayers in the EU.

The following transactions shall be subject to VAT, among others, the supply of goods and the provision of services, which place of supply is established in Poland. In some cases, free of charge delivery and services are also taxed.

In 2018, the VAT rate applicable to domestic transactions are as follows:

Category	
Standard VAT rate	23%
Reduced VAT rate: used for deliveries of selected food products, medical devices, catering and hotel services as well as social housing	8%
Reduced VAT rate: used to deliver some food items (including bread, dairy products, meat) and selected types of printed books	5%
Tax free: for example for the supply of certain ships and aircraft, services connected with maritime and air transport, international transport services, services related to exports and imports of goods	0%

Polish regulations regarding the place of supply of services coincide with the solutions adopted in other EU countries.

Taxpayers selling goods to customers in EU countries may apply the 0% rate of VAT on intra-Community supply of goods (ICS).

The zero-per cent VAT rate also applies to exports of goods defined as exports of goods out of Poland outside of the European Union in performance of taxable activities. The export can be both export by the seller (direct export) and by the buyer (indirect export).

In case of acquisition of goods from another EU Member State to Poland, Polish taxpayer is obliged to settle the transaction as an intra-Community acquisition of goods (WNT) on the basis of the so-called VAT reverse charge. This means that taxpayer should show this transaction both on sales (output tax) and has the right to demonstrate it on purchases side (input tax), in the same amount. As a result, the transaction is usually financially neutral.

There is certain group of activities that can qualify for the exemption from VAT. The result of their execution is that the VAT related to their provision cannot be deducted at all or partially. To the specific transactions that are exempt from VAT you can include:

- → financial services (credit, bank accounts, currency exchange) with the exception of leasing, factoring or advice
- → insurance services and reinsurance,
- → health services
- → educational services
- → social services
- → services in the field of social security,
- → some services in the field of culture or sport.

The taxpayer has the right to reduce the amount of VAT due by the amount of input VAT when purchasing goods and services, provided that the purchases are related to VAT-taxable sales.

Portugal

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The law firm Sousa Machado, Ferreira da Costa & Associados, Sociedade de Advogados ("SMFC") was founded in 1991 by 4 founding partners but currently there are 6 partners, 14 associates and 3 trainee lawyers.

SMFC's vast experience has been put at the service of all entities, funds and leading companies in the most diverse sectors of activity, particularly mobile communications, software, the financial and insurance sector, real estate, tourism, building management and maintenance, chemical and agricultural industry, retail, pharmaceuticals and cosmetics, among others.

Our growth model has proved essential to preserve the values that have always guided SMFCs operations: ethics, excellence, trust and commitment to the Client.

Areas of Practice

Litigation & Arbitration
TMT
Commercial, Corporate
M&A
Labour Law
Social Security
Private Wealth
Family Law and Probate
Foreign Investment
Real Estate Law
Administrative
ublic Law
Data Protection
Debt Recovery
Insolvency
Intelectual Property

Corporate Law

General Legal Framework

The most relevant legislation to companies in Portugal is:

- The Commercial Code *("Código Comercial"*, dated 1888);
- The Portuguese Companies Code *("Código das Sociedades Comerciais"*, approved by Decree law no. 262/86, dated September 2 – , as subsequent amendments);
- The Portuguese Securities Code *("Código dos Valores Mobiliários"*, approved by Decree law no. 486/99 dated November 13, as subsequent amendments);
- The Ultimate Beneficial Owner Registry *("Registo do Beneficiário Efetivo")* approved by, Law No.89/2017, of 21st August and subsequent amendments; and
- Several specific laws and regulations.

Corporate Structures Available

There are four types of corporate entities available for incorporation in Portugal:

- General partnership companies *(sociedade em nome colectivo);*
- Private limited liability companies *(sociedade por quotas);*
- Public limited companies *(sociedade anónima);* and
- Limited co-partnership companies *(sociedade em comandita).*

Furthermore, it can also be created (either via incorporation, merger, demerger or conversion) in Portugal a type of public limited companies named European Companies *(Societas Europaea* or *SE)*, provided that:

- Your registered office and your head operational office must be in the same EU country.
- You must have a presence in other EU countries (subsidiaries or branches), or all companies involved need to be governed by the laws of at least two different EU countries.
- You must have a minimum subscribed capital of EUR 120 000.

Note that in order to pursue with the creation of the Portuguese SE, the entities envolved must have a formal relationship with the Portuguese Jurisdiction.

Notwithstanding, the three most common legal structures that may be considered when envisaging the settlement of a business activity in Portugal are the following:

- → Opening of a representation office or branch *(representação permanente ou sucursal);*
- → Incorporation of Limited Liability Company organized by shares named *Sociedade Anónima (SA)* - similar to: UK: PLC; Germany: A.G.; France: S.A., Italy: SpA and Spain: *Sociedad Anonima;*
- → Incorporation of a Limited Liability Company organized by quotas named *Sociedade por Quotas (Lda.)* which can assume the nature of sole shareholding company named *Sociedade Unipessoal por Quotas (Unipessoal, Lda.)* - similar to UK: Ltd.; Germany: GMBH; France: SARL., Italy: SRL or Spain: S.L.. and SLU.

It is now possible to launch and set up a company throughout digital means – the so-called "online company registration". Regarding the special regime of incorporation "on the spot company" above mentioned, in April 2008, it was also created a special regime that allows a branch from a foreign company to be dully incorporated "in one hour" (on the spot branch – *"Sucursal na hora").*

Branch Office or Representation Office

A branch office or a representation office is merely a permanent representation of a company incorporated in any foreign company, organized to conduct the business outside its original country, namely in Portugal.

The procedure for registering a branch in Portugal is simple and consists mostly on the submission of a resolution from the parent company head-office and other documents evidencing the legal existence of the foreign company, all duly notarized and bearing the Hague Apostil.

Please note that the parent incorporating company must have a Portuguese Tax Payer number and be registered with the Ultimate Beneficial Owner Registry in Portugal.

Please take notice that such Branch Office/Representation Office does not constitute a subsidiary/company due to the following criteria:

- → The branch office/representation office is not legally independent from the company that has decided to open the said office and and therefore the responsibility of the actions undertaken by the branch office / representation office shall ascend to the parent incorporating company, while, diversely, in subsidiary company it operates as a different and fully independent legal entity that, upon certain thresholds and on general terms, shall limit all liabilities to the parent incorporating company;
- → The branch office/representation office shall appoint a legal representative to manage the business, while limited liability companies must appoint members of the corporate bodies (management body and an audit body, if applicable, among others);
- → The branch office may have a share capital attached to its local business but that is not mandatory, diversly to a limited liability companies which must have a share capital, that must be deposited and complied with;
- → All accountancy shall be integrated in the branch office and in the parent incorporating company (diversely to the limited liability companies) while, in both cases, the entities must have a bank account opened in Portugal.
- → Thus, for the annual accounts, it is only required a declaration confirming that the parent company received the supporting documents of the branch's accounts, while the process in a subsidiary is far more complex (see II.B (ix)).

Limited Liability Companies

General Terms

SAs and Lda.'s differ from other structures available where the shareholders' liability is unlimited *(sociedade em nome colectivo* and *sociedade em comandita),* although the latter are rarely used nowadays due to the common praticses in business operations and transactions.

When deciding what legal form a subsidiary company should assume, the investor must take into consideration the differences between a SA and a Lda., which may influence significantly their business operations.

From a day-to-day point of view, the two can be managed in broadly similar terms, although, on general terms, Lda.'s may in some cases be less formally managed by the Quotaholders due to the fact that they comprise a lighter corporate structure where almost all main decisions must be previously approved by the General Meeting of the Shareholders, hence being more appropriated for short-term investments or for investments where the lack of local presence would need additional control from the Quotaholders.

As for SAs, they are usually recommended for larger structures with professionalized Board of Directors or control of a local director for enduring investments, especially where a large number of investors is envisaged. Furthermore, please note it is mandatory to institute a auditing body which also confer additional control in benefit of the investors.

Finally, please note the SA also have additional more complexes management and auditing structures to allow multinational corporate structures to create the relevant checks and balances necessary to ensure control of management while creating a more diverse environment within the management body.

Incorporation Formalities

The incorporation of a company (except when depending on special approvals or when the start-up capital is to be made through contributions in kind) may be fully performed in one day, if the shareholders choose to create a company under the special regime that allows a company to be incorporated "in one hour" (on the spot company – *"empresa na hora"),* with or without acquiring or possessing a trade mark. This process is carried out before a Companies Registry Office or a Company Formalities Centre (CFE).

Please note that in each of these proceedings, both the name for the company and the bylaws, must result from a set of provisions predefined by the Portuguese Registry System.

While all these proceedings might be useful and even applicable in some events, SMFC would advise any investor to request a specific corporate name (in line with existent trademarks) and review the companies' articles of association in order to incorporate a Company that takes into account the proposed investments and business activity. On general terms, such incorporation shall not take more than a week to conclude.

Share Capital

The minimum statutory share capital for a SA is € 50,000.00 (fifty thousand euros), of which at least 30 percent must be fully paid up until the date of incorporation and the remaining undertaken within a period of 5 (five) years. Please note that this amount can be undertaken in kind, based upon a valuation presented an independent chartered accountant.

Under general Portuguese Companies Law, a S.A. must have at least five founding shareholders, with some minor exceptions which foresee the possibility of sole shareholding companies.

Diversly, the statutory capital for a Lda. Is freely set in the articles of association of the company and will correspond to the sum of the quotas subscribed by the Quotaholders. However, it is not possible for this value to be below the minimum nominal value of the quota set by law, which is € 1.00 (one euro). The Portuguese Law also allows the Quotaholders to decide to pay the value of each quota on the date of incorporation or at the end of the first economic year being mandated to confirm such execution in the following General Meeting of Quotaholders.

A Lda. must have at least two Quotaholders unless it adopts the structure of a single quotaholder company *(sociedade unipessoal por quotas)* in which case the share capital is totally held by a sole Quotaholder.

Please note that regulated sectors – such as, for instance, construction sector and the financing/banking or insurance sector – may have additional restrictions and provisions concerning the share capital, namely setting a minimum threshold for the share capital or quality of the shareholders.

Share Capital

The share capital of a SA is divided into shares, and all of these can either be nominal (of no less than € 0,01 per share) or without nominal value (but both cannot coexist in the same company). The shares may be physically represented by certificates or registered in an account, and are issued to represent one or more shares in accordance with the Company's articles of association and share ledger book.

Furthermore, shares must be nominative (registered as the ownership of one person or entity) and therefore transferred, alternatively, by endorsement statement signed by the transferor on behalf of the transferee and the correspondent registration with the Company – in case of shares represented by certificates - or by registry before the financial institution where they are deposited, in case of shares registered in an account).

All amendments shall be included in the Share Ledger Book, which is an internal book that shall keep internal registry of all ownership and encumbrances over the Shares.

This means that, from a public standpoint, it is not possible to assess the shareholding structure of an SA by access to a public database or companies registry certificate.

Diversely, the share capital of a Lda. is divided into quotas, which can have different nominal values with a minimum of € 1,00. Quotas are not materialized in a document but are included in the articles of association of the Company and its transfer must be executed by written agreement, followed by the respective registry with the Companies Registry Office which should provide full visibility of the corporate structure of the Company, at all times.

Special Rights

Both in what concerns quotas (in Lda.) and shares (in SA), the articles of association may define, from incorporation, special rights concerning certain Quotaholders or category of Shares. These can be related with, for instance:

- → Preferencial rights concerning dividends;
- → Preferencial rights concerning the dissolution of the company;
- → Additional voting rights or veto rights;
- → Inexistence of voting rights or rights of amortization;
- → Managerial rights.

In particular, in relation with common shares *("ações ordinárias"),* these are securities that represent ownership in a company (SA). Holders of common shares exercise control by electing the members of the Board of Directors and vote resolutions within the General Meeting of Shareholders. Preferred Shares *("ações preferenciais")* shares may bestow some sort of rights and privileges upon common stock while removing other rights (for instance, the right to vote). The nature of these rights or privileges shall consist of patrimonial advantages (mainly concerning preferential treatment in dividends or dissolution).

Liability of shareholders

On general terms, in both SAs and Lda.s, the liability of each shareholder is limited to the nominal value of his shareholding position in the respective company. However, please bear in mind that in case of sole shareholding companies, potential liabilities could arise to the parent company or could lead to lawsuits.

As such, and on general terms, SMFC would always recommend to have companies with more than one shareholder.

Corporate Governance

SA's management and supervision bodies' composition depends on the organization system adopted, which may be organized either on:

- → A traditional 2-tier structure consisting of a Board of Directors (or a Sole Director, should the share capital not exceed € 200,000.00) and an Audit Board or a Single Auditor; or
- → Under a 1-tier structure consisting of a Board of Directors, an Audit Board and a Chartered Accountant; or
- → Under a 3-tier structure consisting of an Executive Board of Directors, a General and Supervisory Council and a Chartered Accountant.

The corporate bodies of a Lda. are the General Meeting of Shareholders and the Management (which may be composed of one or more directors, in the latter case a Board of Directors). Although a Supervisory Board/Sole Auditor is not mandatory but can be set up in the company's articles of association. Furthermore, in case some thresholds are met during two fiscal years, namely two of the following, it shall be mandatory to have such Auditing:

- → Balance Sheet of 1.5M Euros; and/or
- → Turnover of 3M Euros; and/or
- → Annual number of employees of 50.

Corporate Governance

The following main resolutions are reserved to the Quotaholders/Shareholders, among others:

- → Approval of financial statements and distribution of profits.
- → Appointing and removal of the Directors and members of the Audit Board.
- → Amendments to the Bylaws.
- → Merger, spin-off, convertion or dissolution of the company.
- → Issuance of Preferred Shares.
- → Issuance of Bonds.

Please note, however, that in SQ's there are additional resolutions that must be undertaken on the General Meeting of Shareholders, on general terms, on management matters such as transfer or creating encumbrances of real estate assets or establishments operated by the company, or the incorporation or acquisition of shareholding positions in companies.

Within an SA

Call	Quorum	Majority
1st	No quorum for general matters or 1/3 of the share capital for matters comprising the changing of articles of by-laws, merger, spin-off, convertion or dissolution	Simple majority of votes cast or qualified majority of 2/3 of the share capital for matters concerning changing of by-laws, merger, spin-off, convertion or dissolution
2nd	No quorum	Simple majority of votes cast for general matters or, for matters concerning changing of by-laws, merger, spin-off, convertion or dissolution, qualified majority of 2/3 of the share capital or simple majority if at least 50% of the share capital is present or represented

Within a Lda.

Call	Quorum	Majority
-	No quorum	Simple majority or qualified majority of 3/4 of the share capital for matters concerning the distribution of dividends, changing of by-laws, merger, spin-off, convertion or dissolution

Please note that within the incorporation of a company and the setting up of the articles of association, it may be possible to set out different / additional voting majorities for the approval of resolutions in certain matters.

Board of Directors / Management

SAs are required to have a Board of Directors (or an Executive Board of Directors and a General and Supervisory Council, depending on the organization structure adopted, as described above). In a limited event, is possible to have a sole director of a SA company.

Lda.s are managed by one or more directors *("gerente/gerência plural"),* and in the latter case it can be set out a Board of Directors.

On general terms and with the restrictions already pointed out above, corporate bodies of SAs and Lda.s have very broad authority to resolve on management issues. However, the Shareholders/Quotaholders should define the terms and conditions under which the directors bind the company. Although restrictions may be contained in the articles of association, it should be critically assessed by the Shareholders/Quotaholders the best way to implement restrictions to control the actions of the directors.

In a SA, the Shareholders appoint the board of directors for a specific periodic mandate. There are no requirements for independent directors (except for companies listed in the regulated market).

In a Lda., the directors may be appointed for terms of office or without a definite term, in this case remaining appointed until dismissal or resignation.

The directors may be remunerated or not, usually being set by the General Meeting of Shareholders. Please note that in SA's, the directors should provide a bond/insurance to guarantee their execution of the specific role (which is mandatory in case of companies listed in regulated market or with certain thresholds), event that does not occur in the Lda.

Annual Accounts

Portuguese law foresees that all companies must approve, at the annual general meeting, the respective year-end accounts within a 3-months period (as from the end of the financial year) and, in special cases, within a 5 months period (in case of companies with consolidated accounts due to the existent of a group of companies). The documents to be approved are:

- → the year-end financial statements (comprising a detailed balance sheet) signed by the Chartered Accountant;
- → the management report signed by the Directors, and, in the case of SA's (or Lda. with Statutory Auditor)
- → a report issued by the Statutory Auditor, and
- → a legal certification of the accounts must be issued by Statutory Auditor.

Once approved by the general meeting, the accounting documents must be submitted, via Internet, to the Portuguese Tax Authorities under a system called *"Informação Empresarial Simplificada" (IES),* under which the annual financial and accounting information is sent simultaneously to all the relevant public services (tax authorities, companies registry office, etc.) and can be publicly assessed.

Money Laundering Provisions: Portuguese Central Registry of the Ultimate Effective Beneficiary

With the entry into force of Law No.89/2017, of 21st August, which approved the Legal Framework of the Central Registry of the Ultimate Effective Beneficiary, the companies are now forced to keep an updated internal and external registry of the Shareholders/Quotaholders identification data, with detailed information on the number of shares held by each, on the individuals that hold shares of the stakeholders, even if indirectly or through a third party, and of whom, by whatever means, holds the effective control of the shares.

Thus, the Shareholders and the Quotaholders are forced to inform the company of any alteration of the identification data envisaged by the Law, within 15 days as from the date of the alteration.

Furthermore, the companies are obliged to communicate to the Portuguese Central Companies Registry (RCBE) information deemed sufficient, exact and actual about its effective beneficiaries, as well as all circumstances that indicate their quality and concern the economic interests held. This is a condition for the undertaking of any business related action in Portugal. Thus, it shall be mandatory, for instance, to open a bank account, pursue with contributions to the Social Security, purchase a real estate asset or incorporate a company.

The declarative obligations arising from the Legal Framework of the Central Registry of the Ultimate Effective Beneficiary shall be complied by filling and submitting an electronic form, or by the verbal declaration by the effective beneficiary at the companies registry office, (that will fill electronically the referred electronic form), at the time of registration of any fact at the Companies Registry or at the National Companies Registry ("RNPC").

After submission and validation of the initial declaration, a certificate will be issued, which can be consulted through an access code especially generated for this purpose. This access code will be sufficient proof of fulfillment of the declarative obligations. This shall be periodically (annually) renewed.

Portugal

Foreign Investmnets

Introduction

Foreign investment occurs when an individual, a company or a group of entities apply capital in a foreign country, which means, in an outside economy of the investor.

With the process of globalization, accompanied by the free flow of capital, the lifting of customs and the double taxation convention treaties, the free movement of people and goods, this form of cross-border investment began to live a period of expansion, so that the national economy has started to receive investments from foreign entities, either individuals, entities or other types of institutions. Foreign investment can be split into direct and indirect investments. Thus:

- → **Foreign direct investments,** generally known by its acronym FDI, refers to the physical investments and purchases in buildings, factories, machines and other equipment in the foreign country. The investment is direct because the investor can control, manage or have significant influence over the foreign company.
- → **Foreign indirect investments** occur when companies, financial institutions or private investors purchase positions or stakes in foreign companies or also debt instruments such as loans or bonds. Generally, this form of foreign investment is less related with the operation since the investor does not have close contact with his investment.

Foreign Investment in Portugal

The first Portuguese legal instrument that regulated the private investment in Portugal was launched in the 1980's, following the entrance of Portugal in the European Union (1986), and proposed many bureaucratic and limiting mechanisms, since most projects still imposed several restrictions such as the monopoly activities reserved to the Portuguese State.

Notwithstanding, steadily since the beginning of the 1990's and with more relevance, upon the creation of the European Currency (Euro), there has been profound changes due to the recognition of the advantages of an economy based on the promotion and stimulation of foreign private investment, firstly from other members of the European Union (Germany, France, Spain and Italy, among others) and more recently (2010's onwards) from Portuguese speaking countries (Brazil and Angola) and the United States of America.

As a result of these changes and the evolution of Portugal within the global market, private investment has grown and Portugal has now opened its doors to foreign investment and today Portugal is undoubtedly one of the best countries in Europe to invest.

While there are certain restricted areas for investment – based upon public order principles and security, public health, and the exercise of sovereign authority – the large majority of the economy is subject to free market principles and no restrictions concerning the nationality of the investment are still in place.

Please note, however, that due to EU policies and regulations concerning money laundering and terrorism prevention, there are still penalties – namely from a tax standpoint – to

invest based upon tax havens and therefore additional assessment should be undertaken in case of foreign investors based upon such jurisdictions.

Reason to Invest in Portugal

The Portuguese economy presents several elements that make Portugal an increasingly attractive and competitive country:

- → **Geographical location:** as an investment destination, a factor that stands out is the geostrategic position on the Atlantic zone. Portugal is the gateway to the world markets as it is the closest European country to the United States, South America and Africa.
- → **Free market:** Portugal is a Member State of the European Union, which means a single currency, single market, free trade, without internal borders or other regulatory obstacles to the free movement of goods and services.
- → **Competitive costs:** the operating costs in Portugal are significantly lower compared to the Western European countries and still providing quality of services. Portugal has its best generation of skilled and flexible workforce at a more favorable cost than most Western economies. All services are, comparatively, cheaper that in the remaining Western European countries.
- → **A good legal framework for investment:** Portugal has been creating a favorable legal framework for foreign investors. Government policies have prioritized the promotion of Portugal's appeal to foreign investors, introducing measures like the non-discrimination between domestic and foreign investors (when establishing a business) and the implementation of incentives for investors (contributions for the development of the business, tax benefits, etc.). It has also created a public authority (Portuguese Investment and Promotion Agency - AICEP) focused on the development and execution of structuring policies and supporting both the canvassing of foreign investments and the internationalization of the Portuguese economy.
- → **Modern infrastructure:** the quality of the highway network, the air transportation and both the passengers and merchandise railway networks, which offers frequent connections to major business centers around the world, are important factors to the growth of investment. Lisbon is less than an hour away from Madrid with several flights every day and about two and a half hours from Paris and London. Portugal also maintains privileged ties to its former colonies, especially Angola as well as with Brazil. Finally, the port infrastructure, especially in the Sines terminal, and the railway network that provides connections from the north to the south of the country and international connections between Portugal-Spain-France and in the future up to Germany, are also important key factors to attract investors into Portugal.
- → **Modern technological services:** we are technologically equipped for the global economy. Portugal stands out in different services such as bank services, telecommunications and renewable energy, which have been greatly improved. In fact, our Internet has the highest speed broadband and the fiber optic network was recently recognized as the best. Besides that, we are a leading country in executing operations through the ATM network and very opened to technological innovations and investments in renewable energy.
- → **Talent and integration in Europe:** Portuguese people invest heavily in their education and our society is extremely internationalized. The Portuguese culture stands out for having highly educated human resources (with a higher education degree and a vocation for technology). Likewise the majority of Portuguese people speak English – the language of business worldwide – and many are capable of mastering other languages or are even multilingual. Portugal is also very well positioned in the rankings of scientific studies with thousands of publications.
- → **Tourism Growth:** another important indicator is the fact that tourism in Portugal has been growing increasingly and, at the same time, the real estate market has been expanding in the same direction. New records were set in the 2023 fiscal year.
- → **The high quality of life:** lately, Portugal is a good country to invest, but also to live and visit, offering a still affordable cost of living and an exceptional quality of life. It is a safe country with a relatively low crime rate and a socio-political stability, since freedom, human rights and a stable democracy are basic values of our democratic political system. Last but not the least, the pleasant Mediterranean climate with a major of sunny days in each year makes Portugal one of the best places to live in Europe.

In addition, as a law firm, our lawyers possess specialized knowledge in international corporate operations (particularly mergers, acquisitions and joint ventures) and have the necessary experience to advise clients, prepare, conduct and conclude this kind of operations.

Foreign Direct Investment

In Portugal the form of foreign investment that is more common and has been growing is the Foreign Direct Investment.

FDI is defined by the OECD (Organization for Economic Co-operation and Development) as a type of international investment made by an entity (direct investor) with the purpose of establishing a lasting interest on a company resident in a different country of the one the investor is registered (direct investment company). To be more specific, a non-resident individual or a company who invests at least 10% in a Portuguese company's capital and participates in the decision making of that company is a direct investor.

In compliance with the FDI Regulatory Restrictiveness Index made by OECD, Portugal had the second less restrictive foreign investment regime in 2020. This means that the Portuguese policy in this regard is one of the most open to direct investors of all the 44 countries covered by this Index.

Who may invest?

In Portugal there are no restrictions on the entry of foreign capital. The principle guiding the Portuguese normative framework is the non-discrimination of investment on grounds of nationality. Which means there are no constraints to foreigners to invest and all the incentives are the same to domestic or foreign investors.

In fact, it is not mandatory to have a national partner nor there are limitations to the distribution of profits or dividends abroad. In essence, you can invest in Portugal as an individual or as a company and foreign companies are subject to the same rules as domestic companies. Anyhow, you will have the same conditions that are given to the nationals: the same rights and the same obligations.

Please note, however, that due to EU policies and regulations concerning money laundering and terrorism prevention, there are still penalties – namely from a tax standpoint – to invest based upon tax havens and therefore additional assessment should be undertaken in case of foreign investors based upon such jurisdictions.

How to Invest?

There are many possible ways to invest in Portugal, the most usual ones are the following: buying companies' capital; buying real estate; and set up a company. For all of these types of investment it is advisable to seek legal advice, for reasons included in the Compendium -Portugal.

It is possible to buy shares or bonds of the better-rated companies on the stock market (that may or may not be included on the Benchmark Index PSI 20) or to buy shares of the PME (Small and Medium-sized Enterprises). To a short-term investment, there are many companies in Portugal that are low-rated on the market and will certainly gain value. On the other hand, to a long-term investment, there are numerous companies in Portugal that distribute among the shareholder's considerable dividends.

Incentives offered by the Portuguese government

There are several incentives that the Portuguese government provides to investors. Notwithstanding, these incentives are based on certain factors such as the contribution of the investment for development purpose, the size of the investment and job creation.

There are different types of incentives, but the most usual ones are the following:

→ **Productive Investment:** within the productive investment there are financial and tax incentives. The financial incentives apply to new products or services or to new production methods or processes, but the innovation must be at least nationwide. It can be used in three sorts of expenses, the tangible fixed assets, such as machines, equipment and buildings; the intangible fixed assets as software and technology transfer; and the training expenses. There are two types of support, the loan up to 30% of eligible expenses with an interest-free loan and with 8-years reimbursement period or the cash grant, consisting in a loan conversion up to 60% of the incentive depending on the performance of the project. The tax incentives apply to projects with positive impact on innovation and jobs creation. It includes tangible fixed assets, such as machine, equipment and buildings; and intangible fixed assets, such as software and technology transfer. There are three different types of support, the corporate income tax credit from 10% up to 25% of eligible investment; the tax benefits up to a 10-year period after the conclusion of the investment; and the exemption from Municipal Property Tax, Municipal Tax and Stamp Tax Transactions. Nevertheless, financial incentives combined with tax incentives applied to the same expenses cannot exceed 25% of the eligible investment. And if the project is located in Lisbon or Algarve region, only investments in new activity are eligible up to a limit of 10% of the eligible investment.

→ **Research and Development (R&D) Investment:** Within the research and development (R&D) investment there are also financial and tax incentives. The financial and tax incentives aim to appeal to the investment in R&D activities in order to develop new products or services. It covers costs with technical staff dedicated to R&D activities; acquisition of services from third parties, including technical and scientific assistance and consulting; purchase of scientific and technical instruments and equipment (depreciations during project); and also costs associated with patents registration and acquisition. Concerning financial incentives there are several types of support, such as a base rate of 25% of eligible expenses; bonuses up to 60% according to the project scope and the company size; cash grant up to € 1.000.000,00 of incentive; and for incentive amount that exceeds €1.000.000, 25% as an interest-free loan and 75% as cash grant. In what concerns to the tax incentives there are two sorts of support, which are corporate income tax credit with a base rate of 32.5% and incremental rate of 50% of the increase in expenses incurred during that period compared to the average from the previous two fiscal years, up to €1.500.000,00. Nonetheless, financial grants combined with tax incentives, applied to the same expenses cannot exceed 80% of gross grant equivalent for industrial research projects and 60% of gross grant equivalent for experimental projects.

→ **Job Creation:** In terms of job creation, the Portuguese government, through the Public Employment Service (IEFP), supports financially and during nine months the internships for unemployed people between 18 and 30 years with at least the high school graduation and for unemployed people over 30 and under 45, if registered for at least 12 months at an employment center. Moreover, the Portuguese government, throughout the Social Security, also exempts the company of paying social contributions if the contract is permanent. It applies to young people under 30 years looking for their first job or to long-term unemployed, registered at an employment center for more than 12 months. It allows 50% exemption from payment of social security contributions, during 5 years for young people looking for their first job and during 3 years for long-term unemployed. There is a third option, the "Contrato Emprego" Programme, in which the Public Employment Service (IEFP) is the competent service to submit the request. This one refers to unemployed people registered at an employment center for 6 months or unemployed people under 29 or over 45, if registered for at least 2 months at an employment center. It is granted once and the amount is € 3.921,84 if it is a permanent contract or € 1.307,28 if it is a fixed-term contract (with a minimum of 12 months). However, the investor needs to bear in mind that this measure cannot be cumulatively applied with the exemption of social contributions.

→ **Non-Habitual Residents:** Finally, the non-habitual tax resident framework allows qualified expatriates and qualified foreign people in high added-value activities, scientific, artistic or technical activities and upper management positions, that became tax resident in Portugal, to benefit from a flat rate for income tax of 20% during 10 years, instead of progressive tax rates that can reach 48%. In addition, in general, non-Portuguese source income may be exempt under some specific conditions (eg, pensions, dividends and interest that may be taxable on the source State).

Bilateral Agreements to Promote Investments

There are many bilateral agreements between Portugal and countries all over the world that contain binding measures in order to provide reciprocal protection and promote investments. These agreements cover four major areas, which are the entry of investments, the treatment of investments, the expropriation and losses on investments and the conflict resolution.

As so, bilateral agreements are very useful because they provide the creation of more favorable conditions to the investors of one signatory state in the territory of another, the assurance of more favorable treatment of investors and a guarantee of complete security and protection of investments already made, on a reciprocal basis.

Set up a company or a Branch Office

Please see Corporate Chapter.

Legalization Program

From an immigration law standpoint, Portugal has been at the forefront of legalization programs in the EU, since 2012.

While instituting Golden Visa Program in 2012 – which has now been reviewed and curtailed -, the creation of the Non-Habitual Resident Tax Status – directed at EU citizens that wish to live and work remotely in Portugal which is now also reviewed and curtailed – and now the creation of a new visa program for any person wishing to live and work in Portugal as well as other minor legalization programs for digital nomads and other activities, Portugal has been a welcoming community for foreigners around the world.

Thus, within a Foreign Investment, a legalization process of a family or employee to be transferred to Portugal is something that does not represent a difficulty to address and deal with since the Portuguese legal framework pursued with the creation of all the tools to quickly legalize such person/ family.

As such, prior work/residence permits are required for all foreign citizens wish to carry out in Portugal any lucrative, work-related or professional activity, on their own behalf or on behalf of others. However, this principle is not applicable to nationals of the member States of the European Union, to the nationals of Third States to whom, by reason of relationship, the automatic registry framework can be applied (Portuguese speaking countries or specific race/religion asylum seekers).

The application for work and residency permits must be presented personally by the prospective immigrant to the appropriate State agency (*Agência para a Integração, Migrações e Asilo (AIMA)* or before the respective consular missions of Portugal in the residence country.

Please note that while the legalization process is quite demanding on the documentation required, today the success rate for these legalization proceedings is quite high and the process rather quick.

Labour Law

General

This chapter provides a brief overview of the main aspects of Portuguese employment labour law, notably the ones resulting from the recent labour reform entered into force as of May 1, 2023 which introduced relevant amendments to the Portuguese labour and social security related regulations between employers, employees and third parties.

It should be emphasised that the information contained in this briefing overview does not provide an exhaustive analysis of all legislation changes introduced, but only of the most relevant references and relevant information provided.

Portuguese employment law is mainly governed, at a national level, by the Portuguese Labour Code ("PLC"), enacted by Decree-Law no. 7/2009 of February 12 and subsequent twenty-four amendments, which already allows for the first main idea that this Compendium should provide, which is, the applicable legislation to labour relationships is always in motion and being concurrently subject to amendments. At the same time, Portuguese Social Security Law is mainly governed, at a national level, by the Social Security Contributions Code ("SSCC"), enacted by Law no. 110/2009 of September 16 and subsequent amendments, which provide much more stability to the employees.

The employment legislation in force provides the regulation of the main employment-related features, such as: employment agreements´ modalities, holidays´ regime, absences at work, professional training, gender equality, parental rights, working hours organisation, telework framework, termination of employment contracts framework, disciplinary proceedings, collective bargaining agreements, among others. Matters such as labour accidents and health and safety at work, are governed by specific legislation.

Please also note that on certain sectors of activity or major companies, collective bargaining agreements or company collective agreements (henceforth "CBA") may exist and rule the existent labour relationships at a sectorial, company and geographical level, case in which the Portuguese Labour Code shall only be applicable in case of silence by the referred collective agreements.

Recent employment law amendments to the Portuguese Labour Code in force

Please be informed that the PLC is, from an historic standpoint, revised at a yearly basis, due to its impact in the political process existent in Portugal since its approval in 2009.

The latest amendment, undertaken on April 3, 2023 - Law no. 13/2023 - introduced several changes to PLC as part of the referred "Dignified Work Agenda / *Agenda do Trabalho Digno"* and of the transposition of Directive (EU) 2019/1152 of the European Parliament and Council, dated of June, 20th 2019 on transparent and predictable working conditions in the European Union and Directive (EU) 2019/158 of the European Parliament and Council of the same date, on reconciling work and family life for parents and careers.

Most of the latest amendments introduced to the PLC came into force on 01.05.2023.

It is expected that, due to the outcome of the Portuguese Election 2024, additional amendments are to be expected, undertaken and implemented during the second semester of 2024.

Employment Agreements

Under Portuguese law, subordinate employees are mainly hired through these legal types of employment agreements: permanent, fixed-term and unfixed-term agreements, under full or part-time legal framework.

Please note that special subtypes of permanent and fixed-term employment agreement may exist and be applicable to specific jobs (high-level, special confidence or internships) such as Management Employment Agreement or Services Commission Agreement.

Permanent employment agreements

On general terms, employment agreements of this nature do not have to be executed in written form. However, please note that according to the legal regulations currently in force, an employer has to provide to the employee information on the basic terms and conditions of the agreed employment, which are mandatory by law, such as, for example, remuneration, role, category, place of work and labour accident insurance policy.

The trial period for these permanent employment agreements usually varies according to the nature of the role to be performed by the employee: (i) 90 days for standard employees (undifferentiated role), (ii) 180 days for employees holding a trust position or committed to perform, alternatively, a role requiring high technical skills, a first-time job-seekers and a long-term unemployed, and (iii) 240 days for director and senior employees, which benefit from trust from the employer.

Please bear in mind that both employer and employee may agree on the reduction or full waiving of the trial period. According to the most recent changes to the Portuguese Labour Code, in case of previous internship agreement with the same Company and for the same role, with a duration of less than or equal to the standard length of the trial period, as described above, this period should be mandatorily reduced (in proportion) or excluded.

During the trial period, both Parties may freely and unilaterally terminate the employment agreement, having to comply with relevant prior notice or compensation payment. However, in case of the Employer, a prior notice should be complied with (7 days in case of a trial period of 60 days or more and 30 days case of a trial period of 120 days or more) under penalty of payment of the respective period.

On general terms, the employee may terminate the employment agreement at any time by means of a written communication addressed to the employer with a 30 days prior notice, in case the seniority is inferior to 2 years or less, or with 60 days prior notice in case of more than 2 years seniority.

Term employment agreements

Fixed-term or unfixed-term employment agreements may only be entered into by an employer to deal with specific and detailed temporary need of the business and/or the existent workforce and for the period of time strictly necessary to fulfil such need, caped under the applicable law.

Although, on general terms, the applicable law provides an open clause to justify and define said "temporary needs of the company and/or the workforce", it also foresees some events which, on a general standpoint, enable the employer to hire fixed-term or unfixed-term employees, from which SMFC would highlight the following events that, alternatively, may justify such employment agreements:

- → Replacement of employees temporarily prevented from rendering their activity, independently if the respective event that prevented their activity (long-term illness, leave of absence, parental leave, among others;
- → Exceptional increase of the company's activity / business;
- → Seasonal activity foreseen within the company's ativity / business;
- → Execution of a determined work or project (e.g., a services agreement entered into by the company);
- → Start-up of a new company or activity (only for Companies with a maximum number of 250 employees);
- → Hiring of long-term unemployed employees.

Note that, at any time, upon execution of such employment agreements or renewals, any failure to comply with these assumption conditions shall determine that the agreement shall be deemed as a permanent employment agreement. In what concern the duration of such employment agreements:

- → Fixed-term employment agreement may be entered for a maximum of 2 years and within such period be subject to 3 renewals;
- → Regarding the duration and renewals of the fixed-term employment agreement, according to current applicable law, the total duration of the renewals must not exceed the initial duration of the employment agreement.
- → Unfixed-term employment agreement is limited to a maximum duration of 4 years.

In what concern the termination of such employment agreements:

- → Both Parties may, based upon cause, pursue with the termination of such type of agreements. Please see additional information on IV.12 below;
- → The employee may cancel *(denúncia)* the fixed-term employment agreement at any time, by means of a written communication addressed to the employer with 15 or 30 days prior notice, whether the referred employment agreement has been on execution for less than 6 months or for 6 or more months, respectively. The employee is not entitled to legal compensation but to labour credits.
- → The employer or the employee may also terminate a non-fixed term employment agreement by its initiative, by means of a written communication addressed to the counterpart, at least with 7/30/60 days prior notice, in accordance with the duration of the employment agreement (less than 6 months, in between 6 months and 2 years and more than 2 years).
- → In this case, the employee is entitled to legal compensation and labour credits.
- → The fixed term employment agreement is cancelled *(caducidade)* in the end of the agreed term (or of any of its renewals).

→ To such extent, the employer or the employee has to communicate the termination to the counterpart by means of a written communication with at least 15 or 8 days prior notice from the term, otherwise the employment agreement shall be automatically renewed or converted into a permanent employment agreement (if (a) it cannot be renewed again, (b) it has reached its maximum duration or (b) if no requisites described above are verifiable as at renewal date). In this case, the employee is entitled to legal compensation and labour credits.

The recent amendments to the legal provisions on termination compensations have enacted a new system of payment of the compensation, applicable only to employment contracts entered into after October 1, 2013.

To ensure that the compensation is paid by the employer, two public Funds have been created (although the employer may opt by a private Fund). These Funds are funded by the employer, which has to deliver monthly an amount equivalent to 1% of the employee's salary.

When the respective agreement terminates – except in the cases of mutual agreement – the compensation is paid by the employer, but the Fund may support half of the amount paid, if it is not paid by the employer, under certain circumstances.

Management Employment Agreement / Service Commission Agreement

Additionally, SMFC also would like to highlight the Management Employment Agreement or the Service Commission Agreement, due to the wider flexibility offered to companies, when hiring for top executive / middle-management roles.

Employees committed to managing (or equivalent) role directly dependent from the Board of Directors or Statutory Management, as well as to the admission of employees holding such management positions (2nd line directors dependent of the General Manager) or trustworthy positions may be hired through Management Employment Agreement (or Service Commission Agreements) with more flexibility on the side of the employer, notably in what concerns termination of these types of employment agreements. The main aspects of these employment agreements are as follows:

→ 180 days trial period (may be reduced or suppressed by agreement of the parties);

→ Either party may terminate the agreement by means of a written communication addressed to the other party with 30 or 60 days of prior notice, whether the employee has up to 2 years or more than 2 years of seniority, respectively; Please bear in mind that the Parties may set out additional conditions or assumptions for the execution of such rights.

→ Termination by the employer entitles the employee to legal compensation.

Mandatory provisions. Highlights of new employment regimes in force

On general terms, concerning General Employment Agreement, some of these aspects have been subject to very relevant and recent amendments and changes, as follows:

Information duty

Relevant aspects of the employment agreements and related to the performance of the professional activity shall be disclosed to employees by the employer within the first seven days (main information) or the first 30 days (remaining information), notably: employer´s identification, registered office and domicile; existence of a group of companies´ relationship; workplace or locations of rendering of work; employee's category and job description; date of entering into effect of the employment agreement; duration of employment

agreement; holidays' length; notice periods; overtime requirements; termination requirements applicable to the employment agreement; amount, frequency and remuneration´s method of payment; normal daily and weekly working periods; indication of labour accident insurance policy and of the insurance company; applicable collective labour regulation instrument, if any, and the names of the respective contracting parties; identification of the Labour Compensation Guarantee Fund (FGCT), provided for in specific legislation; identification of the user under temporary work framwork; duration and conditions of trial period, if applicable; individual's right to professional training (40h per year as of certain seniority); social protection schemes, the parameters, criteria, rules and instructions on which algorithms or other artificial intelligence systems that affect decision-making on access to and maintenance of employment, as well as working conditions, including profiling and monitoring of professional activity, are based.

Contract Duration / Successive Contracts

Prohibition of successive contracts was extended, in order to include not only succession in the same job, but also within the same activity. This covers both temporary and fixed-term employees, as well as services agreements concluded with the same employer or with a company that is in a control or group relationship, or that has common organisational structures.

Also, renewal of temporary work agreements has been amended. As of May, 2023 the maximum number of renewals of temporary work agreements was reduced from 6 to 4.

It was also established that duration of successive temporary work agreements for different users, concluded with the same employer or company in a control or group relationship, or which has common organisational structures, may not exceed 4 years in total, and temporary work agreements that exceed the 4-year limit indicated above are converted into open-ended employment agreements for temporary assignments.

Remuneration

Besides the monthly base salary, employees are also entitled to a paid mandatory annual leave of 22 days per year (general rule, except for in the admission and termination years), holiday allowance and Christmas allowance, which amount is equivalent to the base salary.

Applicable CBA's, if existent, provide higher minimum amounts per each professional category.

The minimum national wage is currently (as of 01.01.2024) of € 820,00 (mainland), € 861,00 (Azores) and € 850,00 (Madeira).

Depending on the nature of the activity performed, of its complexity, and on the specific terms and conditions agreed upon between the parties, other complementary payments may be also due, notably the ones set out on applicable CBAs (ex: sales commissions, shift allowances, night work, exemption of working hours allowance, seniority bonuses, meal allowance, transportation allowance, benefits and etc.).

Workplace (Telework / Remote Work)

Extension of the right to telework to employees who have children up to the age of 8 (eight) or, regardless of age, with a disability, chronic illness or oncological disease, provided that this telework modality is compatible with the duties performed and the employer has the necessary resources and means to make it feasible.

Also, additional expenses may now be paid to the employee, provided that specific requirements are met to such extent. Such compensation is to be regarded as a cost for the employer and does not constitute income for the employee, up to the limit of the amount defined by law.

Employees are thus, allowed to telework (as long as this framework is regulated under written form) and may also split their working time between telework and work at the workplace under an hybrid regime basis, following specific terms and conditions agreed upon under a written agreement between the parties.

Working hours framework

As a general principles, employees are committed to a maximum working schedule of 8 (eight) hours per day and 40 (forty) hours per week, unless flexible legal frameworks are agreed upon under the employment agreement in force with calculation of hours in average terms, under a determined reference period. The parties may also enter into a part-time employment framework.

The work performed beyond the daily and weekly limits set is deemed as overtime work, which, itself, is limited to a certain number of hours per day (2) and per year (usually, from 150 up to 200 hours). The performance of overtime work entitles the employee to a special allowance, calculated per each hour of overtime work rendered and with the accruals set forth by law.

Depending on the nature of the job position at stake, exemption of working hours framework may be agreed upon, case in which standard daily and weekly limits shall not apply and a special monthly allowance is due (approximately from 15% to 20% of the base salary, under the terms and conditions set under an applicable CBA).

Overtime in excess of 100 hours per year shall be paid at the hourly rate with the following minimum increases:

- → 50% for the first hour or fraction thereof and 75 per cent for each subsequent hour or fraction, on a working day;
- → 100% for each hour or fraction thereof, on a weekly rest day, compulsory or additional, or on a public holiday.
- → Please note that these amounts are commonly agreed upon in applicable CBA.

Holidays and rest days

Employees are entitled to a paid annual holidays period of 22 working days (general rule). More favourable frameworks may be set under an applicable CBA or granted by the employer as bonuses or in certain conditions.

In the year of admission, employees are only entitled to holidays, 2 (two) working days of holidays per each month of employment agreement duration after 6 (six) months of effective execution of the employment agreement.

Employees are also entitled to a mandatory weekly rest day (usually, on Sundays) and to a complementary weekly rest day (usually, on Saturdays), being public holidays paid, as a rule.

Parental rights

Both parents are entitled to an initial parental leave of 120 or 150 consecutive days following childbirth (without loss of any employment rights, except for the remuneration which is to be paid by the public social security protection scheme in place), which can be increased as follows:

- → 30 consecutive days or two periods of 15 consecutive days of leave taken exclusively by each parent;
- → multiple births;
- → postpartum hospitalisation;
- → premature birth.

In the event of choosing for initial parental leave of 120 or 150 days, after taking 120 consecutive days, parents can combine the remaining days of leave with part-time work on each day. For the purposes of exercising this right:

- → part-time work corresponds to a daily working period equal to ½ of full-time work in a comparable situation;
- → daily periods of leave count as half-days and are added together to determine their total duration;
- → the period of leave can be taken by both parents, either simultaneously or sequentially.

Note that parental leave can be shared between parents, provided that the mother enjoys a mandatory period of 6 (six) weeks of leave following childbirth and takes up to 30 days before the childbirth.

In addition to the entitlement of the right of sharing the initial parental leave, the father is also entitled to an exclusive leave consisting of 5 (five) mandatory and consecutive leave days to be enjoyed immediately after childbirth, plus 15 (fifteen) mandatory days within the 6 (six) weeks after childbirth, and (5) five optional days at the same time as the mother's exclusive initial parental leave.

Please note that parents are entitled to complementary parental-related rights set forth In the applicable law.

On general terms, the father is now obliged to take 28 days of parental leave, which must be taken within 42 days of the birth and must be distributed as follows:

- → 7 taken consecutively and immediately after the birth;
- → The remaining 21 days can be taken consecutively or in interpolated periods of at least 7 days.
- → After taking the above leave, the father can take a further 7 consecutive or interpolated days, provided they are taken at the same time as the mother's initial parental leave.

There are also other leaves supported by the Public Social Security, for purposes of assistance to family. Please note that additional Private Social Security Schemes for specific role or professions might exist and provide additional leaves / rights to the employee.

Finally, and as discussed the employer and the employee may, at any time, also agree on an unpaid leave of absence.

Protection of Care Giver (new legal figure)

The legal figure of the Care Giver has been recently created, as of May 1st 2023.

A Care Giver is someone who carries out a professional activity under an employment agreement and, at the same time, accompanies and cares for a family member on a regular basis, as an informal care giver and in this quality, benefits from several protection rights.

Mandatory professional training

According to the latest changes incorporated in the applicable law, each employee is entitled to 40 (forty) hours of professional training per year.

Please note that, on termination, this right shall accrue to potential existent labour credits.

Absences at work / Sickness and injury

In the event of the death of an unmarried spouse, child or stepchild, an employee has the right to take justified time off work for a continuous period of up to 20 days. Also, in case of gestational bereavement - in cases where leave for termination of pregnancy is not applicable - the employee may be absent from work for gestational bereavement for up to 3 consecutive days. The father also has the right to be absent for up to 3 consecutive days when the mother is on maternity leave or bereavement leave. On both situations, a special formal procedure applies.

Concerning sickness leave, please be informed that it is now possible to prove justified absence due to illness by means of a certificate obtained from the digital service of the National Health Service or the Regional Health Services (as applicable). This certificate is issued on the basis of a self-declaration provided by the employee applied to absences up to 3 days and this procedure may only be used up to twice a year.

Also, employees can now compensate absences with holidays, as long as an express written communication to that effect is presented, without the employer being able to oppose such a request.

Absences to work due to evidenced illness or injury are deemed as justified absences. In these cases, the salary is not due by the employer as employees are entitled to a subsidy paid by the public social security. In case of labour accidents, the insurance company shall be responsible for the payment of the salary and of any compensation for any damages suffered by the employee as a result of the accident. To such extent, under the law, the employer has to enter into an insurance policy for labour accidents, otherwise it shall be liable for every cost and compensation due to the employee. Moreover, the non-compliance with this obligation constitutes a serious infringement, subject to application of fines by the Labour Authorities.

Employment Agreement Termination

As a general rule and except for the cases of termination with cause for disciplinary reasons and the ones foreseen, the employer is not allowed to unilaterally terminate an employment agreement.

Termination on trial period

However, during the trial period, either Party may unilaterally terminate the employment agreement with immediate effects and no compensation is due, unless otherwise is agreed by the parties. Both Parties may terminate the employment contract at any time by means of a prior written communication, which varies according to the type of agreement. Please see Chapter III above.

Termination with cause

- → **By the Employee:** the employee may also terminate the employment agreement with cause, if the employer has breached any legal or contractual rights, case where it shall be liable for the payment of an indemnification, to be settled by a Court of Law, ranging from 15 to 45 days of base salary per each of year of seniority, with a minimum equivalent to 3 months of base salary.
- → **By the Employer:** the applicable law defines cause for dismissal as a serious and intentional conduct of the employee, which determines the immediate impossibility of maintenance of the employment relationship, i.e., the breach of legal and contractual obligations as set forth in the applicable law. The dismissal with cause by initiative of the employer requires a previous internal written disciplinary proceeding which is set under the applicable law. Any failure to comply with certain formalities, the dismissal is deemed as wrongful. Additionally, in the case of pregnant and breastfeeding employees, the dismissal requires a favourable opinion from a governmental body committed for gender equality and maternity protection (CITE). The employee may judicially dispute the dismissal within the year subsequent to the dismissal. The burden of proof of cause for the dismissal relies solely on the employer. Should the dismissal be ruled wrongful, the employee may opt to be reinstated in the company or to be paid a compensation, to be settled by a Court of Law, ranging from 15 to 45 days of base salary per year of seniority, with a minimum equivalent to 3 months of base salary. In the case of small companies (less than 10 employees) or management employees, the company may oppose to the reinstatement, case where the compensation shall vary from 30 to 60 days of base salary per each year of seniority. Additionally, the company has also to pay to the employee an indemnification for any moral or patrimonial damages resultant from the dismissal proceeding and actions, and also the unpaid salaries due since the date of the dismissal until the date of the Court's final ruling. Please bear in mind that in the case of term employment agreements, the amount of this indemnification cannot be lesser than the unpaid salaries due since the date of the dismissal until the term of the employment agreement (or until the date of the Court's final ruling, should it occur before the term of the employment agreement).

Extinction of Job Role & Collective Dismissal Procedures

In addition to the methods set forth above, the employer may only terminate the employment agreement grounded on objective grounds, specifically market, financial or technological reasons.

The burden of proof of the existence of these grounds for termination relies solely on the employer. If, within a 3 months period, the employer intends to terminate, at least, 2 or 5 employees (in case the company has up to 50 employees or more than 50 employees, respectively) the collective dismissal shall apply, otherwise the individual redundancy procedure shall be the applicable procedure.

In order to terminate the employment agreement, either by extinction of job role or by collective dismissal procedures, the employer shall initiate a formal procedure, which involves the affected employee(s), employees 'representatives and the Ministry of Labour (collective dismissal) or Labour Inspection (extinction of job position). The procedure mainly comprises 3 stages:

- → initial written communication to the affected employee(s);
- → information and consultation with the employees and their representatives, as well as input from the applicable authorities; and
- → decision of the procedure, which has to be communicated with prior notice, from 15 to 75 days, depending on the seniority of the affected employee(s).

The termination by extinction of job role or by collective dismissal procedures entitles the affected employees to a legal compensation, calculated in different terms, whether the employment agreement was entered into before or after November 1, 2011, and before or after May 1, 2023.

For employment agreements prior to November 1, 2011, compensation shall be calculated as follows:

- → period in between the execution of the said agreement and October 31, 2012 - compensation is equivalent to 1 month of base salary and seniority allowance per each year of seniority;
- → period in between November 1, 2012 and September 30, 2013 - compensation is equivalent to 20 days of base salary and seniority allowance per each year of seniority;
- → period in between October 1, 2013 until the date of termination, the compensation shall be equivalent to:
  1. 18 days of base salary and seniority allowance per each complete year of seniority (in the first 3 years, when the employment agreement has not reached 3 years on October 1, 2013);
  2. 12 days of base salary per each complete year of seniority (until April, 30, 2023); and
  3. 14 days of base salary per each year of seniority (from May 1, 2023 until the date of termination).

This compensation cannot be less than the equivalent to 3 months of base salary. In respect to the periods referred in (ii) and (iii) the relevant salary cannot exceed 20 times the minimum national wage (€16.400,00) with a maximum amount equivalent to 12 times the monthly base salary (or, if the monthly salary exceeds €16.400,00, the compensation cannot exceed €196.800,00 (240 times Portuguese minimum wage).

For employment agreement entered into between November 1, 2011 and September 30, 2013, the compensation shall be calculated in the terms referred in (ii) and (iii), with the maximum limits referred above.

Due to the existence of additional provisions on this matter, SMFC would recommend that, in any case, it is assessed on a case by case basis, the respective and applicable indemnification rights.

If the Court rules the termination based on extinction of job role or collective dismissal as wrongful, the terms referred above in respect to termination with cause shall apply.

Finally, please bear in mind that, within such dismissal proceedings, it has been specifically set that it is forbidden to use external providers to fulfil needs that have been met by an employee whose employment agreement was terminated in the previous 12 months due to extinction of job role or collective dismissal procedure.

Mutual Agreement for Termination

The employer and the employee may, at any time, agree in writing, on the termination of the employment agreement. The law does not provide any minimum or maximum limits for the compensation to be paid (in fact, the payment of a compensation is not mandatory in this termination modality).

However, within such mutual agreement termination, the employee may revoke its signature and approval of the agreement within the 7 days subsequent to the date of its signature, unless such signature is duly notarized, in which case it shall produce its effects irrevocably as of the date of signature.

Restrictive Covenants

As a rule, Portuguese employment law does not allow, in general terms, agreements that restrict or hinder the freedom of work of employees, except for the case of agreed non-compete covenants, which are to be set between the parties, for a period up to two/three years following termination and with payment of an adequate and proportional compensation to an employee during such period.

General Provisions related with Employment Law

Data Protection principles

The processing of personal data in Portugal is governed by the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation or GDPR) and by Law 58/2019 of August, 8th.

In the employment context, personal data processing is also regulated by the PLC and complementary legislation.

In Portugal, an employer cannot ask a job applicant or an employee to provide information about their private life, except if such information is strictly necessary and relevant for assessing the job applicants/employee's aptitude for performing the employment contract or on their health or condition of pregnancy, unless there are specific requirements arising from the nature of the professional activity. In both cases, the employer shall justify the need for that information in writing.

Information regarding health data has to be provided by a medical doctor, who may only inform the employer whether the employee is suitable to carry out the activity or not.

Job applicants or employees who have provided personal information are entitled to exercise any and all rights over their personal data, as set forth in the GDPR. In this regard, under the terms of the GDPR, it is lawful to process data for the execution of an agreement to which the data subject is a party or for pre-contractual procedures. Therefore, employers are allowed to process their employees' personal data for the purposes and within the limits defined by the GDPR, Portuguese Labour Code and complementary legislation.

Non-discrimination and Harassment principles

In Portugal, employees and job applicants are entitled to equal opportunities and equal treatment regarding access to employment, training, promotion or professional career and working conditions, and may not be favoured, benefited, disadvantaged, deprived of any right or exempted from any duty on the grounds of, namely, ancestry, age, sex, sexual orientation, gender identity, marital status, family situation, economic situation, education, social origin or condition, genetic heritage, reduced working capacity, disability, chronic illness, nationality, ethnic origin or race, territory of origin, language, religion, political or ideological convictions and trade union membership.

The employer shall display in the company, in an appropriate place, information concerning the employee's rights and duties with respect to equality and non-discrimination.

Over the last few years, several measures have been taken to prevent mobbing and harassment, and such practices are expressly forbidden. We would like to emphasise some particularly important measures in this matter:

- → Employers with 7 or more employees must adopt a mandatory code of good conduct to prevent and combat harassment at work;
- → Mandatory initiation of disciplinary proceedings whenever the employer becomes aware of any alleged harassment;
- → A disciplinary sanction applied by an employer to an employee who has reported harassment is presumed to be abusive until one year after the employee has reported the case and/or exercised his/her rights arising from the harassment;
- → Harassment is considered just cause for termination of the employment contract with immediate effect on the part of the employee;

Whistleblowing

Following the transposition of Directive (EU) 2019/1937 on the Protection of Persons Who Report Breaches of Union Law (Whistleblowing Directive), a set of obligations has been created for companies and public organizations regarding the protection of whistleblowers and the implementation of internal whistleblowing channels and procedures.

In this context, the general framework for the prevention of corruption sets the obligation for private sector companies with headquarters in Portugal that employ 50 or more employees and branches in national territory of legal entities with headquarters abroad that employ 50 or more employees, to carry out certain measures, namely the implementation of a:

- → Plan to prevent risks of corruption and related offences;
- → Code of Conduct;
- → Training programme; and
- → Whistleblowing channel.

The organisations covered are also obliged to appoint a compliance officer.

Under Portuguese Law, employees and trainees have special protection under the Whistleblowing Directive. This protection prohibits acts of retaliation against the whistleblower. Furthermore, such protection extends to any natural person who assists the whistleblower in the whistleblowing procedure and whose assistance must be confidential, including trade union representatives or employee representatives, to any third party who is linked to the whistleblower, such as a work colleague or family member, and who could be the target of retaliation in a professional context, and to legal entities or similar entities that are owned or controlled by the whistleblower, for which the whistleblower works or with which the whistleblower is in any way connected in a professional context.

TUPE Regulations / Transfer of Undertaking & Employment related impacts

In the event of a transfer, by any means, of ownership of a business or establishment, or part of a business or establishment deemed as an economic unit, the employer's position in the employment agreement of the respective existent employees shall be automatically transferred to the acquiring entity, by direct effect of the PLC, as well as any existent liabilities for payment of fines imposed for labour offences that were related with the business or establishment under transaction.

Also, the transferred employees shall maintain, upon transfer, all contractual and acquired rights, including salary, seniority, professional category and role and social benefits.

There is a mandatory procedure to be follow on such event and consultation rights to employees´ representatives are granted.

If the asset transfer does not qualify as a relevant transfer of business unit (i.e.: in case of more common share acquisition deal or other M&A transactions), employees may only be transferred with their individual written consent.

Collective Negotiation / Collective Bargaining Agreements

Please also note that in case of CBA's in force covering regional or national geographical areas and/or specific sectors of activity shall apply - either entered into between Trade Unions and Employers' Associations, or which scope is extended by means of government extension acts, regardless of any employees´ affiliation – and those CBA's shall be prioritized and applied to all operating companies within the targeted sectors of activity and

businesses or located in certain regional geographical areas, being PLC regulations residual (unless with imperative nature).

If existent, an applicable CBA always prevails over the law, unless stated differently by the latter (i.e., either the law determines it is imperative or that it will only yield to a CBA provision that is more beneficial to the employee).

Please also note that even if there are no unionized employees and if the employer is not a member of an Employer´s Association, the Portuguese Government may issue administrative orders, extending the scope of application of a certain CBA to other entities of the same sector of activity, regardless of their affiliation – named government extension acts.

In light of the aforesaid, SMFC would recommend that a prior search concerning any applicable CBA is made concerning a specific company or sector of activity.

Service Providers

According to article 1154 of the Portuguese Civil Code, a services agreement or an agreement for the independent and autonomous provision of services is a contract in which one of the parties involved undertakes to provide or render to the other a specific service with a certain result of their manual or intellectual undertaking, with full independence and without subordination, with or without remuneration.

Diversely, an employment agreement is a contract with a subordinate nature to be entered into an employer and the employee, in which an employer has powers of authority, direction and discipline, continuously supervises and coordinates the work of its subordinate employees.

Their nature is, therefore, extremely different, should the legal regulations in force be fully respected.

However, please note that regardless of the specific designation provided and granted to the specific agreement, an employment agreement is presumed to exist whenever, within a relationship between the subject providing the activity and the one(s) benefiting from it, some of the following aspects are met, with regards to the way the relationship is materially granted:

- → The activity is carried by the subject out on premises belonging to or determined by the beneficiary;
- → The equipment and work tools used by the subject providing the activity belong to the beneficiary of the activity;
- → The subject providing the activity observes start and end times, determined by the beneficiary of the activity;
- → A certain amount is paid to the subject providing the activity at regular intervals in return for the activity;
- → The subject providing the activity fulfils management or leadership functions within the company's organisational structure.

As a result of recent legislation amendments, legal provisions on personality rights, equality and non-discrimination and health and safety at work and CBA in force also apply to situations where work is provided without legal subordination, whenever the services provider of the work is in a situation of economic dependence on the beneficiary of the activity. In this respect, service providers (with economic dependence) may now also have the right to represent their interests through a trade union association and a workers' committee,

to negotiate specific collective labour regulation instruments for self-employed workers, through trade union associations, or to apply those that already exist and apply to workers, under the terms laid down therein, as well as to administratively extend the framework of a collective labour agreement or arbitration award, and to administratively set minimum working conditions.

Please note that despite the eventual verification of one or more of these circumstances, a legal analysis on a case-by-case basis shall be undertaken in order to assess whether it is possible to ascertain and define certain rendering of activity within an employment agreement or a services agreement.

This shall have particular relevance since any contractual relationship that is wrongfully defined and legally treated may under certain conditions hinder rights of the services provider / employee or Portuguese Authorities (namely social security or tax related) and therefore be subject to very serious administrative offences / misdemeanours, which may involve, notably:

- → Deprivation or cancellation of the right to support, subsidies or benefits granted by a public entity or service, namely of a tax or social security nature or from European available funds, for a period of up to 2 years; and/or
- → Deprivation of the right to participate in public auctions or tenders, for a period of up to 2 years.

Social Security Contributions and Witholding P.I.T. (Personal Income Tax)

Social Security

The employer and the employee have to pay contributions to social security, which are calculated over the regular salaries paid to the employee, through a 34,75% rate (general rule, although there are exceptions), where 23,75% is supported by the employer and 11% is supported by the employee.

In respect to members of the Board of Directors, on general terms, the social security rate is the same, being applied over the real salary, with a minimum equivalent to the Social Benefits Index (currently, as of 2024, of € 509,26 euros).

PIT – Personal Income Withold Tax

Depending on their monthly income bracket, employees' income resulting from work rendered in Portugal is also subject to personal income tax (IRS withholding tax) according to the tables in force, which are reviewed on a yearly basis. Please see additional information of the Tax Chapter.

Access to Unemployment subsidy

The termination of an employment agreement shall entitle the employee to an unemployment subsidy whenever the unemployment has not resulted from a decision of the employee (except for in the cases where employees terminate the employment agreement with cause).

The unemployment subsidy is directly granted by the social security services. Its amount is calculated in accordance with the salary of the beneficiary employee in the 14 months preceding to the unemployment and shall be equivalent to 65% of that salary. The amount of the unemployment subsidy is limited to 2,5 times the Social Benefits Index (currently, €1.089,40 = €435,76 * 2,5).

This subsidy is granted for a variable period in accordance with the age and the contributions record of the employee/beneficiary, from a minimum of 150 days to a maximum of 780 days.

The beneficiary is prevented from cumulating the unemployment subsidy with other income resultant from a professional activity, save in limited cases of low income.

Retirement Age and access to retirement pension in Portugal

The statutory age for retirement is currently of 66 years and 4 months.

All applicants are entitled to claim a retirement pension with a minimum of 15 years of registered and paid contributions to social security or to other protection schemes (guarantee period), resulting from earned income from employment (under dependent, self-employed regimes or as statutory members of corporate bodies - managers or directors). Longer careers may allow earlier access in case applicants have at least 60 years of age or older and have paid Social Security contributions for at least 40 years.

As a general rule, beneficiaries may cumulate the retirement pension with income emerging from performance of a professional activity.

Real Estate

Types of Ownership

According to the Portuguese Civil Code, ownership consists in the full and exclusive right of use, enjoyment and disposal of a real estate property, including all direct advantages resulting there from (as revenues).

Portuguese law foresees other property rights such as the right to use the property or usufruct *("usufruto"),* the naked property *("nua propriedade"),* the surface property *("direito de superfície"),* the timesharing *("direito de uso e habitação"),* the horizontal property *("Propriedade Horizontal"),* just to name to most common ones.

Furthermore, the adverse possession *("usucapião")* is one method of acquiring property through actual, continuous, open occupancy of the property, for a prescribed period of time, under claim of right, and in opposition to the rights of the alleged formal owner.

Land Registry

All transactions concerning real estate property must be duly registered with the Real Estate Registry Office (which may be submitted online) and the Tax Authorities.

In order to impose that obligation, the law establishes that definitive registration with the Land Registry Office does not produce legal effects – which result from the contractual documentation entered into by the Parties – but constitutes legal presumption of the existence of the ownership right in favour of the person inscribed therein. This means that the land registry certificate *("certidão do registo predial")* confers to the owner of the property the principled right to exclude any alien pretension over the registered ownership right. This is also applicable concerning property rights, building permits or encumbrances over the real estate asset that may be included in the said certificate.

The onerous acquisitions of property rights made by third parties, in bona fides, from a person who appears in the registry records as entitled to transfer such right shall be held harmless against any property claims.

All registered records both with the Land Registry and the Tax Authorities are accessible to the public so as to allow the assessment of information concerning the ownership and/or any existing encumbrances on a real estate property and therefore due diligence is recommended prior any contractual documentation being drafted.

Transfer formalities (public deed)

According to Portuguese law, the constitution, transfer, acquisition or cancellation of any right over a real estate assets may be made through a Deed or a Document duly authenticated by a Lawyer or Authorized Professional. Additionally, other documents may be required, as well as the execution of legal and prior formalities, including the payment of applicable taxes. All in all, the following documents must be assessed prior to the transaction and be available on Closing:

- → Occupation / Use / Construction License issued by the City Hall (for urban buildings); (Please note that recent legislation indicated that such documentation ceased to be mandatory for the execution of transfer formalities, it would be SMFC's standpoint point that any due diligence over a real estate asset should assess the legality of the real estate asset and the constructions set forth therein. Please note that under certain circumstances, the real estate asset may be exempt, namely in case the real estate property is attested by the Municipality as a ruin)
- → Land registry certificate, proving the full description of the real estate property and the ownership of the transferor, issued on the last three months;
- → Real Estate Tax Record *("caderneta predial")* issued by the competent tax services, issued on the last three months.
- → Payment of the Real Estate Transfer Tax *("IMT")* - between 0% and 8%, depending on the real estate type and its value (concerning property owned by entities with fiscal residence in blacklisted jurisdictions, the tax is 10%) – please see additional information in Tax Chapter;
- → Payment of Stamp Duty *("Imposto do Selo")* (please see additional information in Tax Chapter);
- → Energy Certificate of the Property (which certifies the class of energy efficiency of the property); (Please note that under certain circumstances, the real estate asset may be exempt, namely in case the real estate property is attested by the Municipality as a ruin)
- → Technical Datasheet of the Property *("Ficha Técnica da Habitação")* – apart from a few exceptions, it is only mandatory for properties built or refurbished after March 30th, 2004; (Please note that recent legislation indicated that such documentation ceased to be mandatory for the execution of transfer formalities, it would be SMFC's standpoint point that any due diligence over a real estate asset should assess the legality of the real estate asset and the constructions set forth therein).

Finally, please note that some transfer of real estate property might be subject to legal or contractual preemption rights for third parties. This occurs in favor of Municipality or Public Entities – in cases of real estate located in certain development areas or municipalities - or in favor of the real estate has a lease agreement in place (in some cases).

The website and framework "CASA PRONTA" allows for obtaining the majority of waivers, purchases, encumbrances or registrations of real estate properties to be carried out as soon as possible and by a sole entity. Thus, the public deed, the payment of the IMT and the attaining of all necessary documents (may be all carried out simultaneously by the same authority, significantly reducing the bureaucratic procedures of the real estate transactions in Portugal. However, SMFC would strongly suggest that a prior due diligence is undertaken to ensure that the real estate asset present all legal conditions for the undertaking of the transaction.

Restrictions on acquisition (e.g. by foreigners)

Portuguese law has no restrictions to what concerns the possibility of property acquisition by foreigners.

Note, however, that for certain entities located in black-listed jurisdictions, additional tax implications might be applied. See Tax Chapter.

On a different note, there are many incentives for foreign investment in Portuguese properties, which are better described at the Foreign Investment Chapter.

Mortgages, main rights of mortgages

AA Mortgage is a lien by virtue of law (security in rem) that confers to the creditor a preferential right over the other creditors, and that can be defined, in simple terms, as an ancillary guarantee aiming at assuring the fulfillment of contractual obligations.

The law provides for three different types of mortgages: voluntary, judicial and legal. The voluntary mortgage must be constituted by means of a Deed or a Document duly authenticated by a Lawyer or Authorized Professional and must specify the mortgaged property as well as pay an applicable Stamp Duty (Please see Tax Chapter).

All kinds of mortgages should be registered, in order to have existence and to produce effects against third parties as described above.

Construction and use restrictions (e.g. permits, zoning)

The exercise of rights related to ownership is not absolute, considering that Portuguese Law and Local Regulations may set the compliance with restrictions and boundaries imposed by the social and dynamic role of ownership.

Besides the general clause of *"proibição do abuso de direito"* (prohibition of abuse of right), the public expropriations and temporary requisition, SMFC would like to point out that Portugal has two different types of restrictions: "public law restrictions" and "private law restrictions".

- → As to public restrictions, we have to consider specific legislation linked to, e.g. town planning regulations (inspections and supervision of construction works) that covers areas like waters, environment, air quality protection, forests, industry, work licensing, natural parks, sanitation, noise, etc.
- → Concerning the private law restrictions, they are foreseen in the Portuguese Civil Code, and are numerous, as for example easements, excavations, water flowage, right of demarcation, right of dividing and joining rustic buildings, etc.

Therefore, prior to pursuing with the acquisition of the real estate asset, SMFC would recommend that a thorough Due Diligence is undertaken not only regarding the documentation of the real estate property by the area in which it is located and any particulars of such property location (historic site, archeological site).

Construction and use restrictions (e.g. permits, zoning)

The urban lease agreement must be made in writing and its rules vary depending on whether the agreement is for housing or non-housing. In case of lease agreement for housing, the current legal framework is rather restrictive and limited since recent legislation has caped / limited:

- → The minimum duration of the agreement;
- → The prior notice in case of termination of the agreement;
- → The amount of rent requested by the lessor (due to the conditions of the asset);
- → The amount of guarantees requested by the lessor;
- → The penalties for non-payment of the rent;

While for non-housing, the current legal framework is almost as restrictive and limited, however item (i) and (ii) above may be considered not applicable. Finally, please note that rural lease agreement are subject to a specific legal framework. Thus, SMFC would strongly advise that any investment in real estate, either for residence, rural, business or investment opportunities should be carefully considered and analysed.

Corporate Income Tax (IRC)

Taxable Entities: resident and Non-resident entities

The profits of companies operating in Portugal are taxable under the Corporate Income Tax Code (henceforth "CIT Code"). The definition of "taxable profits" includes operating income and capital gains (i.e. there is no autonomous capital gains tax).

CIT Code applies to companies and other corporate bodies and the applicable rules vary according to the tax residence of the taxpayer.

Companies and other corporate bodies with head office or place of effective management in Portuguese territory are deemed resident entities in Portugal for tax purposes and subject to tax on worldwide profits. Despite the absence of statutory criteria laid down in the CIT Code, in normal circumstances, a company's place of effective management is located where the daily management of the company is carried out and the major decisions are taken (e.g. where the meetings of the company's board of directors habitually take place). Other resident corporate bodies that do not carry out a commercial, industrial or agricultural activity in Portugal (e.g. not-for-profit entities) are also subject to CIT although subject to different assessment rules and potentially benefitting from a total or partial exemption.

Non-resident entities (i.e. companies and other body corporates that do not have their head office, nor place of effective management in Portuguese territory, nor have a permanent establishment therein) are only taxed on Portuguese-sourced income. The CIT Code foresees that the taxable income obtained by a non-resident company which is not attributable to a permanent establishment in Portugal should be determined in accordance with the scheduler income rules set out in the Personal Income Tax Code (henceforth "PIT Code"). The taxable income obtained in Portugal by a non-resident company without a permanent establishment in Portuguese territory will be subject to a withholding tax of 25%. These rates may be reduced in accordance with the applicable Double Tax Convention Treaties (henceforth "DTCT"), provided certain formalities are complied with.

Non-resident entities with a permanent establishment in Portugal are also subject to corporate tax on the profit attributable to those permanent establishments. A permanent establishment is defined in the CIT Code as *"any fixed installation or permanent representation through which an activity of commercial, industrial or agricultural nature is carried on".* In general terms, a permanent establishment is deemed to exist where a non-resident entity carries on its business enterprise in Portugal for a period of at least six months. Whenever a DTCT applies, the Portuguese domestic concept of permanent establishment should be interpreted and applies in light of the concept foreseen in that DTCT. In general terms, the taxable profits attributable to a permanent establishment are determined and subject to tax in accordance with the same rules that apply to resident companies, which means the permanent establishment is also required to prepare financial statements and have its own accounting records.

In summary, any company whose head office or place of effective management is not located in Portugal may be subject to CIT in Portugal as follows:

- → Regarding profits allocated to a permanent establishment located in Portugal, CIT will be charged on the (worldwide) taxable profits attributable to it;
- → Regarding profits not allocated to a Portuguese permanent establishment, CIT will be charged only on income that is deemed to be sourced in Portuguese territory.

Rates

· **General rate and special tax regimes**

- → **Standard rate:** 21%
- → **Companies licensed under the Madeira International Business Centre (Madeira Free Trade Zone) until December 31, 2024:** 5% CIT rate until december 31, 2028, provided certain requieremnts are complied with (e.g. minimum number of workers in the payroll and maximum amount of taxable profits benfitting from the special CIT regime)
- → **Autonomous Region of Azores (SME's):** 8,75% CIT rate for taxable profits up to 50.000€ derived by SMEs
- → **SMEs (Small and Medium Sized Enterprises):** Taxable profits up to 50.000€ are subject to a reduced rate of 17%. The exceeding taxable profits are subject to the standard CIT rate.
- → **Start-ups SMEs:** Taxable profits up to 50.000€ are subject to a reduced rate of 12,5%. The exceeding taxable profits are subject to the standard CIT rate.
- → **Stare surtax:**
  - → 3% on taxable profits exceeding 1,5 million € up to 7,5 million €
  - → 5% on taxable profits exceeding 7,5 million € up to 35 million €
  - → 9% on taxable profits exceeding 35 million €
- → **Municipal surtax:** It is defined annually by the municipalities and it is an amount that is levied in the taxable profit of companies and is related to the address of the establishments where the company carries out it's activity

· **Small and Medium-Sized Enterprises ("SME").** The criteria for assessing the status of small and medium-sized enterprises are defined in Annex I to Decree-Law no. 372/2007, of 6 November, in the wording currently in force (Decreto-Lei n.º 13/2020, of 7 abril), which creates electronic certification of the status of medium-sized enterprises (SMEs) and correspond to the provisions of Recommendation no. 2003/361/EC, of the European Commission, of 6 May. As such: Portugal as follows:

- → Medium company shall be considered a company that employs between 51 and 250 people and annual turnover does not exceed 50 million euros or annual balance sheet total does not exceed 43 million euros;
- → Small company shall be considered a company that employs between 11 and 50 people and the annual turnover or annual balance sheet total does not exceed 10 million euros.

In order to benefit from the SME tax framework, companies must obtain SME certification, which can be obtained electronically as long as the requirements for SME qualification are met.

Assessment of taxable income

· **General rule.** Resident companies are taxable on their worldwide income. Income and expenses should, as a general rule, be allocated to a financial period where such income and expenses are realized.

The taxable income of a resident company is based on its accounting records according to the applicable accounting rules and subject to the tax adjustments foreseen in CIT Code. Resident companies may also carry forward tax losses up to five years and deducted up to 65% of the future (annual) taxable profits.

· **Expenses and non-deductible items.** Expenses related to the business activity are generally deductible for CIT purposes, insofar as they are properly documented and were incurred by the company to generate taxable profits or to safeguard its productive source.

Notwithstanding the above, certain expenses are not tax deductible, namely (i) interest paid pursuant to shareholder loans if the applicable rate exceeds EURIBOR 12M accrued with a spread up to 2% (except for transactions subject to transfer pricing rules where the arm's length interest rate is higher than the foregoing), (ii) expenses documented by invoices or other documents without a valid taxpayer number, (iii) penalties or fines paid, (iv) CIT and surtaxes or (v) certain expenses related with vehicles, (vi) confidential or undocumented expenses, etc.

· **Provisions.** As a general rule, provisions registered by a Portuguese company are not tax deductible, except for specific provisions foreseen in the CIT Code, namely:

→ Pending judicial litigations, when concerning bad and doubtful debts;

→ Mandatory technical provisions, constituted in accordance with the Insurance Portuguese Institute and/or Bank of Portugal rules;

→ Remedy of environmental damages.

· **Interest Barrier Rule.** The CIT Code foresees an interest barrier rule which limits the deductibility of net financial expenses to the higher of (i) € 1,000,000.00; or (ii) 30% of EBITDA (operating profits before interest, taxes, depreciations and amortizations).

The interest barrier rule applies to all financial expenditure regardless of the existence of special relations between the debtor and creditor and the residence of the creditor. The interest barrier rule is also applicable to tax groups.

The interest barrier rule allows for the carry forward of the unused percentage (i.e. if the deduction percentage is not fully used, the gap may be added to the following five years). The excessive (non-deductible) financial expenditure may also be carried forward up to 5 years and deducted against future profits.

· **Bad debts.** The costs with impairment losses derived from doubtful debts are tax deductible when an insolvency or recovery procedure has been submitted or when credits have been judicially claimed. Only impairment losses derived from debts outstanding for more than six months are qualified as tax deductible within the following limits on the amount in debt:

→ From 6 to 12 months: 25%;

→ From 12 to 18 months: 50%;

→ From 18 to 24 months: 75%; and

→ More than 24 months: 100%.

· **Autonomous taxation.** In addition to the general CIT rate, autonomous taxation is applied on certain expenses of CIT taxpayers. As way of example, the following expenses are subject to autonomous taxation:

- → Expenses related with vehicles
- → Representation expenses
- → Undocumented expenses
- → Payments made to entities resident in blacklisted jurisdiction
- → Costs or expenses with bonus and other variable remunerations paid to managers and board members

Dividends and capital gains: participation exemption

Resident companies are subject to corporate income tax on their worldwide income (which includes capital gains).

· **Dividends.** Under the participation exemption regime, domestic and foreign-source dividends derived by a resident company are exempt if the following conditions are met:

- → 10% minimum shareholding on the company distributing the dividends;
- → one year holding period (may be satisfied after the income is derived);
- → the taxpayer is not subject to the tax transparency regime;
- → the company distributing the dividends is subject and not exempt to CIT or to a tax comparable to the Portuguese CIT at a rate not lower than 60% of the Portuguese CIT Code rate (12.5%);
- → the company distributing the dividends is not an offshore company.

· **Capital Gains.** As a general rule, capital gains derived by Portuguese resident corporate entities are included in the taxable profits and subject to the general CIT rate. Likewise, capital losses may be deduced to the taxable profits.

Capital gains derived by a resident company on the sale of shares are exempt if the above-mentioned conditions for dividends are met. The capital gains exemption does not apply if the underlying company (which is being sold) is a real estate company, i.e. if the balance sheet is comprised in more than 50% of Portuguese real estate.

Capital gains derived by non-resident corporate entities are subject to CIT at a rate of 25%.

Capital gains derived from the transfer of shares may benefit from a domestic tax exemption provided such gains are derived by a non-resident without a permanent establishment in Portugal, if the following requirements are met:

- → The seller is not owned, directly or indirectly in more than 25% by a Portuguese resident company/natural person or the seller is not a resident in a blacklisted jurisdiction; and
- → The gains derived do note relate to shares or corporate rights in resident companies whose assets consist in more than 50% of real estate located in Portugal or holding companies, whenever such companies are in a control relationship with resident companies whose assets consist in more than 50% of Portuguese-situs immovable property.

Are also subject to taxation in Portugal the capital gains derived by the transfer of shares or comparable interest, if, at any time during the 365 days preceding the transfer, these shares or comparable interest derived more than 50% of their value directly or indirectly from immovable property (real property) situated Portugal (except real estate affected to agricultural, industrial or commercial activities which is not the purchase and sale of real estate).

Transfer pricing

Under this legal framework, transactions entered into between related entities should reflect the arm's length principle, i.e. for tax purposes, the controlled transactions' prices should be established as if the parties were not related, by reference to the conditions which would have been obtained between independent enterprises, in comparable transactions and comparable circumstances. For these purposes, the threshold for the determination of a special relationship is currently in 20% of shareholding. In addition, an entity can be qualified as related party when it has the power to exercise, directly or indirectly, a significant influence on the management decisions of the other.

The scope of the transfer pricing framework covers all taxpayers conducting cross-border as well as domestic controlled transactions, including transactions between permanent establishments and transactions entered into with unrelated entities resident in listed blacklisted jurisdictions.

Withholding Taxes (WHT)

· **WHT - Domestic rules.** Domestic-source income derived by non-residents without a permanent establishment in Portugal is generally subject to a final withholding tax levied on the gross amount.

Dividends paid by a Portuguese company to its resident or non-resident shareholders are subject to a 25% flat withholding tax rate, unless an exemption for dividends paid by Portuguese resident entities is also applicable.

To qualify for the withholding tax exemption for dividend payments, the main criteria are the following:

- → 10% minimum shareholding on the Portuguese company distributing the dividends;
- → one year holding period (may be satisfied after the income is paid);
- → resident of shareholder is geographically limited to shareholders resident in a EU Member State, EEA (excluding those that do not exchange tax information with Portugal) or jurisdictions with which Portugal has signed a DTCT with exchange of information mechanism; and
- → the company receiving the dividends should be subject and not exempt to a tax comparable to the CIT at a rate not below 60% of the CIT rate (i.e. 12.6%).

In case profits are distributed to a corporate entity resident in a blacklisted jurisdiction, a 35% flat withholding tax rate will apply.

No withholding tax on interest paid to Portuguese banks or local branches of foreign banks subject to CIT in Portugal.

· **WHT – According to DTCT entered into with the Portuguese State (%)**

Country	Dividends	Interests	Royalties
Algeria	10-15	15	10
Andorra	5-15	10	5
Angola	8-15	10	8
Austria	15	10	5-10
Barbados	5-15	10	5
Barem	10-15	10	5
Belgium	15	15	10
Brazil	10-15	15	15
Bulgaria	10-15	10	10
Canada	10-15	10	10
Cape Verde	10	10	10
Chile	10-15	15	5-10
China	10	10	10
Colombia	10	10	10
Croatia	5-10	10	10
Cuba	5-10	10	5
Cyprus	10	10	10
Czech Republic	10-15	10	10
Denmark	10	10	10
East Timor	5-10	10	10
Estonia	10	10	10
Ethiopia	5-10	10	5
Finland	10-15	15	10
France	15	10-12	5
Georgia	5-10	10	5
Germany	15	10-15	10
Greece	15	15	10
Guinea-Bissau	10	10	10
Hink Kong	5-10	10	5
Hungary	10-15	10	10
Iceland	10-15	10	10
India	10-15	10	10
Indonesia	10	10	10
Ireland	15	15	10
Israel	15	10	10
Italy	15	15	12
Ivory Coast	10	10	5
Japan	5-10	5-10	5
Kenya	7,5-10	10	10
Korea	10-15	15	10
Koweit	5-10	10	10

Country	Dividends	Interests	Royalties
Latvia	10	10	10
Lithuania	10	10	10
Luxembourg	15	10-15	10
Macao	10	10	10
Malta	10-15	10	10
Mexico	10	10	10
Moldova	5-10	10	8
Montenegro	5-10	10	5-10
Morocco	10-15	12	10
Mozambique	10	10	10
Netherlands	10	10	10
Norway	5-15	10	10
Pakistan	10-15	10	10
Panama	10-15	10	10
Peru	10-15	10-15	10-15
Poland	10-15	10	10
Qatar	5-10	10	10
Romania	10-15	10	10
Russia	10-15	10	10
San Marino	10-15	10	10
Sao Tome and Principe	10-15	10	10
Saudi Arabia	5-10	10	8
Senegal	5-10	10	10
Singapore	10	10	10
Slovakia	10-15	10	10
Slovenia	5-15	10	5
South Africa	10-15	10	10
Spain	10-15	15	5
Sultanate of Oman	15	10	8
Sweden	10	10	10
Switzerland	5-10	10	5
Tunisia	15	15	1
Turkey	5-15	10-15	010
Ukraine	10-15	10	10
UAE	5-15	10	5
UK	10-15	10	5
USA	15	10	10
Uruguay	5-10	10	10
Venezuela	10-15	10	10-12
Vietnam	15	10	7,5-10

Personal Income Tax (IRS)

Personal income is taxed according to the Personal Income Tax Code (henceforth "PIT Code").

Taxable Persons

· **Residents.** Natural persons who are residents for tax purposes are taxed on their worldwide income at progressive rates varying from 13,25% to 48%, for 2024, with certain allowences/ exemptions for low income earners. The PIT Code foresees specific criteria for a person to be considered resident in Portugal. The two main criteria are the physical presence test and the habitual residence test. According to the physical presence test, a person is deemed resident if he/she spends more than 183 days in Portuguese territory within any 12 months period. According to the habitual residence test, a person in deemed resident if he/she declares a primary residence (tax domicile) in Portugal.

The PIT Code also foresees the possibility for a partial residence if a natural person arrives to, or leaves from, Portuguese territory within the course of a taxable year. ç

· **Non Residents.** Non-residents of Portugal are taxed on their Portuguese source income, in most cases through a withholding at the source.

Transfer pricing

Tax rates for natural persons:

Taxable Income	Rate %	Deductible Amount €
Up to 7.703	13,25	0
More than 7.703 up to 11.623	18	365,89
Over 11.623 to 16.472	23	947,04
Over 16.472 to 21.321	26	1.441,14
Over 21.321 to 27.146	32,75	2.880,47
Over 27.146 to 39.791	37	4.034,17
Over 39.791 ti 51.997	43,50	6.620,43
Ovet 51.997 to 81.199	45	7.400,21
Over 81.199	48	9.836,45

Notwithstanding the general terms set forth above concerning personal income tax, please bear in mind that while it is a progressive tax rate that can go up to 48%, it may be applied a solidarity tax in between 2.5% or 5%, depending on the taxable income.

Taxable income

The following income categories exist under Portuguese Law and shall apply, on a general standpoint:

· **Employment income, director's fees (category A) and pensions (category H).** PIT rates apply on the earned income of employed individuals, pensions and directors' fees.

· **Business and professional income (category B).** PIT taxable income includes all earned income of a professional individual, such as commissions and entrepreneurial income (including rental income upon option). Such income may be taxed either in accordance with a simplified regime or based on the taxpayer's accounts.

· **Investment income (category E).** Dividends and interest (bank interest, shareholder loans, from public company bonds, bills or other paper, as well as interest on public debt) are liable to taxation at a flat rate of 28% (either by means of a withholding tax or autonomous rate). However, the taxpayer may elect to include such items in taxable income in the tax return, being taxed at marginal tax rates that vary between 13,25% and 48%, in 2024. Investment income paid by non-resident entities without a permanent establishment in Portugal, but which are domiciled in a blacklisted jurisdiction, are liable to a tax rate of 35%, either by withholding tax or by the autonomous rate.

· **Rental income (category F).** Rental income derived by lease agreement for housing purposes is subject to a 25% flat tax rate, while other kind of rental income is subject to a 28% flat tax rate.

· **Capital Gains income (category G).** Capital gains will be subject to tax at a flat rate of 28%. Capital gains earned by non-residents that are not borne by a permanent establishment in Portugal are fully taxable at a flat rate of 28% (with an exception for capital gains on the disposal of shares, which are exempt in certain cases). Fifty percent of capital gains arising from the sale of real estate by tax residents in Portugal is taxed at progressive rates varying from 13.25% to 48%, in 2024.They are considered as income subject to taxation in Portugal the capital gains derived by the alienation of shares or comparable interest, if, at any time during the 365 days preceding the alienation, these shares or comparable interest derived more than 50% of their value directly or indirectly from immovable property (real property) situated Portugal (except real estate affected to agricultural, industrial or commercial activities which is not the purchase and sale of real estate).

Special Tax Frameworks

· **Tax Framework for Former Tax Residents.** This tax legal framework provides a 50% relief from taxation on employment and self-employment/business income.

In order to benefit from this tax legal framework, the following cumulative conditions should be met:

→ The legal framework applies to taxpayers that become in the years 2024 to 2026, if they were not resident in the Portuguese territory in one of the previous five years;

→ Have their tax situation regularized;

→ The relief shall be capped at EUR 250,000 and applies for five years.

· **Tax Incentives for Rental Income.** The tax incentives regarding rental income derived by long-term lease agreements for housing purposes are the following:

- → Lease agreements for housing purposes for 5 years or more and less than 10 years are subject to a 15% flat tax rate;
- → Lease agreements for housing purposes for 10 years or more and less than 20 years are subject to a 10% flat tax rate;
- → Lease agreements for housing purposes for more than 20 years are subject to a 5% flat tax rate.

· **Tax Incentives for Scientific Research and Innovation.** The Tax Incentive for Scientific Research and Innovation (hereinafter "TISRI") came into force on January 1, 2024. To be eligible for TISRI, the following conditions must be met:

- → Becoming tax resident in Portugal and have not been considered resident in Portugal in any of the previous five years; and
- → Carry out some of the following activities:
  - → Teaching in higher education and scientific research, including scientific employment in entities, structures and networks dedicated to the production, diffusion, and transmission of knowledge, integrated into the national science and technology system; or positions and members of governing bodies in entities recognized as technology and innovation centers; or
  - → Qualified jobs and board members within the scope of contractual benefits for productive investment; or
  - → Highly qualified jobs, developed in:
    - → Companies with relevant apps, either at the beginning of the functions or in the previous five years, which benefit or have benefited from the Investment Support Tax Scheme; or
    - → Industrial and service companies whose main activity corresponds to a CAE (activity code) code defined in an order issued by the members of the Government responsible for the areas of finance and the economy and which export at least 50% of their turnover in the first year of the functions or in any of the two previous years; or
  - → Other qualified jobs and board members, in entities that carry out economic activities recognised by the Agência para o Investimento e Comércio Externo de Portugal, E. P. E (Portuguese Investment and Foreign Trade Agency, E.P.E.), or by IAPMEI - Agência para a Competitividade e Inovação, I.P. (Agency for Competitiveness and Innovation) as relevant to the national economy, namely in terms of attracting productive investment and reducing regional disparities; or
  - → Research and development of people whose costs are eligible for the purposes of the tax incentive system for research and business development, under the terms of the TISRI; or
  - → Jobs and board members in entities certified as start-ups; or
  - → Jobs or other activities carried out by tax residents in the autonomous regions of the Azores and Madeira.

The entities must communicate the beneficiaries' details to the Tax Authority.

The beneficiaries can only start to benefit from this tax incentive once they are registered and, once eligible, they will be taxed at a flat rate of 20% in respect of employment income (Category A) and self-employment income (Category B) for a period of 10 consecutive years.

This regime can only be used once by the same taxpayer.

Value Added Tax (IVA)

The following transactions are subject to VAT when traders and professionals in the course of their business carry them out:

- → transfer of assets and the provision of services performed in Portuguese territory against consideration;
- → imports; and
- → intra-community acquisitions.

Depending on the transaction, a rate of 6%, 13% or 23% will be charged on the transactions (the reduced rate is applicable, namely, to some essential goods and services, such as food, agricultural goods (if not exempt), electricity, transport of passengers, accommodation in hotel units, pharmaceutical and health products; the intermediate rate is applicable to other foodstuff, wine, and certain equipment or machinery intended for agriculture or entertainment tickets).

Certain transactions are exempt from VAT (for example, financial and insurance transactions, medical services, educational services, rental of housing). Since the trader or professional performing these activities does not charge VAT on them, they do not give the right to deduct input VAT. However, there are other exempt transactions that confer the right to deduct input VAT.

Real Estate Tax

Municipal Property Tax (IMI)

Under this legal framework, transactions entered into between related entities should reflect the arm's length principle, i.e. for tax purposes, the controlled transactions' prices should be established as if the parties were not related, by reference to the conditions which would have been obtained between independent enterprises, in comparable transactions and comparable circumstances. For these purposes, the threshold for the determination of a special relationship is currently in 20% of shareholding. In addition, an entity can be qualified as related party when it has the power to exercise, directly or indirectly, a significant influence on the management decisions of the other.

The scope of the transfer pricing framework covers all taxpayers conducting cross-border as well as domestic controlled transactions, including transactions between permanent establishments and transactions entered into with unrelated entities resident in listed blacklisted jurisdictions.

Withholding Taxes (WHT)

Local authorities levy property tax on private urban and rural real estate located in the portuguese territory, at rates which vary from the type of the property, its localization, state of conservation and facilities, and are applied to a deemed value estimated by the tax authorities (henceforth "VPT"). The Municipal Property Tax Code has foreseen some exemptions. Applicable rates are the following:

- → Rural properties: 0,8%;
- → Urban properties: 0,3% to 0,45%, as decided by the respective municipalities;
- → Properties held by entities resident in blacklisted jurisdictions (offshore): 7,5%.

Additional IMI (AIMI)

The AIMI must be paid by natural persons or companies, as well as by structures or centers of collective interest without legal personality and undivided inheritances, that are the owner or that hold the in rem rights over the real estate assets such as of "usufruct right" or "surface right" of urban buildings for housing and construction lands, located in the Portuguese territory. The taxable amount corresponds to the sum of the VPT of the properties held by each taxpayer, reported on January 1 of each year.

Excluded from the taxable amount are the VPTs of real estate properties that have been exempted or have not been subject to IMI in the previous year.

In the case of natural persons and undivided inheritances, are foreseen a deduction of €600,000 from the taxable amount. Married or unmarried taxpayers who chose for joint taxation under AIMI are entitled to a deduction of € 1.2 million. In that case the AIMI rate is 0.7% of the taxable amount after deductions (€ 600,000 or € 1.2 million). For taxable amounts that exceed € 1 million (or double, if it is chosen a joint taxation under this tax), the marginal rate is 1%.

In what concerns to companies, structures or collective interest centers without legal personality, the AIMI rate is 0.4% of the taxable amount. However, if shareholders, directors or any other members of corporate bodies or any of the administrative, management or supervisory bodies used the real estate assets, a rate of 0.7% shall be applied. For taxable amounts that exceed € 1 million, the marginal rate is 1%.

For buildings owned by entities resident in blacklisted jurisdictions (offshore), the applicable AIMI rate is 7.5%.

Municipal Property Transfers Tax (IMT)

On general terms, IMT is levied on the transfer for consideration of real estate located in the Portuguese territory. IMT is due by the purchaser and levied on the purchase price or on the VPT, whichever is higher. The Municipal Property Transfers Tax Code has foreseen some exemptions or events that is also applicable.

· **Rates**

Type of property	Rate %
Rural property	5
Urban property (except residential) and other acquisitions for consideration	6,5
The acquirer is a tax resident in blacklisted jurisdiction (except natural person)	10

Urban property exclusively intended to permanent place of residence		
Amount on which IMT is levied €	**Rate %**	**Deductible Amount €**
Up to 101.917	0	
Over 101.917 to 139.412	2	2.038,34
Over 139.412 to 190.086	5	6.220,70
Ovet 190.086 to 316.772	7	10.022,42
Over 316.772 to 633.453	8	13.90,14
Over 633.453 to 1.102.920		6% (Single rate)
Over 1.102.920		7,5 (Single rate)

Urban property exclusively intended to residence (non-permanent)		
Amount on which IMT is levied €	**Rate %**	**Deductible Amount €**
Up to 101.917	1	
Over 101.917 to 139.412	2	1.019,17
Over 139.412 to 190.086	5	5.201,53
Ovet 190.086 to 316.772	7	9.003,25
Over 316.772 to 633.453	8	12.170,97
Over 633.453 to 1.102.920		6% (Single rate)
Over 1.102.920		7,5 (Single rate)

· **Exemptions and Reductions.** There are some exemptions or reductions provided certain requirements are met. SMFC would highlight the following exemptions or reductions:

- → Acquisition of properties by real estate trading companies for resale;
- → Acquisition of properties that have been subject to urban rehabilitation;
- → Business restructuring or cooperation arrangements;
- → Acquisition of buildings classified as national/public/municipal interest;
- → Acquisition of properties regarded as eligible investment under the Tax Regime for Investment Support (RFAI);
- → Acquisition of property exclusively intended to permanent place of residence by people up to the age of 35 up to an amount that can vary between 150,000 and 300,000 depending on the municipality (so far this measure has been approved in Setúbal, Mafra e Oeiras municipalities)

Stamp Duty

Stamp Duty is charged on certain acts, contracts, documents, titles, books, papers and other facts foreseen in the General Stamp Duty Table, which occur in Portugal and are not subject or exempt from VAT or, although they occur outside the Portuguese territory, they are presented for legal purposes in Portugal. The General Table of Stamp Duty provides for different rates depending on the type, nature, extent and purpose of the transaction. The applicable tax rates are foreseen in the General Stamp Duty Table at the time the tax is due.

As an example and on general terms, the rendering of a loan, the execution of a guarantee, the acquisition of a real estate asset or the granting of business licenses are all subject to stamp duty, to be calculated and assessed on a case-by-case basis, taking into account, as referred the type, nature, extent and purpose of the transaction. It can be a fixed value or a variable value, taking into account the period of duration.

Spain

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ILP Abogados is a multidisciplinary firm, we are proud of the recognition we have received from our clients for our commitment to service, and we value their satisfaction as the only measure of our success, our Firm's strengths are: Client focus, Legal skills and Team orientation.

We are a cohesive team, and every area of our firm works with an unified quality standards towards the same goal, to offer added-value in all areas of our client´s business.

In order to do so, we pride ourselves in having deep knowledge and comprehension of the client´s matters and needs, which added to our professional experience and legal knowledge, make ILP Abogados a wise choice when looking to hire a law firm

Last but not least, ILP Abogados is wholeheartedly committed to regulatory compliance and ethical standards, commitment that we share with all our lawyers and staff.

Areas of practice

Banking and finance
Company Law and Corporate Governance
Competition
Corporate and Commercial
Family Business and Private Clients
Insurance
Intellectual Property
Labour
Litigation and Arbitration
Mergers and Acquisitions
Private Equity
Project Finance
Real Estate
Tax
Unfair Competition
White Collar Crime

Corporate Law

Private Company Limited by Shares

The legal framework of Corporate Law in Spain consists of:

- Royal Decree of 22 August 1885 publishing the Commercial Code. (Articles 116 to 150; 169 to 237).
- Royal Decree of 24 July 1889 publishing the Civil Code.
- Royal Legislative Decree 1/2010, of 2 July, approving the revised text of the Capital Companies Act.
- Law 6/2023 of 17 March on Securities Markets and Investment Services.
- Royal Legislative Decree 1/2020, of 5 May, approving the revised text of the Insolvency Act.
- Royal Decree-Law 5/2023 of 28 June adopting and extending certain measures in response to the economic and social consequences of the war in Ukraine, supporting the reconstruction of the island of La Palma and other situations of vulnerability; transposing European Union directives on structural modifications of commercial companies and reconciling family and professional life for parents and carers; and implementing and enforcing European Union law.
- Royal Decree 1784/1996 of 19 July 1996, approving the Regulations of the Commercial Register.
- Law 22/2014 of 12 November 2014 regulating venture capital companies, other closed-end collective investment undertakings and management companies of closed-end collective investment undertakings, and amending Law 35/2003 of 4 November 2003 on Collective Investment Undertakings.

In European Law, the main sources are:

- Treaty On The Functioning Of The European Union.
- Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 on certain aspects of Company Law (Codified version).

Types of Companies and Liability of shareholders

Joint Stock Companies *(Sociedades Anónimas),* Private Limited Liability Companies *(Sociedades de Responsabilidad Limitada),* Collective Companies *(Sociedades Colectivas),* Partnership Companies - both simple and with registered shares *(Sociedades Comanditarias Simples o por acciones)* - and other associative forms have a diverse range of commercial uses.

For setting up a business in Spain there are different legal forms. The forms most commonly adopted by foreign investors are:

- → ***Sociedad de Responsabilidad Limitada (S.L.)*** **(Private Limited Company or Company Limited by Shares):** Generally but not necessary small sized corporations (a minimum capital of 1 euro (with certain requeriments), fully paid at the time of creation) which are subjected to lower reporting and auditing requirements than the S.A., and which may not issue stock (similar to UK: Ltd.; Germany: GMBH.; France: SARL., Italy: SRL).
- → ***Sociedad Anónima (S.A.)*** **(Public Limited Company or Joint-Stock Company):** Corporation with a minimum capital stock of 60,000 euros of which at least 25% must have been paid at the time of incorporation, divided into freely transferable shares (similar to: UK: PLC; Germany: A.G.; France: S.A., Italy: SpA).
- → ***Sucursal*** **(Branch):** a division of a foreign company with separated accounting.
- → **Permanent Establishment:** any company operating in Spanish territory by a permanent establishment, when by any title there is, in a continuous way, installations or places of work of any kind, in which all or part of their activity is carried out, through an agent authorized to close deals, who habitually exercises said powers, on behalf of an non-resident.

Other less common but valid legal forms are:

- → ***Empresario individual*** **(Proprietorship):** an individual manages the business, providing the capital and assuming unlimited responsibility.
- → ***Comunidad de bienes*** **(Co-ownership):** a business is not an independent legal entity and belongs to two or several proprietors who assume unlimited responsibility.
- → ***Sociedad Colectiva*** **(General Partnership):** an independent legal entity which is owned by two or more general partners, all assuming unlimited responsibility.
- → ***Sociedad Comanditaria*** **(Limited Partnership):** an independent legal entity which is owned by one or more general partners assuming unlimited responsibility and by one or more limited partners whose liability is limited to the amount of capital contributed.
- → ***Sociedad Profesional*** **(Limited or Join Stock Companies):** their corporate purpose is to develop the exercise of professional activities.

Share Capital

(minimum and minimum paid in amount)

Company	Minimum (S)	Min. paid in amount (S)
PLC or Joint-Stock Company (SA)	60.000	25%
Company Limited by Shares (Limited Liability Companies) (SRL)	1 (with conditions)	100%
Banks	18.000.000	100%
Insurance Companies	9.015.181,57	50%
Real Estate Investment Company	9.015.181,57	100%
TV Channels	6.010.121,84	50%
Chartered Stock Brokers	4.507.590,80	100%
Sociedades de Capital Riesgo (SCR) Venture Capital (Private Equity)	1.200.000	50%
Sociedades Gestoras de Fondos de Capital Riesgo (Venture Capital Fund Management) (Private Equity Management)	300.000	100%
Private Equity Funds	1,650,000.00	100%
Private Equity Companies	1,200,000,00	50%
Hedge Funds	3,000,000.00	100%

Classes of shares (registered/bearer, preferred/ordinary) Registered/Bearer

Bearer shares are corporate stock certificates which are owned simply by the person who holds them, the "Bearer". These shares are not registered on the books of the issuing corporation and are transferred by delivery. These shares are only allowed when capital stock has been fully paid up.

Registered Shares are those which are registered on the books of the issuing corporation *(Libro Registro de Acciones Nominativas)* and certificates the name of the owner.

Common *(ordinarias o comunes)* Stock and Preferred (privilegiadas o preferentes) Stock.

The shares can grant different rights. The shares that have the same content of rights constitute the same class. When inside a class several series are constituted, those that integrate a series must equal nominal value.

The preferred stocks grant some privilege out of the ordinary ones, there will be necessary to observe the formalities prescribed for the modification of By-laws.

If there is only one class of shares issued, they may be called "common shares", "capital shares", or just "shares" or "stock".

Common Stock

They represent ownerships in a corporation. Holders of common stock exercise control by of the society electing a board of directors and voting on corporate policy.

Preferred Stock

These shares bestow certain rights and privileges not accruing to common stock. These rights or privileges shall be financial (mainly concerning dividends); but never political, such as "the right of vote" or "the preferred subscription right".

After the incorporation, the issuance of Preferred Stock is an amendment to the By-Laws.

Corporate Governance: **Classes**

Shareholders Meetings

Decisions reserved to the Shareholders:

- → Approval of financial statements and distribution of profits and Approval/Censure of Management.
- → Appointing and Removal of Directors, Auditors, Liquidators.
- → Changing the By-Laws.
- → Winding-Up or Dissolution.
- → Approval of the liquidating balance sheet
- → Approval legal merger, spin-off, disposals of existing fixed assets
- → Other matters determinated by the By-Laws or the LSC

The board members must meet minimum once a year (Annual General Meeting -AGM) in order to approve the financial statements, distribution of profits and Approval/Censure of Management.

Corporate Governance: **Classes**

Classes and Power of Directors

- → Sole Director (Administrador Único)
- → Sole and several Directors (Administradores Solidarios)
- → Joint and several Directors (Administradores Mancomunados)
- → Board of Directors (Consejo de Administración)

Appointment of Directors:

- → Directors shall be appointed by the Shareholders Meeting.
- → When the administrative body is constituted by a board of directors, this one shall be formed by a minimum of three directors and in the SRL (Private Limited Liability Companies) shall not be more than twelve members.

Term of Appointment

- → For Joint-Stock Companies (SA): the term of appointment shall never be longer than 6 years.
- → For Companies Limited by Shares (SL): directors may be appointed for an undetermined period of time.

Range of Directors' liabilities

- → Does Law require a specific agreement - or disclosure - for determining the remuneration of Directors? On the Joint stock companies, the scope of Directors' duties shall be determined by the By-Laws. On the limited liability comp anies, the Directors'duties are generally not remunerated, unless the By-Laws establish a remuneration and the method of calculation. Remuneration is often in the form of a percentage of after-tax profit.
- → Any limit? (SA) The Directors' remuneration is set only after allocating the legal and statutory reserve and at least the 4% - or other higher percentage determined in the Estatutes – of dividends in favour of shareholders. (SRL) The aggregate number of Directors' remuneration must not exceed 10% of the after-tax profit.

Liabilities

(SA and SRL) Directors' liabilities, contribution to damages caused in the course of their duties and the procedure of claiming against them, are set in detail in Articles 236-241; LSC.

Annual Accounts-Financial and operating results: Duties and Liabilities

Necessary Documents: 1) Profit and Loss Account; 2) Balance Sheet; 3) cash flow statement; 4) Statement of Changes in equity;5) Memory; 6) Management Report; 7) Auditors Report; and 8) the certification of the AGM Minutes in which the approval of Annual Accounts took place.

Time Limit for delivery of documents

Directors will draft the Annual Account

(Cuentas Anuales) no later than 3 months after the end of the corporate year. The AGM will examine and approve or refuse these Annual Accounts no later than 6 months after the end of the corporate year.

Time Limit for deposit/application/registration: No later than 30 days after the AGM approves the Annual Accounts.

Authentication

Secretary and Chairman's signature in the certification of AGM Minutes in which the approval of Annual Accounts shall be authenticated by a Public Notary.

Publication in a Legal Gazette/Mercantile Register

The Legal Gazette *("Boletín Oficial del Registro Mercantil")* shall publish a report on the fulfilment of corporate duties, and a notice that the Annual Accounts are publicly available in full. By-Laws are also publicly available in Mercantile Register.

Private Equity Companies

A Venture Capital Company is legally qualified as a Financial Entity with the purpose of investing in: (i) Non-Financial Business, or (ii) Business that are not dedicated to non-listed Real Estate businesses.

These Entities may acquire listed companies within the term of 12 months of acquisition; squeeze-out measures have not been approved yet, to facilitate taking 100% of shares.

Foreign Investmnets

In the context of implementation of the European Union Maastricht Treaty, Spain made significant revisions to its legislation on foreign investment. Royal Decree 664/1999 has set up as a general rule complete freedom of capital movements, both in relation to foreign investments in Spain as well as to Spanish investments in other countries. However, this general regime does not apply to certain specific sector legislation such as the defense sector. These exceptions to the general regime of complete freedom of capital movements are only allowed on the basis of public order and security, public health, and the exercise of sovereign authority.

Foreign investments

- → Participation in Spanish companies;
- → Establish and increase capital allocated to branches;
- → Subscription for and acquisition of marketable debt securities issued by residents;
- → Participation in mutual funds recorded in the Registers of the Spanish National Securities Market Commission (CNMV)
- → Acquisition by non-residents of real estate located in Spain valued at more than 3.005.060,52 € (or regardless the value if the investment is originated in a tax heaven defined in Royal Decree 1080/1991 of 5 July).
- → Formation or participation in joint ventures, foundations, economic interest groupings, and cooperatives if the total value of the investment exceeds 3.005.060,52 € (or regardless the value if the investment is originated in a tax heaven defined in Royal Decree 1080/1991 of 5 July).

Governmental Declarations (of capital), authorizations and permits.

Order of 28th May 2001 puts into effect the guidelines from the Royal Decree 664/1999. It establishes the necessary procedures to declare foreign investments and its liquidation, as well as procedures for obtaining authorizations and annual reports. Direct foreign investments are subjected to a notification after the investment has been made. The form and the deadline of the declaration are determined by the 1st July 2010 Resolution.

Foreign investments in Spain, as well as their liquidation, must be declared to the Register of Ministry of Industry, Tourism and Trade, for administrative, statistic or economic purposes. These documents can be downloaded at http://subsede.comercio.mityc.gob.es ≥ Proceeds and Electronic Services ≥ Download assistance programs.

Typically, non-resident investors are required to report the investment once it has been made. The general regulation may be suspended in exceptional cases by decision of the Council of Ministers, so a prior authorization is required in the certain circumstances:

- When the declaration concerns an investment coming from a tax haven jurisdiction, the declaration must be made by the investor prior to the actual investment. This declaration is in addition to the declaration to be made subsequent to the actual investment.

No prior declaration is required in the following cases:

- Investments in negotiable instruments, as well as participations in investment funds registered in the records of the "Comisión Nacional del Mercado de Valores (CNMV)" (Securities and Investments Board).
- Where the foreign participation does not exceed 50% of the capital of the Spanish company target of the investment.

Foreign investments in Spain in activities directly related to national security, such as those intended for the production or sale of weapons. Except when the foreign investment does not exceed 5% of the share capital of the Spanish company and it is not allowed to be a member of the management board of the company, directly or indirectly.

Foreign investments in Spain that affect or might affect activities related to the enforcement of the public order or which affect or might affect public security and health.

Direct or indirect investments in Spain by non-EU member states for the acquisition of property intended to be used as diplomatic and consular offices.

The prior declaration of investment is valid for six months, from its filing, so that, when the investment not materialize in that time, a new prior declaration is required. It should be pointed out that once the prior declaration has been made investors can make their investment without having to wait for prior notification from the government, even though they are still subjected to the notification after the investment has been made.

Order of 28th May 2001 establishes that the actual investment shall comply with the following rules:

- Declarations related to investment operations in privately held companies, branches, real assets and other type of investment.

The declaration (application D1-A for the declaration of foreign investment in privately held companies, branches and other types of investment) shall be addressed to the Investment

Registry of the Ministry of Economy within a maximum period of one month from the actual investment, supporting documents shall be attached to the said declaration to evidence the following:

- Non-resident status of the investor.
- where applicable, compliance with any requirement of sector legislation.
- Having obtained an authorisation in the hypothetical cases of a suspension of the liberalization regime.
- Having made a prior declaration, if required.

- → For investments in real assets, a concise explicative report which states the main features of the investment.
- → Declarations related to investments in real assets. The declaration shall be submitted to the Investments Registry through the printed application D- 2A (Declaration of foreign investment in real assets) within one month from the actual investment.
- → Declarations related to investments in negotiable instruments. Non-residents who subscribe to or purchase negotiable instruments in the Spanish market, on their own account or that of third parties, shall maintain their securities and assets in a registered account opened with an authorized market compensation and liquidation institution.

The depositary or administrator for the assets represented by account entries, shall submit to the "Dirección General de Comercio e Inversiones" (General Direction of Trade and Investments) about a report on flows in the ordinary or extraordinary market operations for non residents, subscriptions to share capital made directly with the issuing company or through the Bank, registrations and discharges of non resident deposits related to security transactions other than sales and purchases thereof.

These reports are rendered on a monthly basis between day 1 and 20 of each month for transactions during the previous month.

Likewise, the deposits and balances in accounts of non-residents on the Entries Central of the depository, as at 31 December must be declared during the month of January.

Transfer of dividends, interests and royalties

The acts, businesses, transactions and operations of any kind which suppose, or require, charges or payments between residents and non-residents, or transfers to or from abroad, on a general basis, are free.

However, as an exception to this general rule, the Ministry of Economy, may forbid or limit certain categories of transactions with specified foreign countries or specified operations of charging, payment or transfer, whenever these dramatically affect the interests of Spain, or in application of measures adopted by international bodies of which Spain is a member.

Likewise, whenever short term capital movements are exceptionally ample and may cause significant tension in the foreign exchange market or dramatic alterations in the direction of the economic and foreign exchange policy, the Government, at the request of the Ministry of Economy, is able to adopt safeguard measures as necessary, submitting certain types of transactions to a regime of administrative authorisation.

The charges and payments between residents and non-residents, as well as the transfers to or from outside of Spain, may be coded in euros or in foreign currency, and must be made through a Deposit Entity inscribed in the "Registros Oficiales del Banco de España" (Official Registrar of the Bank of Spain, "Registered Entities" hereinafter).

In any case, the resident shall declare to the "Registered Entity", his name or company name, domicile, tax identification code, name or company name and domicile of the non-resident sender or beneficiary of the charge or payment, amount, currency, country of origin or destiny, and concept of the operation by which the charge, payment or transfer takes place. The "Registered Entities", in their case, shall provide, in the manner determined by the Ministry of Economy and within thirty days after each calendar month, such information.

The "Registered Entities", as well as the resident natural or corporate persons who carry out this type of operations, shall be subjected to the obligation of providing the competent bodies of the Government Administration and the Bank of Spain, in the manner established, the data required for the purposes of statistic and fiscal follow-up of the operations.

Repatriation of capital. Procedure of liquidation of investments in privately held companies, branches, real assets and other types of investment.

For the total or partial liquidation of such investments, the holder of the same, commissioner for oaths or other person obliged to declare, as the case may be, shall submit the declaration of liquidation in the printed application D- IB (Declaration of liquidation of foreign investment in non-listed companies, branches and other types of investment) duly filled in and subscribed. Each holder shall fill in a single application for each liquidation referred to even if there are several documents of declarations of investment in one same Spanish company.

Procedure of liquidation of investments in real assets

For the total or partial liquidation of a foreign investment in real assets, the holder or the commissioner for oaths shall submit the declaration of liquidation in the application D-2B (Declaration of liquidation of foreign investment in real assets) duly filled in and subscribed by the non-resident holder.

In case of partial disinvestments, either for the change of one or several of the holders of a property "pro indiviso", either for the transmission of a part of the real assets declared in one same instrument of declaration, such partial disinvestment shall be declared to the Registry of Investments.

In the event of the exchange of securities in a privately held company for negotiable instruments of another company, the printed application D-1B (Declaration of liquidation of foreign investment in privately held companies, branches and other types of investment) of the investment liquidation, through the intervention of the company or Securities Brokers or the member of a secondary market, official or not, of values which are part of the operation, along with the Significant Participations Communication, if deemed suitable, shall be submitted. The values acquired through the exchange shall be included as the "purchase flow"in the mandatory report by the depositary or administrator.

In those cases where the exchange of negotiable instruments for values of other privately held companies takes place, the relevant Significant Participations Communication for the securities delivered in exchange shall be submitted, if suitable, along with the printed application D-1A (Declaration of foreign investment in non listed companies, branches and other types of investment) of foreign investment declaration in non negotiable instruments, with the intervention of the entity which orchestrated the transaction, shall be submitted. The values delivered in exchange shall be included as the "purchase flow" in the mandatory report by the depositary or administrator.

Annual Report

Spanish companies participated by non-resident must file an Annual Report on investments to the Administration in the following cases:

- → Branches in Spain, in all cases
- → Spanish companies with capital or shareholder's equity of over 3.005.060,52 euro and in which 50% or more of the equity capital is held by non-resident investors.
- → Spanish companies with capital or shareholder's equity of over 3.005.060,52 euro and in which a single non-resident investor holds 10% or more of the company's equity capital or of the total voting rights.
- → Spanish companies that belong to a company group or in which 50% or more of the equity capital is held by a non-resident investor or in which a single non-resident investor holds 10% or more of the company's equity capital or of the total voting rights. In such cases, neither the capital nor the shareholder's equity is considered.

The report must be presented within 9 months from closing the accounting period. For this procedure the application D4 must be completed, and a copy of the Business Tax or the annual accounts must be attached to it.

Foreign personnel; permits and other aspects to be considered

Prior work permits are required for all foreign citizens over sixteen years of age who wish to carry out in Spain any lucrative, work-related or professional activity, on their own behalf or that of others.

This regime shall not be applied to the nationals of the member States of the European Union, to the nationals of Third States to whom, by reason of relationship, the communitarian regime can be applied, except the nationals of the new States (save for Cyprus and Malta) that joined the European Union on 1 st May 2004, for the application of a transitory period of two years from that date.

Work permits will only be delivered to new immigrants only if in Spain it is not possible to find adequate workers with the skills needed in order to perform the work as determined by the State agency which handles job offers.

The application for work and residency permits must be presented personally by the prospective immigrant to the appropriate State agency. In the event that the applicant is also an employer, the application must be submitted by the applicant or a legal representative of the employer.

Where the applicant resides outside of Spain, the application may be submitted before the Diplomatic Mission or Consular Office in the district where he may live.

The application will be processed in the following manner: Upon completion of a review of the application, the relevant authority (Government Vice Delegate or Government Delegate in the au-tonomous communities made out of one sole region) shall deliver a unique resolution by which the foreign citizen is authorised to work and live in Spain, the beginning of his work activity and carry out his membership of, registration in and quotation to the *"Seguridad Social"* (Social Service).

The resolution shall be notified to the businessman, indicating the amounts that need to be satisfied in concept of taxes, expiring if after a month from the date of such notice the corresponding visa was not, in its case, requested.

Once the application has been submitted to an Embassy or Spanish Consular Office, the resolution shall be notified to the interested party by the mentioned instance, through the Ministry of Foreign Affairs. The resolution and notice shall be carried out within a three-month period, counting from the day after that one of the dates in which the entry of the application in the registry of the competent body to handle it has taken place. After that period has expired, the initial work permit applications shall be understood as dismissed.

Spain

Labour Law

In Spain the Labor Jurisdiction is quite protective for workers. It's difficult to obtain a favorable ruling defending investor's rights against the worker. Likewise, legal costs for employees are exceptional in the Labor Jurisdiction, so suing the employer is easy and economical in Spain because no legal costs are incurred if the worker is defeated by the Company.

Contracts

It is generally possible to form verbal contracts, when the employee is over 18 (except for freelance workers).

Types of Contracts

Contracting under Labor law in Spain is a broad subject, but can be summarized as follows:

- → **Permanent Contracts:** unlimited in time. When we use this modality for hiring people with some specific conditions, we can benefit from reductions in Business Social Security contributions, if the firm is up to date with its tax and social security payments and has not been sanctioned for infringements. Those special workers are those aged under 30 years or over than 45 years, long-term unemployed (over 2 years), handicapped unemployed for more than 3 months, and unemployed women.
- → **Part-Time Contracts:** This is not strictly speaking a different type of contract, but rather a form of dividing the working day. There must be always a written contract and is divided into two forms: part-time and relief work. All contracts can be full-time or part-time (except for training). The part-time mode denominated 'relief' is used to hire a worker to progressively substitute a worker who is going to retire.

Contracts of defined duration

(Temporary)

There are two types:

- → **Replacement:** used to replace a worker until his or her reinstatement, for a determined period of time, when he or she is entitled to reserve his or her job, e.g. maternity, paternity, medical leave.
- → **Temporary:** due to production circumstances: allows companies to hire workers for a specific period of time to cover a temporary and unforeseen increase in activity. It can be of two types:
  1. **The occasional and unforeseeable increase in demand and oscillations in demand:** we are talking about an increase in market demands in an occasional and unforeseeable manner, not subject to seasonality. In other words, in cases of increases in demand that were not foreseen and are not permanent, but one-off. The maximum duration of this contract is 6 months, applicable to twelve months if permitted by the applicable collective bargaining agreement.
  2. **The punctual and foreseeable increase in demand:** as long as it has a reduced and clearly delimited duration. The maximum duration of this contract is 90 non-continuous days in a calendar year, per company. The contract must be in writing if the period exceeds 4 weeks.

The transformation of these contracts (Replacement and Temporary due to production circumstances) to permanent contracts once that maximum duration has been completed operates automatically. In case the contract stops fulfilling all the requirements for a modality ((Replacement and Temporary due to production circumstances), the contract can be renamed as a permanent contract, and the worker can ask the employer or the Public Entity in change for a document to prove his/her new status.

Training Contracts

It consists on providing the worker with knowledge and techniques to develop his/her work, there are two types:

- → **Training:**These contracts could only be used to combine employment with vocational training. They can be formalized with those pursuing university studies or other lower education. . It shall last minimum 6 months, and maximum 2 years. The number of these contacts in the firm is limited depending on its size. The effective working time must be compatible with the study time at the training center. Thus, it may not exceed 65% during the first year and 85% during the second year. The salary cannot be under the minimum inter-professional and must be between the 60 and 75% of the official salary according to the applicable Collective Convention.
- → **For Professional Practice:** These contracts can be used to obtain the professional practice appropriate to the corresponding level of studies. There is no age limit but it must be arranged within 3 years (or 5 years if arranged with a person with a disability) following the completion of the corresponding studies. This contract cannot be formalized if professional experience has already been obtained or if the training activity has been carried out in the same company for more than 3 months. The duration may not be less than 6 months or exceed one year. The remuneration must be that agreed in the collective agreement for that professional group and level corresponding to the functions performed.

Other special contracts

- → Working from home, without supervision by the firm, written
- → Early retirement, to cover anticipated premature retirements, in written.

Contracts for the handicapped

If the contract is Permanent, a 33% of disability is required and must be accredited with a certification, and the worker cannot be related to the employer more closely than the second degree. The contract must remain in force for at least three years, and in the case of a justified termination, there is an obligation of hiring for the remaining period. These contracts give access to an automatic subvention for the firm and a bonus of four monthly social security quotas.

If the contract is Temporary, it must be for at least 12 months and not more than 3 years. The rest of requirements of this modality are the same as for the permanent contract. It includes a bonus of social security quotas, and its conversion to a permanent contract generates a subvention. It can be offered for Training; It may be held for persons over 16 years of age and with no age limit. and the firm is not limited in the number of contracts it can offer. Bonuses are paid in social security. If the contract is for for Professional Practice, the handicapped person must provide the disability certificate. It is required to hold a university degree or an intermediate or higher vocational training degree or degrees officially recognized as equivalent and that no more than seven years have elapsed since the completion of the studies.

Contracting Administrative and Top Management Staff

The Authorised Employers and/or Top Manager of the business must be distinguished from the ordinary labor relation. If the employer chooses to be self-employed, he/she is inscribed in the self-employed regime and with regard to Social Security, works for him/herself. However, in the case of a limited or non-limited company, non-labour, he/she can work either as self-employed or as employed because the regime will vary depending on his/her functions and participation as capital partner of the company.

- → If a partner performs management or advisory functions, or personally offers other services, and also possesses effective control of the company, either directly or indirectly, he/she should register in the self-employed regime (SELF-EMPLOYED). It is understood that effective control of the company in terms of participation is possessed when: The related parents to the second degree or less constitute more than or equal to 50%; his/her share alone is equal to or more than 33%; or he/she is the managing director of the company in possession of 25% shares (minimum).
- → In any other case, the inscription is made in the Social Security Offices: NORMAL REGIME for executives or persons in charge, and PROFESSIONAL REGIME for top managers with certain executive power.

As far as the General Professional Regime is concerned its main singularity is that the contract finishes it does not involve right to un-employment benefit (Worker unemployment). Top Management personnel are regulated under Real Decreto 1382/1985, 1st of August. The general characteristics of top management indicate a specific regulation in terms of previous notice of contract termination, non-simultaneity agreements, indemnification for contract termination, etc.

Contract Suspension

In specific circumstances, the worker or employer can suspend the labor contract, which involves to interrupt it without terminating it. During the suspension of the contract, the employer does not pay the salaries. The worker will continue in his/her position when the causes that motivated the suspension are over. The contract may be suspended: a) By mutual agreement between the parties, b) For causes set out in the contract, c) For temporary incapacity. Here the employee continues to pay social security, (if the incapacity becomes total, absolute or great invalidity, the contract will be cancelled), d) For maternity/paternity leave (for both parents) may be divided as follows: 6 weeks mandatory, uninterrupted, full-time following childbirth (court decision or administrative decision in the case of adoption). The biological mother can anticipate this period up to 4 weeks before the foreseeable date of birth.

The remaining 10 weeks will be enjoyed in weekly periods, accumulated or interrupted, within the 12 months following the birth or the judicial resolution or administrative decision in the case of adoption. e) For privation of freedom (in the absence of a condemning sentence), f) By temporary major force, g) Because of strike h) Due to legal closure of the workplace, i) Due to the suspension of work and salary for disciplinary measures; j) For training permission or professional development; k) To take part in an adaptation or retraining course (maximum of 3 months), l) For adoption and fostering of minors under 6.J) as a result of being a victim of gender violence.

There are other circumstances that imply suspension of the contract:

- → For leave of absence: a) Forced: In some cases, the firm is obliged to suspend the contract and maintain the job post for the employee. The period of leave in calculated according to seniority. b) Voluntary: The position is not maintained, but rather preferential treatment is given when a vacant position arises. c) For child care: With a maximum duration of 3 years, from the birth of the child. Only one of the parents can apply for it, and it doesn't lead to the conservation of the position, except during the first year. d) Circumstances stated in Collective Conventions.
- → Due to economic, technical, organizational or production causes, or those derived from force majeure. The existence and temporary character of this causes must be proved and the contract suspension requires future viability. In order to obtain the suspension, the employer must undertake the same process as for an Expediente de Regulación de Empleo, in art. 51 of Worker Law. This circunstancies can also be solved with a reduction between a 10% or a 70% of the working day, week, month or year.

Permits and Holidays

The worker has the right to absence for diverse causes.

The Holiday Period cannot be less than 30 natural days. Holidays cannot be compensated economically and the dates must be known at least two months beforehand.

Employees' Years of Service

Dismissal compensations are calculated depending specially on employee's years of service in the company that is the reason of temporary contracts lasting over their limits shall be presumed to be for an indefinite period.

Royal Decree-Law 32/2021, of December 28, on urgent measures for labor reform, guarantee of employment stability and transformation of the labor market. provided a new wording for article 15.5 of the Workers' Statute, with the following literal reading:

Notwithstanding the foregoing, workers who in a period of twenty-four months have been hired for a period of more than eighteen months, with or without solution of continuity, for the same or different job with the same company or group of companies, by means of two or more contracts due to circumstances of production, either directly or through their provision by temporary employment agencies, will acquire the status of permanent workers.

Likewise, the person who occupies a job position that has been occupied with or without continuity solution, for more than eighteen months in a period of twenty-four months by means of contracts for circumstances of production, including the contracts of provision made with temporary employment agencies, will acquire the status of permanent employee.

This provision shall also apply in the event of business succession or subrogation in accordance with legal or contractual provisions.

With regard to the peculiarities of each activity and the characteristics of the job, collective bargaining shall establish requirements aimed to prevent the abusive use of temporary contracts with different employees for performing the same job.

The provisions of this section shall not be applied to the use of training, or replacement-contracts.

Termination of The Contract – Dismissals

Contracts can be terminated for various reasons, and in all of them the parties are obligated to notify it to the other party. The employer must calculate the appropriate quantity owed to the worker (settlement), always including the proportional part of extra pays and spear holidays, discounting to the worker the advanced payments and holidays in excess.

The causes for TERMINATION are:

- → Mutual agreement between the parties.
- → Causes agreed in the contract. End os the temporary due to production circumstancesof contract. Temporal contracts, except for replacement and training contracts, grant the employee the right to receive an indemnification of 12 days of salary per year of service worked.
- → Resignation of the employee.
- → Permanent total incapacity, absolute or great invalidity of the employee. In case of total permanent incapacity of the worker is declared, the firm can choose to offer him/her another position more fitting with his/her capability. In case of permanent total incapacity or great invalidity, the work contract is terminated, but the position is reserved for a period of two years.
- → Death, retirement, incapacity or termination of the judicial character of the contractor
- → Collective dismissal. When the process affects a determined number of employees during a minimum period of 90 days. There must be economic, technical, organizational or production causes. The employer must provide proof of their existence and the character of these causes, which might be provoking negative results, or might produce a continued decrease of the incomes. It generates the right to an indemnification of 20 days of salary per year worked, to a maximum of 12 months. In order to articulate these dismissals, an Expediente de Regulación de Empleo is required, which requires a period of discussions between the employers and the representation of the workers, to try to verify the causes of the redundancies, and to set some measures of readaptation for workers that can reduce the damages.
- → A unfair cause. When the dismissal is based on causes out of the Law, the judge shall declare by sentence the dismissal was unfair, so the employer will have 5 days to decide the compensation, which might be: a) the readmission of the employee and the salaries unpaid since the dismissal date; or b) 33 days for each year worked, to a maximum of 24 monthly payments and the salaries unpaid since the dismissal date. However, in order to obtain the indemnification, it is necessary to apply for it in the Social Court of Law. (i) Substantial modification of the work conditions that damage the workers professional training or dignity; (ii) Unpayment or continued delays in the payment of the salary agreed; (iii) Any other grave breach of the obligations of the employer (except force majeure) and the refusal of the employer to reintegrate the employee in the same position when a legal sentence has declared it unjustified.
- → For legally causes. There are some objective causes which turn a dismissal declared as fair. Objective DISMISSAL of the worker, with an indemnification of 20 days per year worked, limited to 12 monthly payments, in limited circumstance: a) Ineptitude, b) Lack of adaptation of the employee to his/her position, after technical modifications, c) d) Amortization of job places. (e) Substantial modification of the work conditions that damage the workers professional training or dignity when it does not affect a number of workers enough of collective dismissal

In relation to Dismissal, it is important to note that if a Legal representative or trade union delegate is dismissed, the process is initiated through an "expediente contradictorio" and the rest of the members of the representation and/or trade union of affiliation are heard.

- → Trade union affiliation, being a candidate to represent a trade union, race, sex, civil status, pregnancy, religion, political opinions, etc. can never be a cause for dismissal.
- → The Dismissal can be legally challenged within a period of 20 working days, but before going to Court, the case must be heard by the Servicio de Mediación, Arbitraje y Conciliación (SMAC).
- → The Dismissal is declared, in the SMAC (by the parties) or in the Court (by the Judge) as:
  1. Fair, in which case, there is no indemnification.
  2. Null, for violation of basic rights or discrimination, in which case, the employee must be reinstated immediately.
- → Unfair, because the circumstances were not as claimed by the employer, in which case, the employee must either be rehired within 5 days or indemnified with 45 days of salary for each year worked, to a maximum of 42 monthly payments. If the employer acknowledges the unfairness of the dismissal within 48 hours of the ruling by the SMAC or the Court, the worker need not claim its legal recognition. If the employer chooses readmission, the worker must be notified within 10 days from the sentence and readmit the worker within a further 3 days. As an exception to the indemnification for unfair dismissal, in the permanent contracting of disabled workers, the indemnification is 33 days salary for each year of service, with a maximum of 24 monthly payments and 12 days of salary for temporary contracts.

Summary table of termination of contract

(Royal Decree 3/2012)

Cause	Compensation	Maximum	Right to Collect Unemployment
1. Mutual consent	If agreed	-	No
2. Temporary work or service	12 days per year	-	Yes
3. Termination clause included in contract	If included	-	Yes
4. Worker resignation with compensantion	20 days/year	9 to 12 months	Yes
5. Unfair cause	33/45 days/year	24/42 months	yes
6. Worker resignation	No	-	No
7. Incapacity	No	-	Yes/No
8. Died	15 days	-	No
9. Retirement	No	-	No
10. Died, incapacity or retirement of the employer	1 month		Yes
11. Termination with extinction of the corporation	20 days/year	12 months	Yes
12. Objective/Fair causes	20 days/year	12 months	yes
13. Unfair causes	33/45 days/year	24/42 months	Yes
14. Promoting for permanent contracts:			
a) Unfair	33/45 days/year	24/42 months	Yes
b) Fair	20 days/year	12 months	Yes

The Salary of the Worker. Salary and economic Rights for services rendered

In consideration of services rendered, the employee may receive money or payment of any kind, and also accrues a right to a month of vacation pay. Two bonus payments per year are obligatory, the amount being fixed by the applicable Collective Convention. IRPF (income tax) and social security payments must be withheld by the employer on these amounts.

The salary comprises the salary base and/or "salary extras". Remuneration in kind may not exceed 30% of the total salary. The minimum inter-professional wage is the minimum for all professions, is reviewed annually and its amount may not be embargoed for debts of any kind. The minimum wage for any activities in agriculture, industry and services, without distinction between the employees' sex or age, is set at 1,000 euros gross per month divided into 14 payments for the year 2022. Both monetary remuneration and remuneration in kind are computed in the minimum wage. This wage is understood to refer to the legal working day for each activity, without including in the case of daily wage the proportional amount for Sundays and public holidays. If the working day is lower than standard then the pro rata amount is to be received.

The delay in salary payment generates an annual interest of 10%. In case of insolvency, the first to receive payment are the employees. In the case of insolvency, the employees are paid by the *Fondo De Garantia Salarial (FOGASA).* All employees and representatives have the right to receive advances. The employer must keep salary receipts and contribution slips for at least 4 years.

Non-salary items are the amounts paid for expenses incurred at work, social security payments and indemnifications for transfers, suspensions and dismissals.

Employees' Representatives and Union Representation

The participation of the workers in the Firm can take place through Unitary and/or Trade Union Representation. According to the number of workers in the firm, the Unitary Representation is by the delegation of personnel or firm committees elected by the employees. The Trade Union is the representation of the employees affiliated to the Union. The Law establishes a minimum number of trade union delegates for trade union representation.

Specific responsibilities are conferred to these representatives by Law: to receive information from the employer, to report on certain matters, to carry out monitoring and to control of wwcertain rules, to negotiate agreements with the employer, to participate and to collaborate in the business activity, etc,...and to facilitate exercise of these functions, the employer must provide specific materials (use of premises, notice board) and time (paid), and not to do it may be considered a crime against trade union freedom.

Personnel delegates or committee members are elected every 4 years. The period can be shortened if the representative stands down, is substituted in partial elections or if he/she is revoked by the same employees who elected the delegate or member.

In disciplinary matters, they have the right to receive a prior disciplinary file before any sanction is applied, and if the dismissal is unfair, they can opt for indemnification or readmission.

On June 2011, Spain´s Government approved new labor reforms, affecting the collective bargaining system. The bill aims to introduce more flexibility within companies so that when they undergo changes or go through difficult situations they can adapt to new conditions.

The main change implies that company pacts shall have more legal weight than Sectoral agreements when conflicts arise. Thus, the COMPANY AGREEMENTS must respect the minimums of national and regional Legislation, but they shall be over Sectoral Agreements in the following areas: Base salaries and incentives, Overtime, Flexible work hours, Job classification and Contract modality.

Another measure to increase the flexibility consist on allowing the employer to redistribute 10 percent of employees' work time.

Social Security Contributions and Basis for Contributions

The employer pays monthly contributions to social security, consisting of: The Firm's Quota + the Employee's Quota. The payment is made in the month after the month of payment to the employee, through two forms: I) contributions register, where the wages and contributions to be paid are detailed); and II) which is obligatory via Internet if the workforce consists of more than 10 or 15 workers.

To calculate the value of the contributions, we shall multiply the rate legally established by the basis for contribution, deducting the bonuses applicable to the case.

The basis for contributions is the employee's monthly salary plus the proportional part of the extra payments and other income of the worker with a periodicity greater than monthly.

Although there are various special regimes, (such as sea workers, artists, bullfighters, etc.) but we will only consider the contributions to the general regime that consist of the following:

- → Common contingencies;
- → Work accidents and illnesses
- → Professionals;
- → Unemployment;
- → Fondo de Garantía Salarial;
- → Professional training;
- → Overtime

Employers must make contributions for all of the above, whereas employees only contribute for common contingencies, unemployment and professional training. The contributions depend on the salary and professional category of the employee, as well as if the contract is permanent or not and the professional activity in which he/she works.

Retirement

After the pension reform carried out by the Government in 2013, the general legal retirement age was increased from 65 to 67 years over a 15-year horizon. In other words, a progressive increase that will culminate in 2027.

Thus, from 2013 to 2027 the retirement age will increase proportionally month by month, and at the end the retirement age will be 67 years, and the compensation will be calculated on the income of the last 25 years.

Real Estate

The Registry System development has stamped Real Estate in Spain

The Spanish Registry System is a mixture of the French system (where inscription is voluntary) and the German system (where inscription is compulsory). Estate transfer takes place unrelated to the Registry while estate inscription or registration is made by properties: one property per register sheet.

Other basic element that distinguishes the Spanish Registry System from other systems around the world is the Land Registrar, with professional qualifications and his/her enrolled to the office (by a Civil Service Examination).

In Spain, any property is firstly related to legal businesses, and later registration in the Registry provides a pledge to their purchasers before any third party. The Land Registry provides a secure, stable and trustworthy record of land ownership and recorded interests therein, so it promotes social and economic reliability and contributes to national development.

The protection of third party's rights by Law in Spain is so high that one of the purchaser's duties of care is to previously enquiry at the Registry about the ownership and encumbrances of the property he/she wants to purchase.

The information and protection provided by the Spanish Land Registry is basic to understand Real Estate in this country. The Spanish Registry System has replaced fiduciary and trustee systems (more frequent in Anglo-Saxon countries) in the field of Real Estate.

In fact, practice shows that it is becoming really complex to apply Directive 94/47/EC (Timesharing) through the *Ley de Aprovechamiento por Turno de Bienes Inmuebles* (Act 42/98), because it is very difficult to match the "Club System" with the Spanish Registry System. The situation is becoming really delicate as Spain is the second country in the world (after USA) on the number of Timesharing resorts.

Types of Ownership	In Spain there is the so-called actual right of "ownership" regardless other real property rights such as leasehold, possession - in deed or bare or bona fides ... -, accretion, easement, emphyteusis, antichresis, usufruct, mortgage, acquisitive prescription... All of them are inspired by Roman Law, on which Spanish Law is based. Timesharing is called *"Aprovechamiento por Turno de Bienes Inmuebles"* in Spain; it is an atypical real property right and is regulated by Act 42/98 in Spain. Act 42/98 requires the resorts to register their structure and working in the Land Registry; it mixes thus the Anglo Saxon Fiduciary system with the Spanish Registry System, and creates some missfunctions very difficult to solve. For instance, any clause that may exonerate promotor's liability is null.
Land Register (if appropriate)	The Real Property Registration in Spain is managed by Land Registry Offices throughout the whole country which registers, stores and manages documents such as deeds, mortgages, plans of survey and a wide range of property real rights. All registered and deposited records are available to the public (for a fee) to search title or to obtain information about the ownership of any real property. The Land Registry's object is to register the acts and contracts related to ownership and other real rights on real estate (rentals, usufructs...) However, the bare (or naked) possession can not be registered in the Land Registry. To be registered those acts or contracts must be have been recorded as a public instrument or been acknowledged by a judicial authority or by the Government. Moreover, any acts or contracts granted in a foreign country which are having effects in Spain (Apostille ...), have to be entered in the Spanish Land Registry.
The Land Registry attests the title against third-parties.	Those who acquire their right from a person who appears in the Registry as entitled to transfer that right, are supposed to possess the real estate according to bonas fides requirements. So, their possession is going to be presumed as according to Law once that they register their right. Even though the seller's right is set aside or discharged for reasons that are not recorded in the Registry. The third party's bona fides is presumed as long as any third party can proved that the information recorded in the Registry was not accurate. Caution: Holders of any title acquired gratuitously do not enjoy the same protection. The parties in a contract are not required to register the acquisition of a real right. However, the registration is highly recommended, because it implies a presumption of legality and it is a prove itself against third parties who claim a right on the same real estate. The rights that have not been recorded in the Land Registry are presumed as a " manifest negligence and a clear breach of duty of care "; it does not mean it is illegal but it may cause damages to the purchaser or the real right holder that has not entered it. Another important question is the difference between the Land Registry and the Cadastre or Land Survey. The Land Registry records and states real estate ownership. On the other side, the Cadastre represents real estate through a more detailed and graphical description. The Cadastre's purpose is related to its tax functions.
Reliance on register positive-negative	Registration is considered negative because once a first entrance is registered in the Land Registry, any intend of registration coming afterwards are going to be refused, until you prove the transfer. Transfer formalities e.g. notary deed. To be able to reap the benefits of the protection provided by the Land Registry, any holder must communicate the acts or contracts which can modify, transfer or extinguish any real right on any real estate. Moreover, any real estate leasehold for six or more years must always be entered in the Registry.

Mortgages.
How they are created, and main rights of mortgagees

A mortgage gives a security for all kind of liabilities and does not alter the debtor's limitless responsibility.

A mortgage covers improvements and betterments as well as any compensations granted or due to the owner. However, a mortgage does not cover any personal property, proceeds or any earnings due and not paid, express agreement excepted.

Any real estate, any real property rights (save easements), any legal usufruct (save the usufruct granted by the widowed spouse) can be mortgaged.

Construction and use restrictions

The carrying out of any works or building requires a licence: *Licencia de Obra Mayor* (with a large budget or works on structural elements) and *Licencia de Obra Menor* (a sensu contrario). In any case, the Municipal Ordinances and the Local Building Code define the differences between a *Licencia de Obra Mayor* (Large Works Licence) and a *Licencia de Obra Menor* (Minor Works Licence).

Moreover, any land or underground usage (partitions, land movements, demolition ...) requires a permit that is regulated in the Local Zoning Regulations.

The Zoning Regulations ascribe different usages (residential, turistic, tertiary) to each land class (urban land, land which may be developed, or protected land that can not be urbanized). Land usage and land classes limit building rights. In addition, each type of land has a percentage of urban development permitted.

Any license is subjected to the payment of a fee called Impuesto sobre Construcciones Instalaciones y Obras which has to be paid by the owner. This tax is calculated by applying to the current costs of the building or the works, a rate that is determined by the Town Hall, and will NOT be over 4%.

The application for the permission requires a Technical project signed by an Architect and ap-proved by the Architects Professional Association.

The Technical Project is carried out by the Work Manager -who is responsible for it- who may be or not the author of the Technical Project. Local Building Codes do not require a dateline of the works.

It is usual for the owner to keep an amount of money (a percentage) from the promotor as a guarantee for the proper completion of the works.

Corporate income Tax

Tax rate

The prevailing general rate is 25% from January 2016.

Corporate Residence

Any company, which is considered as resident, that generates incomes in the Spanish territory is subjected to corporate income tax, through a subsidiary, branch office.

Permanent establishments opened in Spain: non-resident's tax at a 25% rate on their tax profit from 2016.

Branch income

The incomes generated by a branch in a foreign territory, will be part of the incomes of the head office. Nevertheless, any income obtained in Spain through a branch of a foreign entity, will be taxable at general rate, applying the general rules for Spanish entities.

Incomes remitted from the Spanish branch to the head office are subject to a 19% withholding tax. Exemption is applied to EU head offices and to those territories that signed double taxation treaties with Spain.

Income determination

If the law does not say anything on the contrary (transfer pricing new policies are highly relevant in this particular area), the Spanish Accounting Rules *(Plan General de Contabilidad Español - PGCE)* will be applied to the income determination. If the law is applied in a different direction, two kinds of differences between the P&L financial and taxable will be generated:

- → Temporal differences: They generate advance or deferred corporate tax, their appearance is conditioned to the specific moment of the deducibility of the costs
- → Permanent differences: It includes the non-deductible costs, such as: capital retribution, corporate tax, penalties and sanctions supported from the Tax Administration, liberalities (with the exception of PR costs with clients or suppliers, sales promotion costs, moderate costs to employees, between others).

Tax incentives

The main tax incentives (to be done on the next tax due) are the following:

Deductions for Research and Development (art. 35.1 Corporate Tax Act - CTA)	8/25 %
Deductions for technological innovation activities (art. 35.2 CTA)	12%
Deduction for investments in the production of Spanish films (it must fulfill art. 36.1 CTA requirements)	25/20 %
Deduction for investments in the production of Spanish films (it must fulfill art. 36.2 CTA requirements)	20%
Deduction for investments in life shows (Theater) (it must fulfill art. 36.3 CTA requirements)	20%
Deduction for job creation (it must fulfill art. 37 CTA requirements)	3000 €/ 50%
Deduction for job creation disabled person (it must fulfill art. 38 CTA requirements)	9000€/12000€

Group taxation (tax consolidation)

It is permitted for corporate tax effects, and the withholding on account of this tax. The decision must be taken and notified to the Tax Authorities at the beginning of the fiscal year. At this moment, the consolidated corporation should have more than the 75% of the capital of the Spanish entity, directly or indirectly.

Special Tax Regimes

Canary Island Zone (ZEC)

All the companies incorporated between June 2000 and December 31, 2020 can apply to this special regime, and receive the tax benefits until December 31, 2026. The registration requires: (1) a minimum investment of 100.000 (Gran Canaria y Tenerife) in the first two years of activity, (2) to create at least 5 new jobs in Gran Canaria or Tenerife or 3 in the other islands. The corporate tax is 4%, and limited to specific taxable base amount. The general rate will be applied over this base. There are exemptions regarding IGIC and transfer tax. The EU Parent-Subsidiary Directive are applie for non-EU countries, with the exceptions of tax haven.

ETVE Companies (Spanish holdings of foreign entities)

Main features of the ETVE: (a) Their corporate purpose must primarily be the management and administration of shares in entities that are not resident in Spain. (b) They must have the corresponding organization of human and material resources. (c) The shares (or participations) held by the ETVE must be all nominative. (d) Incompatible with the regime of fiscal transparency. (e) It is required to communicate to the Ministry of Economical Affairs about the regime going to be used:

A) Dividends resulting from benefits obtained by entities not resident in Spanish territory are exempt of Corporation Tax upon fulfillment of the following conditions:

→ The investment is at least 5 % or the acquisition value exceeds 20 million euros, and is maintained continuously during the fiscal year prior to the day when the dividends or shares become due.

→ The entity that is not resident in Spanish territory must be subjected to and not exempt of a tax that has an identical or similar nature as the Spanish Corporate Tax.

→ The income of the entity not resident in Spanish territory from which the dividends have been obtained must carry out business activities abroad, this condition is complied with in the event that at least 85 % of the income of the accounting period corresponds to:

1. Income obtained abroad not imputed by means of the regime of international fiscal transparency (passive income).
2. Dividends resulting from benefits, as well as gains resulting from the transfer of the stake in entities not resident in Spanish territory.

B) Capital gains resulting from transfer of shares in entities not resident in Spanish territory, upon fulfillment in all the cases of the following requirements, are exempt:

→ Those indicated in point a) above (referred to all the accounting periods during which the stake was held, except the first one, referred only to the day of the transfer).

→ That the acquirer is not resident in a Tax haven.

→ This regime is also applied to the rent resulting from the events of separation of a shareholder or liquidation of an entity.

The most important difference with the general tax system is the treatment of the dividends paid by the Spanish Holding to its non-resident shareholders or the capital gains obtained by the non-resident shareholders in the case of transmission of the shares of the Spanish Holding.

In this case a distinction must be made between the perception of dividends and the obtaining of capital resulting from the transfer of shares in the Spanish Holding (or in the events of separation or liquidation of the entity).

→ **Dividends:** The distributed benefit, when it results from income not integrated in the taxable base because of its exemption, it is considered not obtained in Spain and consequently not subjected to taxation in Spain.

Capital gains resulting from transfer of shares: The capital gains corresponding to either the provisions to cover exempt rent or to the differences in value imputable to shares in entities not resident in Spanish territory are considered gained out of Spain and are consequently not taxed in Spain.

Venture capital companies and funds and collective investment institutions.

The venture capital companies, regulated under Law 22/2014 will be exempted in a 99% of the revenues generated by shares transmission of related companies, if the investment has been in their assets at least 1 year and no more than 15.

During the investment of the venture capital in the related company, at least the 85% of the buildings of the related company must have been used for the main activity of the company.

The exemption is available for dividends received from related companies, no matter how long the shares have been in the venture capital assets.

There are other special tax regimes such us:

- → Temporary consortia of companies.
- → Restructuring transactions.
- → Fiscal transparency (international-controlled foreign corporation rules)
- → Special tax regime of the Basque country

Double taxation deduction

According to the Spanish regulations, a Spanish entity should be taxable in all the incomes perceived, even when some of them were generated abroad. Nevertheless, the Corporate Tax law considers a special deduction to avoid some activities are taxable in two territories, or in other entity.

- → **Internal double taxation deduction:** It is focused in the double taxation over a single income for two different entities (generally dividends).
- → **International double taxation deduction:** There is a juridical double taxation, system which is applied to the same income taxed in two countries (withholding tax at source), and an economic double taxation, the same income taxed in two companies and/or in two different territories.
- → The dividends or profit-sharing income from a foreign entity are exempt in Spain if:
  - → The Spanish entity has at least 5% or the acquisition value exceeds 20 million euros, of the shares of the foreign entity, during the last fiscal year,
  - → The foreign entity is subjected to a similar tax to the Spanish corporate tax, and it is not a tax haven country. When a double taxation treaty is signed between that country and Spain with exchange of information clause, this clause is presumed;
  - → The income of the dividend was generated in foreign activities of the foreign entity carried out abroad.

About the double taxation, the imputation method is used, it means, gross foreign income (including the withholding tax already paid) is considered for Spanish tax calculation purposes, and then a tax credit for the foreign withholding tax is applied, limited to the corporate tax that would be paid if such gross income (with the deduction of all associated costs), had been obtained in Spain.

Tax Administration

Returns

If there is a tax credit, a return can be applied.

Payment of Tax

The last day of payment is 25 th of July. After the first year of activity, three advanced payment are required (Oct. 20th, Dec 20th, Apr 20th). The advance payment may be calculated according to the company size:

- → **Large entities:** 25% of the profit at Sep30th, Nov 30th and March 30th.
- → **Small entities:** Can decide at the beginning of the fiscal year between the large entities system, or applying the 18% to the corporate tax paid the year before.

Withholding taxes

Country	Dividends[1]	Interests	Royalties[2]
Algeria	5	5	7 - 14
Arab Emirates	5	0	0
Argentina	10	12,5	3 - 15
Australia	15	10	10
Austria	10	5	5
Belgium	15	10	5
Bolivia	10	15	15
Brazil	10	15	15
Bulgaria	5	0	0
Canada	15	15	10
Chile	5 - 10	5 - 15	5- 10
China P.R.	10	10	10
Croatia	15	8	8
Cuba	5-15	10	5
Czech Rep.	5-15	0	5
Denmark	5-10	10	6
Ecuador	15	10	10
Egypt	12	10	12
Estonia	5-15	10	5-10
Finland	10-15	10	5
France	15	10	5
Germany	10-15	10	5
Greece	5-10	8	6
Hungary	5-15	0	0
Iceland	5-15	5	5
India	15	15	10-20
Indonesia	10-15	10	10
Iran	5-10	7,5	5
Ireland	15	0	5-10
Israel	10	10	5-7

1 Note that as Spain has implemented in its legal regulation the EU Parent/Subsidiary Directive, the dividends perceived from an EU subsidiary may be exempt of the withholding tax (under specific premises). For Luxembourg does not apply to entities under the paragraph one of the protocols to the tax treaty between Spain and Luxembourg.

2 The percentage can vary depending of the specific intellectual property which generates the royalty.

Country	Dividends[1]	Interests	Royalties[2]
Italy	15	12	4-8
Japan	10-15	10	10
Korea	10-15	10	10
Latvia	5	10	5-10
Lithuania	5-15	10	5-10
Luxembourg	5-15/10-15	10	10
Macedonian	5-15	5	5
Malta	5	0	0
Mexico	5-15	10-15	10
Morocco	10-15	10	5-10
The Netherlands	15	10	6
New Zealand	15	10	10
Norway	10-15	10	15
Philippines	10-15	10-15	10-15-20
Poland	5-15	0	10
Portugal	10-15	15	5
Romania	10-15	10	10
Russian Federation	5-15	5	5
Slovakia	5-15	0	5
Slovenia	5-15	5	5
Sweden	10-15	15	10
Switzerland	10-15	10	5
Thailand	10	10-15	5-8
Tunisia	5-15	5-10	10
Turkey	5-15/5-25	10-15	10
United Kingdom	10-15	12	10
United States	0-15	0	0
USSR	10-15	42278	10
Venezuela	10	10	5
Vietnam	7	10	5
Non teatry	15	15	25

1 Note that as Spain has implemented in its legal regulation the EU Parent/Subsidiary Directive, the dividends perceived from an EU subsidiary may be exempt of the withholding tax (under specific premises). For Luxembourg does not apply to entities under the paragraph one of the protocols to the tax treaty between Spain and Luxembourg.

2 The percentage can vary depending of the specific intellectual property which generates the royalty.

Other Taxes

VAT

VAT is levied in good supplies and services given and provided inside Spain, import/intra EU acquisitions of goods. There are three different rates: general at 21%, reduced at 10% and super-reduced at 4%.

In Canary Islands, VAT does not apply, but the IGIC (Impuesto General Indirecto Canario) with an ordinary rate of 7%.

Transfer Tax (Tt)

It is used in *"inter vivos"* transfers when there is no VAT. The rate can vary, depending on the Autonomous Region

Stamp Duty

Notarial documents of valuable transactions (fix rate: 0,15 per sheet, variable rate: 0,5). Other documents submitted to the Public Administration, administrative documents and mercantile documents (such as a bill of exchanges), have a scale. Compatibilities between the three taxes and the VAT:

Compatibilities between them		
	Compatibility	**Incopatibility**
TT versus CT	-	-
TT vs SD (variable)	-	-
TT vs SD (fix)	X	X
CT vs SD (variable)	-	-
CT vs SD (fix)	X	X

Compatibilities with VAT		
	Compatibility	**Incopatibility**
Transfer tax	-	X
Capital Tax	-	X
SD (Variable)	-	X
SD (Fix)	X	-

Sweden

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Moll Wendén's business concept is to offer high quality legal advice to large and medium sized corporations. MOLL WENDÉN has its offices in Malmö, Sweden, in the heart of the Öresund region. The Öresund region mainly consists of the southern part of Sweden and Zealand (Copenhagen) in Denmark. The region, with its 4.2 million inhabitants, is a transnational region within the EU.

Moll Wendén offers first-rate competence within corporate law, mergers and acquisitions, financing, construction and real estate law, real estate transactions, litigation, IT and telecom, intellectual property, labour law, competition law and public procurement. The lawyers at Moll Wendén have sector-specific expertise in a number of areas including the food industry, real property and construction, packaging and manufacturing, pharmaceuticals and biotechnology as well as IT and telecom.

Moll Wendén is an established law firm with traditions. The partners of Moll Wendén have worked with international clients and assignments for up to thirty years; first at Lagerlöf & Leman and then at Linklaters. All of the associates at Moll Wendén are experienced in handling international matters. The partners and associates at Moll Wendén are used to working in large organisations and international networks - something that clearly influence our idea of a first-class legal assistance. Moll Wendén has a large number of international clients whose common denominator is the demand for Swedish expert legal advice.

Corporate Law

General

The Swedish corporate law is largely based on the written laws that apply to each specific kind of legal entity that is available in Sweden. A Swedish business can be conducted as a trading partnership, as a limited partnership, as an economic association or as a sole trader (which is not a legal entity). As in other EU-countries, it is also possible in Sweden to establish a European company (SE) in accordance with the Council Regulation (EC) No 2157/2001 and Council Regulation (EU) 517/2013 of 13 May 2013 and, as in other EEA-countries, to register a European Economic Interest Grouping (EEIG). However, these legal entities are normally not chosen by foreign companies and investors when establishing a business in Sweden and they will therefore not be part of this description of Swedish corporate law.

Foreign companies and investors establishing a business in Sweden most commonly form subsidiaries in the form of limited liability companies. An alternative is to set up a branch office of the foreign company in Sweden. The Swedish law for limited liability companies and the alternative to use a branch office are described below.

Limited liability companies

General

There are two kinds of limited liability companies in Sweden; private and public limited liability companies. Public companies may distribute their shares to the public, which private companies may not. The vast majority of companies in Sweden are private companies. The name of a private company may not include the word "public", and the name of a public company may not include the word "private". Some rules in the Swedish Companies Act (the "Act") *(Sw. Aktiebolagslagen)* apply only to either type of company. However, most rules in the Act apply to both private and public companies. In addition to the Act, companies which are listed on the Stockholm Stock Exchange must follow certain set of rules which apply to listed companies only.

Forming a limited liability company

A limited liability company is formed by one or more founders. A founder may be any natural person or legal entity.

The founders shall sign a memorandum of association which shall contain certain information including articles of association for the company. All shares in the company shall be subscribed for in the memorandum of association.

The articles of association shall contain certain information as stated in the Act, for example information about the financial year of the company. The financial year shall be the calendar year or 1 May–30 April, 1 July–30 June or 1 September–31 August. It is however also possible to apply for permission to adopt any other twelve-months period as the financial year of the company.

Before the company can be registered with the Swedish Companies Registration Office (the "SCRO"), the share capital of the company must be paid to the company by the founders of the company. The minimum share capital of a private company is SEK 25,000 and of a public

company SEK 500,000. The share capital may also, subject to certain rules, be contributed in kind to the company. The board of directors (see 2.4 below) shall register the shares in the share register of the company. Shareholders may be residents of any country. When the shares are transferred to new shareholders, the new shareholders must be entered into the share register. Shares in listed companies are registered electronically through a system known as Euroclear Sweden. Companies that are not listed may in their articles of association prescribe that the shares may be registered in Euroclear Sweden. Share certificates may be issued and shall be issued to a shareholder which presents such request. Share certificates may not be issued in companies that use the VPC-system. Shareholders in companies that use the Euroclear Sweden-system can instead prove their ownership of certain shares through a print-out from the Euroclear Sweden-system.

Buying an "off the shelf company"

If a company is needed with short notice, an alternative to forming a new company may be to acquire an existing limited liability company (which is always private) that previously has conducted no business, i.e. a so-called "off the shelf company". Such a company can normally be acquired very quickly, provided that the share capital of SEK 25,000 is transferred to a new bank account in the name of the company.

Management

The board of directors is elected by the shareholders at a shareholders' meeting. The board is responsible for the operations of the company. Normally, the directors are elected at the annual shareholders' meeting until the next annual shareholders' meeting. However, the directors can be discharged from their position at any time prior to the next annual shareholders' meeting by resolution at an extraordinary shareholders' meeting.

A public limited liability company must have a board with at least three directors. In private companies, the board may consist of only one or two directors, provided that at least one alternate director is elected. The exact number of directors or the minimum and maximum number of directors must be stated in the articles of association. If the board consists of more than one director, a chairman of the board shall be elected by the board, unless the articles of association or a shareholders' meeting has decided otherwise. At least half of the directors and the alternate directors must be residents within the EEA, however it is possible to apply for an exemption. If no board member, managing director or special authorised signer (which can be appointed by the board) has its residence in Sweden, the board of directors must grant a power of attorney to a person who has its residence in Sweden to accept service of process for the company.

Public companies shall and private companies may appoint a managing director. The managing director will have authority to represent the company in all matters that fall into the

day-to-day management of the company. The managing director may be discharged at any time by the shareholders' meeting or by the board of directors (subject, of course, to the employment contract from an employment law perspective). The managing director must have its residence in the EEA, however it is possible to apply for an exemption.

The founders, directors of the board or the managing director may be liable to pay damages if they wilfully or negligently cause the company damage when performing their duties. The

founders, directors of the board or the managing director may also be liable to pay damages if a shareholder or another person suffers damages through a director's violation of the Act, of the Annual Accounts Act or of the articles of association.

There is no requirement for Swedish limited liability companies (except for listed companies) to appoint a secretary of the board of directors.

Shareholders and shareholders' meetings

Within six months from the expiry of each financial year, an annual general shareholders' meeting shall be held in the company at which the annual report shall be presented. In addition to the annual general shareholders' meeting, it may in the articles of association of the company be stated that other general shareholders' meetings shall be held during each year. Additionally, the board of directors may at any time during each year convene extraordinary shareholders' meetings.

A shareholder has a right to participate at a shareholders' meeting if the shareholder at the day of the shareholders' meeting has been entered into the share register. In companies that use the Euroclear-system, the shareholder shall be stated in the share register on the fifth day (or at a later day if stated in the articles of association) before the shareholders' meeting to have a right to participate at the shareholders' meeting.

Most resolutions can be adopted by the shareholders' meeting by simple majority. However, some resolutions, such as amendments to the articles of association, require qualified majority. Normally, all shares have equal voting rights but it is possible, by the articles of association, to prescribe that there shall be shares of different classes and that these shares shall have different voting rights.

A shareholder may be liable to pay damages if such shareholder wilfully or by gross negligence causes damage to the company, to any other shareholder or to another person if the shareholder participates in a violation of the Act, of the Annual Accounts Act or of the articles of association.

Accounts and audits

All companies carrying on business are obliged to maintain accounting records under the Bookkeeping Act *(Sw. Bokföringslagen)* and are required to adhere to generally accepted accounting principles. However, some small companies with less than three employees does not have this obligation. The annual accounts and the audit report, as adopted by the annual shareholders' meeting, must be submitted to the SCRO within seven months from the expiry of the relevant financial year, i.e. on 31 July at the latest for companies with the calendar year as financial year.

The company shall, by a resolution at the shareholders' meeting, elect the auditor or the auditors of the company. Only authorised or approved public accountants or a registered accounting firm may be elected as auditors. The auditor examines the company's accounts and the board of director's management of the company. The auditor is not allowed to

also keep the company's current accounts. The auditor´s mandate period is normally one year. However, in the article of association, it may be stipulated that the auditor´s mandate period may be longer than one year. In any case, the term of office shall expire at the end of the Annual General Meeting which is held during the fourth financial year following the appointment of the auditor.

The auditor may resign in advance or be discharged in advance by a resolution at a shareholders' meeting.

Registration for taxes

Employers must register as such by filling in the form "Företagsregistrering" and sending it to the Swedish Tax Agency. Upon registration, the employer will automatically receive the documents and information required in order to account for and pay VAT, income tax and social contributions.

Stationery

The letters, invoices and order forms of limited liability companies must state the name of the company, the place where the registered office of the board is located (as stated in the articles of association) and the corporate registration number issued by the SCRO.

Branch office

General

According to Swedish law, a branch office is not an independent company, but an office through which a foreign company runs its business in Sweden. Naturally, the branch has no share capital of its own.

Permission for the foreign company to establish a branch office in Sweden is not necessary, but the branch office must be registered with the SCRO and there are a number of specific requirements for such a registration.

The name of the branch office shall include the foreign company's name with the addition of the Swedish word "filial" (which means branch) or "filial till" (which means branch to). It must be possible to distinguish the name of the branch from other existent firms registered in Sweden.

Management

The branch office shall be run by a managing director. The managing director shall be resident in Sweden or any other country within the EEA. A person underage, declared bankrupt or who has an administrator cannot be appointed managing director. If the managing director is not resident in Sweden, the company must authorise a person resident in Sweden to receive summons and other legal documents on behalf of the branch. The requirements for this person correspond to the requirements for the managing director.

The foreign company shall give a power of attorney to the managing director of the branch to represent the foreign company in all matters concerning the business in Sweden, including the right to receive summons against the foreign company and to represent the foreign company in court. Additionally, one deputy managing director can be appointed.

Annual accounts

The branch shall appoint an authorised or approved auditor or registered accounting firm to review the accounts of the branch and the managing director's management of the branch.

The managing director shall each year provide the SCRO with the annual report for the branch office as well as for the foreign company. As concerns the foreign company, the requirement is only applicable if the documents are public in the home country of the foreign company. If the foreign company is a limit liability company resident within the EEA, a limited annual report may be produced instead of a formal annual report.

Accounting

The branch shall have its own bookkeeping which shall be separated from the foreign company's bookkeeping.

Generally, the accounting records of a branch shall be kept in Sweden. However, an exemption makes it possible to keep the records on electronic media in another country within the EEA, provided that the Swedish Tax Authority has been notified of the place of storage and provided that the branch always can get immediate access to the accounting records through a print out in Sweden.

Stationery

Letters, invoices and order-forms of the branch must state the name and address of the branch as well as the foreign company's legal status and domicile.

General Data Protection Regulation

General

The General Data Protection Regulation ("GDPR") is directly applicable throughout the European Union. In Sweden the regulation has been applied in its entirety replacing the previous Swedish Data Protection Act ("DPA"). The new DPA entered into force in Sweden on 25 May 2018. However, as the former DPA was an outcome of the European Data Protection Directive, the changes are not too extensive.

The major changes are, inter alia, more severe penalties when a natural or legal person who determines the purposes and means of the processing of personal data (the "Processor") breaches GDPR, stricter rules on valid consent, an enhanced GDPR-compliance control and, in certain cases, a requirement to designate a data protection officer.

The Scope, Purposes and Fundamental Principles of the GDPR

One of the main purposes of the General Data Protection Regulation (GDPR) is to protect individuals' fundamental rights and freedoms, particularly their right to protection of their personal data. Personal data is any information relating to an identified or identifiable natural person ("Data Subject"). In principle the GDPR applies to all automated personal data processing and in some cases also manual processing of personal data.

The fundamental principles of GDPR are that the processing of personal data must at all times be lawful, fair and characterised by transparency. The principle of lawfulness means that the Processor must have lawful grounds, as set out in the GDPR or in complementary

legislation, for all of the company's processing of personal data. Fair processing means that the Processor must weigh its own interests against those of the Data Subjects before the personal data is processed. The processing of personal data must also be clear and understandable to the Data Subject and must not be carried out in hidden or manipulated ways. In other words, the processing must be transparent.

The rights of a Data Subject

A Data Subject must be informed that the Processor collects his or her personal data, why it has been collected (the specific purpose of each collected personal data) and how it is being processed. The Data Subject must also be informed about what rights he or she has, for example how he or she can request a register extract, how to have errors rectified, and how to have personal data erased.

The Effect of GDPR on Swedish Legal Entities

Basically, GDPR effects all parts of a legal entity and applies in every situation where personal data is being processed. Consequently, a legal entity must ensure that it complies with GDPR when dealing with the personal data of its employees, customers, suppliers, distributors, business partners etc.

Sweden

Foreign Investmnets

For several years Sweden has been encouraging foreign investments. Sweden has plenty to offer to foreign investors such as simple business procedures, low corporate tax rates, good infrastructure and a well-educated labour force and is generally considered to be an attractive country to invest in. Few provisions regarding investments in Sweden distinguish between domestic (Swedish) and foreign investors.

Registration with Government, Authorities and Permit

There are various ways to do business in Sweden. One alternative is for the foreign investor to form an alliance with an existing independent Swedish business on a contractual basis. Another alternative is to run its own business in Sweden - without obtaining any specific authorization. A foreign investor wishing to set up a business in Sweden has the alternative to conduct business via different kinds of partnerships or as a limited company. The latter can be either private or public. Foreign companies also have the possibility to set up a branch office (a local office with an independent administration). The most common way to set up a business in Sweden is to create a Swedish subsidiary (generally a limited liability company) to the foreign company.¡

There are generally no requirements for foreign investors to register or obtain authorization for making investments in Sweden. However, since the introduction of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union came into force 10th of April 2019 ("Regulation (EU) 2019/452"), Sweden has introduced some legislative measures regarding foreign investments, where the investment may risk Sweden's security or public order or has relevant information for such a review.

Specifically, the Swedish Parliament recently adopted the Foreign Direct Investment Review Act (the "FDIR", SW: Lag (2023:560) om granskning av utländska direktinvesteringar) which came into effect on 1 December 2023. This legislation is intricate and comprehensive, including a mandatory notification obligation for a variety of sectors and activities. A notable impact of the FDI Act is the standstill obligation, meaning an investment cannot be finalized until the screening process is completed and the investment has been approved or a decision to close the case without further action has been taken.

If there is assumed risk to Sweden's security or public order, the legislation assigns the Swedish Inspectorate of Strategic Products (the "SISP", SW: Inspektionen för Strategiska Produkter) to act as the governmental body tasked with acquiring and exchanging information in accordance with the provisions introduced through Regulation (EU) 2019/452. SISP is also the Swedish governmental body tasked with supervision of the obligations introduced by the FDIR (see the Swedish ordinance SW: Förordning (2023:624) om granskning av utländska direktinvesteringar).

Moreover, all business units in Sweden are on the other hand subject to registration at the Swedish Companies Registration Office (SCRO) (Sw. Bolagsverket). The public commercial register contains basic information about the legal entity, its business and its representatives. The cost of establishing a Swedish limited liability company is relatively low.

There are no general Swedish restrictions in relation to foreign ownership of shares (however, please see section 7 below as new legislation may be introduced in future). In a limited liability company, however, at least half of the board members as well as the managing director must reside within the EEA. But regarding residents from outside the EEA and the managing director, the company may apply for an exemption at the SCRO. Should no board memberreside in Sweden, the board must authorize a Swedish resident to receive documents on behalf of the company.

Foreign investors may acquire Swedish real estate for commercial use without applying for governmental permission.

Specific permits and authorizations may be generally required to engage in certain types of businesses and to carry out certain types of activities. Foreign entities are however generally treated as equals to Swedish entities when applying for such permits and authorization.

Registration of beneficial owner

On 20 June 2017, the Swedish parliament enacted a law on the registration of beneficial owners, which came into effect on 1 August 2017 and was based on the EU's fourth Anti-Money Laundering Directive, which has been implemented or will be implemented in all EU Member States. The law aims to prevent money laundering and the financing of terrorism through an increasing transparency of ownership and control of companies, associations, trusts and other associations (legal persons). According to the law, a legal entity will be obliged to notify the Swedish Companies Registration Office of its beneficial owners. A beneficial owner is (i) any individual which ultimately owns or controls the legal entity and/or (ii) the individual on whose behalf a transaction or activity is being conducted. The latter is characterized as a person enjoying the benefits of someone else's action. The duty to notify the Swedish Companies Registration Office will attach to all Swedish legal entities, foreign legal entities operating in Sweden who have not made a corresponding notification in another EEA country, as well as persons domiciled in Sweden who manage trusts or similar legal arrangements. Limited companies listed on a regulated market are among the entities that are exempt from providing notification.

Transfer of Dividends, Interest and Royalties Abroad

There are no restrictions in Sweden regarding the dividends a Swedish corporation may transfer to foreign owners or shareholders, nor are there any restrictions on remittances of interests or of royalties.

In the absence of an applicable double taxation treaty, dividends payments beneficially owned by a foreign person are subject to withholding tax. The tax rate is significantly reduced under most tax treaties. Due to tax treaties dividends paid by a subsidiary in Sweden to its foreign parent company may not at all be subject to Swedish source taxation.

Repatriation Procedures and Restrictions

Investments are not subject to foreign exchange controls and there are no restrictions on repatriation.

Repatriation Procedures and Restrictions

The requirements about residence permits and/or work permits for foreign personnel who are to be sent to Sweden depend on whether they are EU/EEA citizens or not.

EU/EEA citizens do not need work permits to work in Sweden. However, generally a residence permit (which will formally record the individuals for tax and social benefit purposes) is required for any citizen visiting or staying in Sweden for more than three months.

Non-EU/EEA citizens must obtain work permits to work in Sweden. The work permit must be obtained before arriving to Sweden. It is quite difficult for non-EU/EEA citizens to obtain a Swedish work permit. However, work permits may be granted in cases of temporary shortage

of labour or if the work requires employees with specialist knowledge whose equivalents are hard to find on the Swedish employment market. An application for work permit shall include housing provisions, guarantees of work and minimum wages. Work permits are initially granted for a one-year period but may be extended. Specific additional requirements may apply depending on the nationality and domicile of the foreign individual. Like EU/EEA citizens, non-EU/EEA citizens need a residence permit to stay in Sweden for longer consecutive periods than three months. For stays shorter than three months a residence permit is not needed but instead a visa may be required for some foreign citizens.

Generally, foreign citizens are subject to the same taxes as the Swedes. Taxes for foreign key personnel may be reduced.

Grants

There are a wide range of investment incentives provided by the Swedish Government and regional authorities, e.g. grants such as regional development support. Most of these incentives are available to foreign as well as Swedish investors.

Future Outlook

Recent legislative developments have significantly influenced Sweden's stance on foreign investments, particularly with the enactment of the FDIR, effective from 1 December 2023. This act introduces a mandatory notification and review process for foreign investments in sectors deemed critical for national security and public safety. The governmental authority SISP now plays a pivotal role in this scrutiny, underscoring Sweden's commitment to safeguarding its societal and security interests while remaining open to foreign investments.

Given the broad scope and novel nature of the FDIR, it is not unlikely that new case law will emerge as these regulations are applied and tested in practice. The evolving legal landscape suggests that investors should not only prepare for adherence to current regulations, but also stay informed about potential judicial interpretations and administrative guidance that may affect investment strategies. The development of case law could further clarify the application of the FDIR, offering insights into compliance and the regulatory outlook for foreign investments in Sweden. Navigating these changes effectively will be crucial for foreign investors aiming to involve themselves in in Sweden's economy.

Tax Administration

General

There are no formal requirements for a binding employment agreement in Sweden, why an employment agreement can be in written or oral form but also arise through the actions of the parties. However, from an employer's perspective it is always preferrable to enter employment agreements in writing, given that uncertainties in the terms generally will be interpreted in favour of the employee. Additionally, under the provision of the Swedish Employment Protection Act (SFS 1982:80) ("LAS"), an employer must provide employees with written information regarding important terms and conditions of the employment. The information shall at least include the following:

- → name and address of the employer and the employee;
- → the commencement date and the ordinary place of work or, if there is no fixed or main place of work, information that the work is to be carried out in different places or that the employee is free to determine his place of work;
- → a brief specification or description of the work duties and job title;
- → the type of employment, i.e., if the employment is permanent, probationary or temporary,
  - → in the case of permanent employment: the notice period to be observed.
  - → in the case of temporary employment: the end date and the conditions for premature termination and whether the employment constitutes a substitute, special fixed-term (Sw: särskild visstidsanställning) or seasonal employment. (please note that this information must be provided when entering the employment agreement.).
  - → in the case of probationary employment: the length of the trial period and any other conditions for the probationary employment.
- → the remuneration, including all parts of the salary and any variable pay, including the frequency and the method of payment;
- → information on normal working hours and the minimum notice period the employee is entitled to prior to any changes to the regular working hours;
- → when applicable, policies for overtime and additional time, including compensation for such;
- → any training/education entitlement provided by the employer;
- → mandatory social security contributions paid by the employer and protection relating to social security provided by the employer, either through collective bargaining agreement or through a unilateral policy;
- → length of paid vacation;
- → the provisions and procedures to be observed by the employer and the employee if either of the parties wants to terminate the employment;
- → the applicable collective bargaining agreement (if any); and
- → conditions in relation to work to be performed outside Sweden, if such work is intended to last more than one month. Any amendment to such terms and conditions must also be communicated in writing to the employee within one month.

The information shall be provided as soon as possible within the commencement of employment. Specific deadlines apply for some of the information.

Forms of Employment

The main rule is that employment agreements are concluded for an indefinite term (permanent employment), unless otherwise agreed. A permanent employment may include a probationary period of up to six (6) months. A probationary employment automatically transforms into a permanent employment unless terminated according to certain procedures prior to the expiration of the probationary period.

The forms of fixed-term employments following from law are "special fixed-term employment", substitute employment and seasonal work.

A special fixed-term employment does not need to be justified by any special circumstances in order to be lawful. However, a special fixed-term employment will automatically be converted into a permanent employment if the special fixed-term employment cumulatively lasts twelve (12) months during a period of five (5) year or during a period when the employee has had fixed-term employments with the employer in the form of special fixed-term, substitute or seasonal work and the employments have followed each other. An employment is held as following another if it has been commenced within six (6) months of the end date of the previous employment.

A substitute employment is automatically converted into permanent employment if the employment has lasted for more than two (2) years within a five-year period.

Notwithstanding the aforementioned, collective bargaining agreements may deviate from this and take precedence over the rules of LAS.

Wages and Benefits

Wages and other financial benefits (except holiday pay) are not subject to any legislation in Sweden, not even regarding minimum pay rates. Considering the pervasiveness of collective bargaining agreements, especially regarding blue-collar workers, the collective bargaining agreements in practice constitute de facto minimum rates, leaving little room for individual agreements. White-collar workers on the other hand predominantly negotiate wages and other benefits locally either through their union or individually. In the absence of any collective bargaining agreement, wages are negotiated between the employer and the individual employee. Compensation for inconvenient working hours, overtime hours and other forms of additional compensation are extensively regulated in most collective agreements but not by law.

Trade Unions and Collective Bargaining Agreements

General

Trade unions and collective bargaining agreements are a central part of Swedish labour law. The legal relationship between employer and employee is, to a large extent, regulated in collective bargaining agreements between trade unions and employer organisations. The waste majority of Swedish workers are employed in work that is governed by a collective bargaining agreement, however Sweden does not apply a system with generally applicable collective bargaining agreements.

The Swedish Co-determination in the Workplace Act (SFS 1976:580) ("MBL") contains the general provisions governing the relations between the employer and employees and their respective organisation. MBL sets forth the rights of employers and employees to associate in and act through organisations without interference by the other party. Moreover, MBL includes the basic provisions in relation to conclusion, interpretation and termination of collective bargaining agreements as well as the legal implications of such agreements.

Collective bargaining agreements are legally binding on the signatory parties as well as members of such organisations. Moreover, collective bargaining agreements take priority over individual employment agreements. Breach of a collective bargaining agreement may result in liability for the employer to pay damages (including punitive damages). When a collective bargaining agreement is concluded, the parties to it, in principle, cannot legally take industrial action in relation to any issue covered by the agreement.

A trade union that has concluded a collective bargaining agreement with the employer acquires a privileged position at the workplace, including rights to negotiate and receive information in relation to redundancies and many other issues that may occur. At workplaces where the employer is bound by a collective bargaining agreement with a trade union, terms and conditions of the collective bargaining agreement apply directly to employees being members of the relevant trade union and the employer is also, in relation to the counterparty in the collective bargaining agreement (i.e. the trade union), obliged to apply them to all employees who's employment falls within the scope of the collective bargaining agreement. Moreover, collective bargaining agreements frequently affect employers not bound by such agreements. The reason being that industry-wide collective bargaining agreements are generally held to set standards to be applied at all workplaces in that particular sector. However, Sweden does not apply a system of generally applicable collective bargaining agreements.

An employer without a collective bargaining agreement has a limited but crucial duty to keep all trade unions with members employed by the employer informed regarding its business in terms of production, economy and the guidelines for staffing policies.

European Works Council

The European Works Council Directive (2009/38/EG) has been implemented in Sweden by the adoption of the European Works Council Act (SFS 2011:427). Accordingly, Swedish employers qualifying to set up a European Works Council must comply with specific consultation requirements on a European level.

Termination of Employment

General

Termination of employment by the employer require just cause in order to be lawful. Reasons for termination can be divided into two main categories – redundancy or personal reasons. Certain employees, primarily those holding a senior managerial position, are not protected by the mandatory minimum requirements on employment protection in case of for example termination of employment. If an employee who has been terminated without just cause brings action against the employer, a court may declare the termination invalid and/or order the employer to pay damages, which may be considerable.

Termination due to Redundancy

The employer decides whether a redundancy situation is at hand or not. In principle, no distinction is made in Sweden between collective redundancies involving a large number of employees, and a redundancy situation involving only one single employee. Notice of termination by the employer must be given to the employee in writing and include detailed information on what the employee shall observe if he or she wishes to challenge the termination or claim damages. The notice must also state whether or not the employee has a right to re-employment if a vacancy should arise within a certain period of time.

When notice of termination is given by the employer, the employee has a mandatory minimum notice period of between one (1) and six (6) months depending on his total period of employment with the employer. A collective bargaining agreement or individual employment agreements can provide for a longer notice period than this.

In a redundancy situation, the employer is obliged to pay salary and all other benefits to the employee during the notice period even if the employee is placed on garden leave. The employer is, however, entitled to deduct income which employee receives from another employment during the notice period.

An employer must prior to a decision regarding important alterations of the business operations, on his own initiative, negotiate with all trade unions to which he is bound by collective bargaining agreement provided that such trade unions have at least one member employed by the employer. A decision, which may result in redundancies, is always considered to be of a nature that requires prior negotiations. Employers who are not bound by any collective bargaining agreement are, prior to termination due to redundancy, obliged to negotiate with all trade unions having members who are affected by intended decision.

The obligation to negotiate with the unions implies that negotiations must not only be initiated but also finalised prior to a decision by the employer to restructure and subsequently terminate the employment agreements with employees affected. Provisions on the negotiation procedure are often included in local or central collective bargaining agreements. The negotiations are intended to result in an agreement and both parties are obligated to present motivated proposals for a solution of the subject matter of the negotiation. Damages may be awarded to the unions if it is held that the employer has failed to fulfil the obligation to negotiate.

In a redundancy situation, the employer is, prior to the termination, obliged to investigate potential redeployment for affected employees within the company. This means that the employer must offer vacant position to employees threatened to be made redundant, provided that they have the basic qualifications to assume such positions. Furthermore, the employer shall observe rules regarding seniority, the rule of first in – last out applies. Collective bargaining agreements frequently supersede the legal requirements regarding e.g. notice period, seniority rules and rights to re-employment. Especially the collective bargaining agreements for salaried employees generally provide for notice periods exceeding the legal minimum requirements.

Termination due to Personal Reasons

According to LAS, an employment may be terminated due to personal reasons in either of two ways. Firstly, termination can be made with notice where the same notice periods and other requirements apply as outlined above in relation to termination due to redundancy. The second alternative is immediate dismissal without notice. Both options require the employer to have just cause for the action taken. Accordingly, the employer must substantiate a failure by the employee to comply with his obligations under the employment in such a material manner that the employer is not obliged to maintain the employment relationship. There are numerous precedents from the Labour Court to take into consideration. It should be emphasised that in order to arrive at a just cause for termination due to personal reasons, the employer has the full burden of proof to prove both the employee's failure to comply with material contractual obligations and his awareness that such failure was not acceptable to the employer. The rules in LAS on just cause for termination are dispositive in that deviations can be made in collective bargaining agreements at a central level.

Termination of employment can validly be made for several reasons, including repeated late arrivals, disobedience, harassment, competing activities or other acts of disloyalty,

negligence in performance, and acts subject to criminal liability (if it is associated with the work or otherwise affects the employer in any way). However, termination should be the last resort for the employer and cannot, as a starting point, be made unless the employer has given the employee a reasonable chance to improve and also exhausted other, less severe, measures, such as transfer of the employee to another position.

Immediate dismissal is reserved for material breaches of the obligations under the employment contract, such as wilful and repeated disobedience of orders, criminal acts directed against the employer, and other acts involving a serious breach of material responsibilities under the employment agreement.

Annual Leave

According to the Swedish Annual Leave Act (SFS 1977:480), the minimum general holiday entitlement is twenty-five days of paid vacation in each twelve-month period from April 1 to March 31 ("holiday year"). Unless otherwise agreed, the employee is normally entitled to exercise four weeks of holiday during the period June – August. The employee's mandatory right to holiday pay is assessed on a pro-rata basis corresponding to the part of the preceding holiday year ("earning year"), that the employee was employed by the employer. The employee may save part of his paid holiday entitlement for a period of up to five years.

Substantial deviation from the Annual Leave Act is allowed, and common, in collective bargaining agreements.

Working Time

In Sweden, working time is mainly governed by the Swedish Working Hours Act (SFS 1982:673). The ordinary working time is limited to forty (40) hours per week. The requirements under the act are mandatory but deviations are allowed by collective bargaining agreement concluded by a central trade union and to a limited extent also by a local collective bargaining agreement. Save for a limited number of sectors, for example seamen, employees in the employer's household and people employed in commercial air traffic, the act applies to all work except for employees in managing positions or with uncontrolled working hours.

The act includes limitations on, among others, overtime, night-work and requirements on mandatory daily and weekly rest periods. The act only regulates working hours from a work environment perspective and does not deal with remuneration.

The act contains an obligation, under criminal liability for the employer, to keep records of on-call time, overtime and additional time.

Sick Pay

Under the Sick Pay Act (SFS 1991:1047), the employer has to pay eighty (80) per cent of the employee's salary and benefits during the first fourteen (14) days of a sick leave. However, the employer may deduct a sum corresponding to approximately one (1) day's salary from the sick pay in accordance with the provisions in the Sick Pay Act. If the sickness period exceeds fourteen (14) days, sickness allowance is payable to the employee under the National Social Insurance System. Under many collective bargaining agreements, employees are entitled to more favourable terms and conditions in relation to sick pay and to supplemental sickness allowance, payable by the employer. If the sickness period exceeds fourteen days, the employer shall, under criminal liability, inform the Swedish Social Insurance Agency.

Parental Leave

Under the Parental Leave Act (SFS 1995:584), parents with children below the age of one and a half (1,5) year are entitled to full parental leave. The employee also has the right to reduce the working time by twenty-five (25) per cent until the child is eight (8) years old. In some collective bargaining agreements, this right is extended until the child reaches the age of twelve (12). Additionally, parents are entitled to parental leave during such time they receive parental benefits from the Swedish Social Insurance Agency. Such benefits are paid to the parents for 480 days. In principle, the parents decide themselves who will exercise such parental benefits, but 90 days are reserved for each parent. Fathers may take an additional 10 days of leave in connection with the birth. As an outset, the employer is not required to pay salary to the employees during parental leave but many collective bargaining agreements contains provisions on extra pay during such leave.

Board Representation

Employees in limited companies and co-operative associations having at least 25 employees are entitled to appoint two board members and two deputy members to the board of directors. Such board members are appointed by the trade unions if the employer is bound by a collective bargaining agreement.

Trade Secrets

In Sweden, trade secrets are primarily protected by the provisions of the Swedish Protection of Trade Secrets Act (SFS 2018:558). The act is a result of the implementation of an EU directive on the protection of trade secrets. A trade secret is defined as information on business or operational matters; which is not, as a whole or in the form in which its content have been organised and assembled, generally known to or readily accessible by those who normally have access to information of the kind in question; which the holder has taken reasonable steps to keep secret; and the disclosure of which is likely to cause competitive harm to the holder. Protection under the legislation is consequently dependent on the employer ensuring that the requirements set out in the law are met for a trade secret to be considered as such. The act specifies that, within the definition of trade secrets, experiences and skills gained by employees in their normal course of employment shall not be included. However, any product from this knowledge during the course of the employment is usually to be considered a trade secret and therefore protected by the act.

There are in principle no legal restrictions in terms of the enforceability of imposing wider obligations on confidentiality on the employee by mutual agreement, unless such restrictions are provided for in a collective bargaining agreement to which the employer is bound.

Discrimination Act

The Discrimination Act (SFS 2008:567) intends to promote equality regarding employment, conditions of employment and other conditions of work and opportunities for personal development in employment. Furthermore, the act prohibits discrimination in the labour market based on sex, transgender identity or expression, ethnicity, religion or other belief, disability, sexual orientation, or age. The prohibition concern direct discrimination, indirect discrimination, and inadequate accessibility. The act also mandate employer to investigate any indication of harassments or sexual harassments on the workplace. The act is applicable to everyone, i.e. the discriminated person does not have to be an employee to claim compensation.

Health and Safet

The Work Environment Act (SFS 1977:1160) contains the basic provisions concerning occupational safety and health matters in Sweden. Moreover, the act includes regulations on how employers and employees should cooperate on work environmental matters. The working environment in principle comprises all conditions at workplaces. The act applies to the physical safety of employees but also to mental and psychological work conditions at workplaces. According to the act, the responsibility for the working environment primarily rests with the employer. The employer is also responsible for rehabilitation of employees and continuous improvements of the working conditions.

The Swedish Work Environment Authority has issued an extensive framework of more detailed regulations regarding work environment, which employers are obligated to follow.

Real Estate

Types of ownership

Swedish land is divided into property units. Ownership of land is always connected to a registered property unit. A property unit can be demarcated horizontally as well as vertically thereby creating three-dimensional property units. Absolute ownership of a property unit entails the right to own, occupy and dispose of the property unit. Where a right less than absolute ownership is intended, a right to site leasehold may be granted. Real estates may also be owned by a tenant-owner association *(Sw. Bostadsrättsförening)* or a co-operative lease association *(Sw: Kooperativ hyresrättsförening)*.

A right to a site leasehold (*Sw. Tomträtt)* may only be granted over publicly owned land. The site leaseholder essentially has the same legal status as an owner of land. Thus, he has the exclusive right to use and occupy the property (but he has no right to sell the land). A right to site leasehold is generally granted for an indefinite period in return for an annual fee, normally calculated as a percentage (equalling the long-term interest rate less inflation) of the land value.

When a tenant-owner association purchases a property unit the association becomes owner of the real property. The members of the association acquire shares in the association's capital, corresponding to their designated units (usually flats) which they have an exclusive right to use without any limitation in time as long as they pay a monthly fee to the association to cover the running expenses of the building and the association's interest cost where applicable. The acquirer of the equity share in the association must be granted membership of the association in order for the purchase to be valid. A tenant-owner association can be formed not only for residential purposes but also where a building is used for commercial purposes or is used for a mix of residential and commercial purposes.

An association similar to the tenant-owner association is the so-called co-operative lease association. It is an economic association formed for the purpose to lease residential apartments to its members. Every member of the association must pay a member fee and the association can also require its members to pay special fees. If the lease period is terminated, the members only have a right to regain paid fees. The association's profit can only be divided between the members and is generally divided between them in relation to their contributions.

In 2009 a new type of housing was made possible in Sweden using three-dimensional real estate. These so-called ownership apartments *(Sw. Ägarlägenheter)* allow the owners to own their apartments in an apartment building. Ownership apartments mean greater autonomy because one owns the apartment, and one can register it under the same rules as for other types of properties. In addition, no tenant-owner association must approve purchases or subleasing. The owner of the apartment may freely pledge, encumber, or dispose of its three-dimensional property.

Land Registry

All property units are registered in the Land Registry *(Sw. Fastighetsregister),* which is computer-based. The Land Registry is administered by the Land Registration Authority *(Sw, Fastighetsinskrivningen)* which is part of the Swedish National Land Survey *(Sw. Lantmäteriet).* The Swedish National Land Survey maintains one public surveying authority, and 40 municipal surveying authorities in Sweden.

All registered property units have specific names and codes, usually consisting of the name of the municipality or city where the property is situated, an area name and numbers for local identification (example: Stockholm Norrmalm 1:1). The Land Registry contains information for every property unit including the location of the property, the registered owner (and the registered leaseholder where applicable), mortgages easements, tax assessment values and the most recent transfer, including the purchase price. The records and documents submitted to the Land Registry are public and anyone can request an extract from the registers (certificates of searches) *(Sw. Fastighetsbevis).* The registers provide useful information and are regularly used in the process of transferring property. Detailed maps of the real property can be provided by the Swedish National Land Survey.

Transfer

Normally the parties will use two contractual documents for the transfer of real property in Sweden. The first document is a purchase agreement *(Sw. Köpekontrakt)* including all conditions, warranties etc. The second document, which is usually drawn up on the day of the actual transfer of property to the purchaser, is the Bill of Sale *(Sw. Köpebrev).* The Bill of sale confirms that the purchase price has been paid etc. The formal requirements for a transfer of real property to be valid according to the Swedish Land Code (SFS 1970:994) *(Sw. Jordabalken)* are relatively simple. Firstly, the purchase agreement must be in writing and be signed by both the seller and the purchaser. Secondly, the agreement must include information about the purchase price and the name and code of the property unit. Thirdly, the agreement must contain a declaration that the seller conveys the property to the purchaser. Finally, if the seller has any spouse or co-habitee their approval is also required. Concerning witnesses, it is not an absolute requirement to have them but the absence of witnesses when it comes to the seller's signature may cause a delay in the registration procedure. It is also important to be aware of that a written or oral option to purchase or sell real property is not valid.

Although a registration of ownership in the Land Registry is not necessary for a valid transfer of ownership, it is important that an application is filed at the Land Registry within three months from the acquisition of the property. Normally, the Bill of Sale is then also submitted to the Land Registry and thereby made public. When the ownership is registe-

red in the Land Registry, the Land Registration Authority issues a certificate of title *(Sw. Lagfart)* to the owner. The registered owner has the formal capacity to take action involving the property and will be regarded as the owner in relation to authorities. A registered owner may also mortgage the property and agree on other rights over the property (e.g. rights of use and enjoyment). Furthermore, if a property has been sold twice by the same seller, the first purchaser to apply for registration of ownership usually has priority over the other purchaser.

The relevant tax applied on a purchase of real property is stamp duty (explained below).

Mortgages

Swedish banks are in general very reluctant to grant loans for real property investments without any security in the property. In practise, mortgage is the only recognised formal fixed security taken over property in Sweden. The formal capacity to mortgage a property belongs to the registered owner of that property unit. If the owner is an individual and is married or co-habitant, written consent from the spouse/co-habitee is required. To mortgage the property unit, an application must be filed at the Land Registration Authority. The registered owner thereafter receives a mortgage certificate *(Sw. Pantbrev)* with the value specified and the certificate is registered in the Land Registry. Concerning the total face value of the mortgage certificates that may be registered and issued, there is no limit. However, the practical value of all the mortgage certificate issued is naturally limited to the value of the property. For issuing the certificate, a stamp duty at a rate of two per cent of the face value of the mortgage certificate is charged. No extra stamp duty is levied when the mortgage certificate is used as security for a liability.

When the mortgage certificate is delivered to the creditor for the purpose of constituting security for a debt or some other obligation, the security is perfected. If part of the amount of the mortgage certificate is not needed to cover the debt, the excess amount may be used as second ranking collateral for some other debt or obligation. In the case of a second mortgage as described above, a notice to the holder of the mortgage certificate is needed for the security to be perfected. Until the loan is settled the creditor's lien and the mortgage right exists. When the loan is settled, the mortgage certificate should be handed back to the owner, who may then use the same mortgage certificate as security for a new loan or any other liability without additional stamp duty or costs.

However, nowadays it's more common to use electronical mortgage certificates. These corresponds to the physical possession of a mortgage letter. The Land Registry shows whether the certificate is electronic. It also holds information about who is the recipient of the electronic mortgage letter.

Restrictions on Acquisitions

There are no restrictions on foreign ownership of real property in Sweden. However, there are some legal restrictions imposed regarding the transfer of property in general.

The pre-emption act (SFS 1967:868) *(Sw. Förköpslag)* expired on the first of March 2010. It allowed Swedish municipality's pre-emption rights when real property (or a right to site-leasehold) were sold. However, the municipality's pre-emption right still applies to sales of real property, if the municipality registered the property in the Land Registry before the first of May 2010.

The Act on Acquisitions of Apartment Property etc (SFS 1975:1132) *(Sw: Lagen om förvärv av hyresfastighet m.m.)* was in force until 2010. According to the act, transfers of properties

taxed as rental housing units did not in general require authority approval. However, it was obligatory to notify the municipality of an agreement on transfer of such properties (and the site leasehold right to such properties) within three months from entering into the agreement. One of the purposes of notifying the municipality was to protect the existing tenant's interests when there rental housing unit were sold. To maintain the purposes of the act, stricter rules were introduced in another act called The Act on Housing Administration (SFS 1977:792) *(Sw. Bostadsförvaltningslag).*

According to the Agricultural Land Acquisition Act (SFS 1979:230) *(Sw. Jordförvärvslagen)* transfers of land taxed as agricultural property, or land that have been converted or newly created for the purpose of agriculture or forestry but have not yet been subject to property taxation, require approval by the County Administrative Board *(Sw. Länsstyrelsen)* if the property is situated in designated parts of Sweden or the acquirer is a legal person, and the property is purchased from an individual or the estate of a deceased person. Approval is required also when agricultural property is transferred by a contribution in kind to a company or as a dividend from a company. If the land is purchased at a compulsory auction, no approval is needed. For a legal person, approval is normally given only in very special situations.

Restrictions on Development

The main act in Sweden on the regulation of the use of land is the Planning and Building Act (SFS 2010:900), ("PBA"), *(Sw. Plan- och bygglagen).* According to the PBA, each municipality in Sweden must adopt plans regulating the utilisation of land and water within the municipality. The plans to be adopted are comprehensive plans *(Sw. Översiktsplan),* regional plans *(Sw. Regionplan)* and detail plans *(Sw. Detaljplan).* A detail plan applies to a limited part of the municipality (normally a few blocks in a town) and is binding on the authorities as well as individuals during the time it is to be achieved. The plan includes regulations concerning the use of the land and construction work on the land.

Before construction work is started, a building permit *(Sw. Bygglov)* is required and an application therefore must be sent to the local building committee *(Sw. Byggnadsnämnden).* Which activities or changes to buildings and properties that require building permits are regulated in the PBA in detail. Concerning activities, including erecting, altering, and extending of buildings or amended use of a building or part thereof, permits are compulsory. If the development project adheres to the detail plan and construction standards the property owner will in general be entitled to the building permit. If the building permit is denied by the local building committee, the decision can be appealed to the County Administrative Board *(Sw. Länsstyrelsen).*

The local building committee can also issue a preliminary statement on whether a building or an installation that requires a building permit may be permitted on the intended site. The PBA also contains provisions with respect to demolition permits and permits regarding ground works. In addition to the PBA, it should also be mentioned that the Environmental Code (SFS 1998:808) *(Sw. Miljöbalken)* regulates planning on a national level in order to economise with natural resources such as forests and running water.

Leases

Leases can be granted either for residential or commercial purposes. The regulations on commercial and residential leases vary in important areas and the legal provisions are to a great extent mandatory in favour of the tenant. The below overview concentrates on different aspects on commercial leases.

There is no requirement of a certain form for entering into a legally binding lease agreement. However, a lease agreement must be in written form if one of the parties to the lease request it. Often when letting commercial premises, a rather simple standard contract form is used. The standard form has been drawn up and negotiated between the Swedish Property Federation *(Sw. Fastighetsägarna)* in co-operation with different business sectors. However, it is common that the parties agree on specific provisions attached to the standard agreement. The term of lease can be fixed or continuous. Usually, leases are granted for a fixed period between three to five years. There are, however, many examples of both shorter and longer lease periods. In towns and cities, the maximum term of lease is 25 years, but on the countryside a lease period of up to 50 years is allowed. There are no restrictions regarding the minimum term of the lease.

The rent must be a fixed sum. Regarding commercial properties, the parties may freely agree on the amount of the rent. It is very common that commercial tenants pay added charges for heating, cooling, water, and property tax, etc. Commercial premises are sometimes let on a turnover basis, and the rent is determined as a percentage of the income generated by the tenant. Usually, the tenant pays the rent in advance and in quarterly instalments. It is also quite common that the rent is linked to changes in the consumer price index from year to year. However, such indexation is not allowed if the lease period is shorter than three years.

A tenant's main obligations is to pay the rent, use the premises only for agreed purpose, to take good care of the premises and not disturb its neighbours. The parties are free to agree on responsibility and the duty to pay for maintenance of the premises. Concerning commercial leases, it is not unusual that the majority of the costs for maintenance and utilities of the premises are borne by the tenant. The landlord's main obligations are to provide premises fit for the intended purpose/use and to repair defects cause by ordinary wear and tear.

Unless the landlord has very strong reasons for not extending a lease after the expiration of the agreed lease period, the commercial tenant is entitled to compensation for his loss, so called indirect protected tenancy *(Sw. Indirekt besittningsskydd).* The right to compensation ceases if the landlord offers the tenant an extension of the lease on market terms and the tenant does not accept those terms. The right to compensation is also waived if the tenant does not submit the matter to the Regional Rent Tribunal *(Sw. Hyresnämnden)* within two months from the date he received the notice for termination. A tenant may also in advance waive his right to extension or compensation in a separate document. If the lease has been in force less than nine months at the time for signing the waiver, an approval from the Rent Tribunal might be necessary for the waiver to be valid.

In general, a tenant has no right to transfer a lease agreement without the consent of the landlord. However, one important restriction of the rights of the landlord is that the Rent Tribunal may, subject to certain conditions, authorise the tenant to transfer his tenancy to a person who is taking over the trade or business carried on by the tenant on the premises.

Stamp Duty

The relevant tax in case of purchases of real property (and leasehold rights) is stamp duty. Stamp duty falls due when the purchaser's title to the property is registered in the Land Registry (however, special regulations apply when a real property is sold within a group of companies). Stamp duty is also triggered when real property (or a leasehold right) is transferred as a contribution in kind to a company and when real property is distributed as a dividend in kind from a company. Normally, the stamp duty is paid by the purchaser, but if the purchaser does not pay, the seller is liable for it. The stamp duty is either based on the purchase price (or the value of the real property) or the tax assessment value of the property for the year before the registration of ownership, whichever is the higher. The stamp duty rate triggered for transfers in case the purchaser is an individual or a tenant-owner association is 1.5 percent of the value, and in case the purchaser is a legal person, 4.25 per cent of the value.

Stamp duty is also triggered when a mortgage certificate is issued by the Land Registration Authority. The stamp duty on a mortgage certificate is two per cent off the face value of the certificate. As regards rent or lease agreements, no stamp duty is triggered.

VAT

Transfers or letting of property does not trigger value added tax ("VAT") *(Sw. Mervärdesskatt, abbr. moms).* However, the owner of a business property may voluntarily choose to have premises, in which commercial activities are carried out, registered for VAT (provided that the tenant is liable for VAT). The registration can also be applied for by a tenant or a sub-tenant involved in commercial activities on the premises. As long as the premises are registered for VAT, the owner can charge VAT on the rent and offset it against VAT paid by him on maintenance, repairs and other expenses as well as building costs.

Tax Law

General

Limited companies and certain other legal persons are since the 1 January 2021 obligated to pay a corporate tax of 20,6 per cent. The tax is deducted from the enterprises pre-tax results of operations, subject to certain fiscal adjustments. The tax rate for individuals as regards income from employment and partnerships is progressive and varies between 28 and 58 per cent depending on the amount of income. Capital gains tax varies between 20 and 30 per cent.

Taxation of resident companies

All income received by a company is dealt with together, regardless of whether it originates from different kinds of activities. Thus, losses from one activity may be set off against income from another. Losses from business activities carried out abroad may be set off against income from Swedish activities if there is no tax treaty stipulating that the foreign income should be tax exempt. Calculation of a company's taxable income is based on the annual report prescribed by civil law and the fiscal income assessment is based on the realised results of operations.

The allocation reserve

A deductible allocation reserve may be made at maximum of 25 per cent of net earnings prior to allocations for the financial year. The allocation must be recognised in the financial statements of the limited company.

The allocation reserve must be reversed for tax purposes no later than in connection with the tax assessment of the 6th fiscal year following the year when the provision was made. If no voluntary reversing entry has been made, the remainder will be reversed mandatorily. Each year's provision constitutes a reserve of its own. Consequently, a company can have a maximum of six allocation reserves at a time. The company is not required to make payments into a special purpose account or similar.

Depreciation and deductions

Normal expenses incurred in the course of business are deductible when determining the taxable income.

Assets which are held for permanent use may be depreciated on the bases of the actual acquisition cost. Assets with an expected useful life of less than three years may be written off at once, as may assets of minor value.

Real estate is depreciated using the straight-line method over the expected useful life of the property. Usually, commercial properties may be depreciated by 2 – 5 per cent per annum, factory premises by 4 per cent and office properties by 2 per cent per annum.

Interests and royalties are generally fully deductible.

General Swedish taxes paid are not deductible according to Swedish law. Sweden has no rule on thin capitalisation. Consequently, there are no restrictions on interest payments between related parties, as long as these are made on an arm's length basis.

Dividends paid are not deductible.

If the company suffers a loss one year the loss will become deductible the following year. The taxpayer may not choose when to use the loss but it may be carried forward without time limitation if the loss is not covered by profits in the subsequent year. However, some limitations apply to this rule if the company suffering the loss is sold.

Group Taxation

Limited companies are treated as groups where a parent company directly or indirectly holds more than 50 per cent of the voting powers of another limited company.

A group is not a taxable entity in itself but companies in the same group can make certain fiscal redistributions of their earnings. The owner may, under certain circumstances, through intra-group transfers obtain a tax allowance.

For intra group transfers to take full legal effect the following requirements apply. The companies concerned must be Swedish limited companies. The parent company must have owned more than 90 per cent of the shares in the subsidiary during the entire financial year or both the donor and the donee must be subsidiaries of the same parent company which owns more than 90 per cent of the shares in each of the companies. Subsidiaries, which render or receive transfers, must have been wholly owned during the entire fiscal year for both donors and donees or since the subsidiary commenced conducting business activities in some kind or other. Neither the donor or the donee may be housing, investment, or management company. Both the donor and donee must disclose the intra group transfer during the same fiscal assessment year in the tax return. Nor must shares in the subsidiary constitute a stock asset in the parent company.

In some cases, a parent company is exempt from tax on dividends received from foreign subsidiaries if the foreign company is subject to a tax at a rate comparable to Swedish taxation of similar entities or is recognised as a company in a Double Taxation Treaty to which Sweden is a party.

Taxation of foreign companies

Whereas a company that has been duly incorporated and registered under Swedish law will be taxed in Sweden on its world-wide income (total tax liability), a foreign company will only be taxed for income deemed to derive from Swedish sources (limited tax liability). The latter rule applies mainly to income attributable to real property or to a permanent establishment located in Sweden. A foreign company will be considered to have permanent establishment in Sweden when its operations are carried out through a fixed place of business, i.e., a branch office. An agent with power to conclude contracts on behalf of a company will normally qualify as a permanent establishment. Unrelated agents, for example a reseller, will not constitute a permanent establishment as long as the assignment carried out on behalf of the foreign company is within the agent's usual type of business.

Business related shares

Sweden has rules regarding business related shares *(Sw. näringsbetingade aktier).* The rules apply to limited liability companies *(Sw. aktiebolag)* as well as partnerships *(Sw. handelsbolag).*

A holding company's shares in other companies are regarded as business related if one of the following criteria is met:

- → The shares are not listed on any stock exchange or similar marketplace (unquoted shares)
- → The shares represent 10 per cent or more of the voting power in the company
- → The business of the holding company or its subsidiaries is related to the business of the company held

Dividends from unquoted shares and other business-related shares are tax free for the holding company with only a few exceptions. There are for example exceptions for dividends from controlled foreign companies in certain tax haven countries.

Generally, capital gains on sale of business-related shares will be tax free for the holding company. However, a few exemptions worth mentioning apply to this general rule. If a business-related share is quoted it must have been held for a year or more. Another exception regards sales of shares in shell companies, i.e., companies holding primarily lots of cash or other liquid funds but few other assets.

Double Taxation

Swedish domestic law provides two main alternatives for avoiding international double taxation:

- → Foreign tax may be deducted as a cost when calculating the taxable income of the company, provided that the income in question is taxed in Sweden.
- → Foreign tax may be credited against Swedish tax using the over-all method. However, the foreign tax assessment must be final, compared to Swedish tax, and levied on the basis that the income originates from the country in question.

The latter alternative may be utilised even if there is a treaty covering the situation provided that the treaty does not prescribe exemption from Swedish tax.

Sweden also has an extensive network of tax treaties. There are no Swedish laws on treaty shopping, but provisions on this subject, mainly concerning dividends, may be included in some of the more recent treaties. Most of the treaties are based on the ACCEDE model convention.

Partnerships and limited partnership

Partnerships and limited partnerships are legal persons that can enter into legal and binding agreements etc. Despite this, it is not the partnership/limited partnership that is subject to pay tax on its income. Instead, each of the co-owners is taxed on his share of the profits of the partnership.

The co-owners of the partnerships will be taxed in Sweden on income earned by the partnership through its business transactions in Sweden. If the overseas owner in a partnership is an overseas company, the tax charge will be the same as had the operations been conducted through a branch office.

Although the co-owners are subject to tax on the income of the partnerships, a joint assessment of income must be made for the partnership as such. The co-owners will then be taxed for their shares of the profits of the partnership.

Value added tax VAT

VAT is levied on the sales price of taxable goods or services. At present three rates apply, a standard rate of 25 per cent and two reduces rates of 12 and 6 per cent. The reduced rates of 12 per cent applies to food (excluding alcoholic beverages), hotel services, camping sites and ski lifts while the lower reduced rate of 6 per cent applies to for example daily papers, magazines, books, and passenger transportation. Anyone who commercially trades taxable goods or services in Sweden is liable for VAT. Every two months, or if the company is trading with other EU member states every month, the difference between the VAT received from the selling of goods and services and the VAT paid for the acquisition of goods and services is paid to the state. When the latter exceeds the former the company will receive a refund.

Individual taxation

Residents of Sweden pay Swedish tax on all income irrespective of whether the income is earned inside or outside the country. You will be regarded as a resident of Sweden if you stay in the country for more than six months, or if your fixed domicile lies in Sweden. You can also be regarded as a Swedish resident if you have some connection with the country, for example Swedish citizenship, property, or business operations. The latter pre-supposes, however, that you have previously been regarded as a fiscal residence of Sweden, i.e., if your true domicile has been in Sweden.

The tax liability in Sweden for non-Swedish residents is limited to the income earned in Sweden.

A company is obliged to pay preliminary tax when paying salary to its employees. The preliminary tax to be paid in respect of each employee varies depending on the employee's domicile and his or her expected annual income. In addition, each employer is obliged to pay a statutory payroll tax of (31,42 per cent) of the remunerations paid.

Individuals must pay a 20 to 30 per cent tax on capital gains.

Other taxes

Property Tax

The state property tax on owner-occupied houses and apartment buildings was abolished in 2008. Instead, a "local/municipal fee" was introduced with a cap, to be adjusted annually and was indexed to the so-called income base amount *(inkomstbasbelopp),* which tracks the average nominal income. The state property tax, however, still applies to properties which are not considered as residential properties, i.e. an unbuilt plot of land.

Excise duties

In addition to general VAT, duties are imposed on several goods. Notable examples include fuel, tobacco, electricity, and alcohol. VAT is levied on all excise duties.

Stamp taxes

Certain stamp taxes apply in connection with transfer of real estate and issuing of mortgages in real estate, companies (floating charges), air crafts and vessels. The stamp taxes applicable to real estate are further described under "Real Estate".

Türkiye

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Since 1989, Hergüner Bilgen Üçer Attorney Partnership has been recrafting the Turkish law firm model along modern corporate standards, while maintaining the personal attention that its clients have come to expect. Its size and expertise make it one of the few truly full service independent Turkish law firms with a global reach, equally at home in the role of primary counsel in multinational transactions and local counsel to foreign and domestic clients. The firm's expertise and institutional knowledge enable it to go beyond simple lawyering and develop creative business-oriented solutions to client needs. It accomplishes this by putting clients first and becoming intimately acquainted with all aspects of their business and legal needs. The firm's reputation for innovation goes back more than three decades, having drafted many first-of-their-kind agreements in cross-border transactions that continue to be used as model agreements in the market today.

Areas of practice

General Corporate
Mergers & Acquisitions
Banking & Finance
Privatization
Energy & Infrastructure
Healthcare & Life Sciences
Wealth Management
Global Trade & Customs
Employment & Labour
Securities & Capital Markets
Immigration & Citizenship
Infrastructure & Project Finance
Real Estate
Tmt Law
Competition & Antitrust
Tax Dispute
Intellectual Property
Dispute Resolution/Arbitration
White Collar & Investigations
Insurance
Data Protection/Data Privacy

Legislation Overview

Applicable regulations and rules

Türkiye's corporate law is mainly comprised of the provisions of the Turkish Commercial Code ("TCC"), the Regulation on the Procedures and Principles of the General Assembly Meetings of Joint Stock Companies and the Ministry Representatives to be Present at these Meetings ("Regulation on GAM Meetings of JSCs"), the Direct Foreign Investments Law numbered 4875 ("DFI Law"), together with the Trade Registry Regulation numbered 2012/4093 ("Trade Registry Regulation") and the Direct Foreign Investments Law Application Regulation ("DFI Regulation"), all based on the related respective legislation.

The Turkish Commercial Code

The TCC is the main legislative instrument that regulates the regulation and operation of companies' commercial transactions and the activities.

The Trade Registry Regulation

The Trade Registry Regulation seeks to guarantee legal security by publicizing records through documenting the trade registry records in Türkiye in full and in a decent manner. The regulation focuses on the functioning of trade registry directorates, keeping trade registry records electronically, qualifying trade registry personnel, and regulating the general procedures and principles regarding matters relating to the trade registries of Türkiye.

The DFI Law and The DFI Regulation

The main purpose of the DFI Law and the DFI Regulation is to set forth standards and to provide guidelines to ease and encourage foreign investments in Türkiye as well as to ensure compliance with international standards. Similar to the TCC, the DFI Regulation also focuses on the electronic accessibility of certain commercial activities related to foreigners by introducing E-TUYS, an electronic system assisting all foreign invested companies established in Türkiye with notifications to the Ministry of Industry and Technology and obtaining investment incentive certifications.

The Regulation on the Procedures and Principles of the General Assembly Meetings of Joint Stock Companies and the Ministry Representatives to be Present at these Meetings

The main purpose of the Regulation on the GAM Meetings of JSCs is to ensure the compliance of general assembly meetings held in JSCs with the related legislation, articles of association, and the internal directive of the company. It mainly regulates the requirements of internal directive and participation in ordinary general assembly meetings.

Corporate Overview

Forming a company in Türkiye as an International Business

The regulatory environment in Türkiye is business friendly. Businesses may be established by individuals in Türkiye irrespective of nationality or place of residence. An international business that wants to operate in Türkiye as a foreign investor has three options: (i) liaison office, (ii) branch office, or (iii) Turkish subsidiary.

· **Liaison Offices.** Liaison offices are prohibited from engaging in commercial activities and are only permitted to conduct certain activities such as market research for the foreign investor's business in Türkiye. Liaison offices are not qualified as an independent legal entity but rather an extension of the foreign parent company's business in Türkiye. They are not allowed to acquire rights or incur liabilities by their own actions. Therefore, liaison offices cannot issue invoices, act on behalf of the foreign parent company, execute any contracts, or accept orders from customers that would also correspond with a sale and purchase agreement under Turkish law.

Establishment of liaison office is subject to permission of the Ministry of Industry and Technology ("MIT"). Liaison offices are given a maximum permit of three-years to conduct their activities. The term of the liaison office may be extended by application to the MIT close to the expiry date of the three-year permit term. Extensions are generally given for one-year periods, and after a certain number of extensions to be determined by the MIT, the MIT may not approve extension requests and request the foreign investor to establish a subsidiary or a branch office in Türkiye if they wish to continue their activities.

Liaison offices must submit an annual notification to the MIT through the E-TUYS system before the end of May of each year with regard to their activities over the past year. In addition to the annual notification requirement, certain changes also must be notified to the MIT including but not limited to changes in the shareholding structure and authorised signatories. Such notifications must be completed within one month following the change at the latest.

· **Branch Offices.** Branch offices are not authorized to act as a separate legal person apart from their parent company. The foreign investor is held liable for any debts and obligations of the branch, irrespective of the capital allocated to the branch itself. Nevertheless, branches are independent from the parent company with regard to their external affairs and are allowed to conduct any transaction in their field of activity.

· **Turkish Subsidiaries.** A foreign investor may choose to form a fully-fledged company in Türkiye. The most commonly formed companies in Türkiye are joint stock corporations ("JSC") *(anonim şirket)* and limited liability partnerships ("LLP") *(limited şirket).* The incorporation of a new company will generally consist of the following steps:

→ **Preparation and execution of incorporation documents:** Such documentation may require certain certification, legalization, and apostille procedures. The registered address and relevant lease agreement of the company to be incorporated ("NewCo") should also be provided.

→ **Online application through MERSİS:** MERSİS is an online system recently introduced to ease the process before submitting to the registry with hardcopy incorporation documents. The tax number of the NewCo is also automatically generated by MERSİS.

→ **Opening of a bank account for the NewCo:** Once a bank account has been opened, at least one quarter of the share capital must be deposited and blocked by the bank before registering the incorporation of a JCSs. The remaining capital may be paid within 24 months. There is no such prepayment requirement for LLPs.

→ **Physical application to the relevant trade registry office:** Incorporation documents will be certified and company books will be issued by the trade registry on the date of incorporation.

→ **Issuing a signature circular:** The signature circular of the NewCo should be executed and duly issued by the notary public in accordance with the description regarding signatories, who may be determined as limited or unlimited, jointly or individually.

- → **Tax authority inspection:** After incorporating the NewCo, the tax authority officials will visit the registered address of the NewCo to ensure that there is a physical place for the NewCo and that there is an authorized representative present who has the power to represent and bind the NewCo during their visit.
- → **Application for a workplace opening and operation permit *(İşyeri Açma ve Çalışma Ruhsatı):*** An application should be submitted to the relevant municipality to obtain a workplace opening and operation permit in order to operate a workplace.

Most Commonly Used Types of Companies in Türkiye (JSC and LLP)

A foreign investor may prefer incorporating a JSC or establishing an LLP mainly because of the corporate veil principle. Under Turkish law, in principle, both in a JSC and in an LLP, the liability of shareholders is limited to the capital they have contributed. A few exceptions in relation to public debts or unpaid tax may lead to unlimited liability of the partners of the LLPs and the legal representatives of the LLPs and JSCs.

The partners of an LLP may be held personally liable, up to the percentage of their partnership for the public debts (e.g., tax, social security, fines, etc.) that remain uncollected partially or in whole from the LLP. Furthermore, the legal representatives of such companies (including the members of the Board of Directors of JSCs and Board of Managers of LLPs) may be personally liable for the unpaid public debts that cannot be collected from the company.

Applicable regulations and rules

General Assembly Meetings

Both JSCs and LLPs must convene an ordinary general assembly meeting ("OGAM") with the participation of the shareholders and the partners, respectively, at least once a year within three months following the end of each activity period. For JSCs, the Board of Directors invites the shareholders to the general assembly meeting, whereas for LLPs, this duty falls on the Board of Managers. The mandatory agenda for the OGAMs is specified in Article 13 of the Regulation on the GAM Meetings of JSCs and the Ministry Representatives to be Present at these Meetings, which are listed as:

- → Opening meeting and the formation of the chairing committee;
- → Reading and discussion the annual activity report prepared by the Board of Directors for the specified financial year;
- → Reading the independent audit report for the specified financial year;
- → Reading, discussing, and approving the balance sheet and profit and loss tables for the specified financial year;
- → Releasing the members of the Board of Directors from their liabilities with respect of their activities during the specified financial year;
- → Discussing the dividend distribution;
- → Deciding on the financial compensation for the members of the Board of Directors; and
- → Appointing an independent auditor, if applicable.

An extraordinary general assembly meeting may also be held whenever it is deemed necessary for a company. These instances include share capital increases/decreases, appointment/resignation of members of the Board of Directors, share transfer, or among others.

Certain JSCs that are involved in a specific type of activities (companies that provide financial services, holding companies, etc.) are incorporated with the approval of the Ministry of Customs and Trade. Pursuant to the TCC, a ministry representative is required to be present during the general assembly meetings of these companies. In addition, ministry representatives are also required to be at general assembly meetings of other JSCs when it comes to resolving issues in relation to share capital, mergers, spin-offs, changes in the company's scope of activity, etc. The main duty of the ministry representative is to supervise the meeting and report whether it was in accordance with the legislation. Requests for the appointment of a ministry representative are submitted through MERSİS.

Board of Directors/Managers Meetings

Members of the Board of Directors of JSCs and members of the Board of Managers of LLPs are responsible for the management and the external representation of the Company. The appointment of signatories, the incorporation of new branches, and changes in the representation and binding structure of the company are a few of many decision could be resolved in a Board of Directors meeting. Non-transferrable duties of the Board of Directors are listed in the TCC as follows:

- → Management of the company
- → Determination of the company's management structure
- → Accounting, financial auditing, and to the extent required by the management of the company, establishing the necessary order for financial planning
- → Appointment of managers, equivalent persons, signatory authorities, and their dismissals
- → Oversight of the management with respect to their compliance with the laws and the articles of association of the company
- → Dismissal of the persons in charge of management
- → Record keeping of the company books (i.e., share ledger, Board of Directors' resolution and general assembly meeting books), preparation of the annual activity report and corporate governance disclosure and submission of the annual report and corporate governance disclosure to the general assembly presentation, preparation of general assembly meetings and execution of general assembly resolutions.
- → Notification to the court in case of insolvency.

Regulatory Compliance

Trade Registry Office Filings - Registration Procedures

Companies are required to register certain changes to their governance structures such as changes to the Board of Directors, changes to representation and binding structure, general assembly meeting resolutions regarding the amendment of the articles of association, increase/decrease the share capital, appointment of independent auditors and the Board of Directors, etc. to the relevant trade registry office where the change has been made.

Such filings require certain documents stated in the TCC, the relevant secondary legislation, and also on the website of the relevant trade registry office. Once the application has been filed, the trade registry office reviews it and either approves it or requests amendments/additional documents. Upon the completion of the registration, the documents are published in the Turkish Trade Registry Gazette, which is publicly available.

Documents required from companies for the registration depend on: (i) the kind of the requested registration and (ii) the type of company (LLP, public JSCs, private JSCs). This information can be easily accessed either from the website of the relevant trade registry or by communicating with the officers.

In fact, the Istanbul Trade Registry where most foreign investors choose to register their companies has its own electronic system where one can ask any questions in relation to the registration procedures by simply texting an official online.

Ministry Filings

Companies with foreign capital (i.e., having foreign shareholders) are required to make certain filings to the Ministry of Industry and Technology. Changes with regard to their share capital, share transfers, etc. are required to be notified to the ministry for statistical purposes through the E-TUYS system, the online platform of the Ministry of Industry and Technology where individuals that the companies appointed have access by way of their e-signature. While such a notification obligation is provided under the DFI Regulation, there are no penalties or sanctions provided under the legislation for failure to do so.

Conclusion

Corporate regulations and the environment in Türkiye are becoming more international business friendly each and every day. With the digital infrastructure becoming more prominent, legislators and the administrations lead with the highest intention to keep up with international standards and to ease bureaucratic processes for foreign investors.

Disclaimer

While this chapter has endeavored to provide a glance at corporate law overview in Türkiye, it is advised to first consult legal and accounting professionals for individual advice and not rely on the content of this chapter.

Employment Contracts

Turkish labour law is mainly regulated under the Turkish Labour Code numbered 4857 ("TLC"). As per the TLC, employment contracts are generally not subject to any specific form unless stated otherwise by law. However, employment contracts that are executed for a term of more than one year must be executed in writing. Employment contracts must reflect the employee's undertaking to perform work under the instructions of the employer and the employer's undertaking to pay a salary in return.

Definite Term and Indefinite Term Employment Contracts

In standard employment practice, employment relationships are established for an indefinite term (i.e., employees are permanent). If no specific term is stipulated in an employment contract, then the contract is deemed to be for an indefinite term.

It is also possible to employ a person with a definite term, but this is an exceptional method and can only be done if certain requirements set forth by the TLC are fulfilled. Definite-term employment contracts (i) should have a specified term, (ii) should be based on the emergence of objective conditions like the completion of a certain work or the materialization of a certain event, and (iii) must be made in writing. Unless these conditions are met objectively, then it is highly likely that a fixed term employment contract will be treated as an indefinite-term contract.

Employment Contracts with Probationary Periods

In principle, an employee and employer may agree on a probationary period of up to two months in an employment contract. However, this probationary period may be extended for up to four months in the case of collective bargaining agreements. During the probationary period, either party may terminate the contract without giving prior notice or paying compensation provided that all employment receivables pertaining to the employed days are duly paid.

Remote Work Contracts

Employment contracts for employees working remotely should include certain mandatory subjects, including the following: a description of the work, how the work should be performed, the duration and place of work, salary and details regarding payment, equipment provided by the employer and obligations regarding care for the equipment, employer communication with the employee, and provisions regarding the general and special working conditions. It is also possible to convert an ongoing employment contract to remote work upon the mutual agreement of the employee and the employer (i.e., with an addendum to the current employment agreement) or create an employment relationship with remote work subject to certain conditions.

Workplace Order: Salaries, Working Hours, Statutory Holidays

Legal Minimum Salary

In principle, Turkish law differentiates salary into three main categories – namely, (i) salary based on working hours, (ii) base-rate or lump-sum fee, and (iii) payment on a percentage basis and tips provided that it does not fall below the minimum salary.

At the end of each year (December), the government issues a decision setting forth the minimum salary as per Article 39 of the TLC. For 1 July 2023 and 31 December 2023, the gross minimum salary (monthly amount) is TRY 13,414.50 (≈EUR 450) and it is forbidden for an employer to pay less than the applicable minimum salary determined for the relevant period.

Working Hours

There is no statutory standard working hours, but there is a statutory limit. Accordingly, employers can set the working hours as long as they do not exceed the maximum working hours, which is forty-five (45) hours per week and eleven (11) hours per day. Any working hours that exceed the agreed working hours in the employment contract constitutes "overtime work".

If the contractually agreed working hours are less than forty-five (45) hours per week, then any works longer than the said determined hours up to forty-five (45) hours per week are considered "additional hours worked". Employees are entitled to a payment of 1.25 times the regular hourly salary for each additional hours worked.

For overtime work exceeding forty-five (45) hours per week, employees are entitled to overtime payment, which is 1.5 times the regular hourly salary for each hour of overtime.

Statutory Holiday Entitlement

Weekly Holiday

Pursuant to the Law on National Holidays and General Public Holidays numbered 2429 ("Holiday Law"), Sunday is the legal day-off in one week of employment. In the event that the nature of the services provided by the employee requires work on Sundays or if an employee works a Sunday shift, another day of the week should be granted as a weekly holiday to the employee. Employees should be paid their daily salary for the weekly holiday that they do not work. In the event that the employee works on a weekly holiday, an amount equal to two times their daily salary should be paid.

National and General Holidays

The provisions of the Holiday Law determine the days that are considered national and general holidays. The national holidays for each year include April 23, May 19, August 30, and October 29. January 1, May 1, and July 15 are also considered holidays. Furthermore, there are two religious holidays each year with a term of 3.5 days and 4.5 days respectively, the timing of which varies every year. Employees should be paid their daily salary for all national and general holidays that they do not work. If the employee works during a national or general holiday, the employee's consent to work must be taken and they should be paid an amount equal to two times the daily salary.

Termination of Employment Contracts

Unilateral Termination

Unilateral Termination by the Employee (Resignation)

Under the TLC, unless there is just cause for termination, an indefinite term employment agreement can only be terminated by the employee through prior written notice to the employer. If the employee terminating the employment agreement does not comply with the statutory notice periods, then the employee must pay a notice payment to the employer corresponding to their salary that would have accrued during the applicable notice period. Upon termination of the employment contract through the resignation of the employee, the employer is obliged to pay any outstanding employment receivables, such as unpaid salaries, side benefits, and other quantifiable amounts such as unpaid overtime work. Employees are not entitled to severance payment in case of resignation.

Unilateral Termination by the Employer Based on a Valid Cause

Employers who employ at least thirty (30) or more employees may only terminate indefinite term employment contracts who have been employed for at least six months by specifying a "valid cause" (provided that there is no "just cause") and by complying with the statutory notice periods. This mechanism is called "job security". The following grounds are regarded as "valid causes": (i) inefficiency or lack of qualification; (ii) the employee's behaviour; and (iii) necessities in relation to the business or workplace or the work (re-organization, financial difficulties of the company, liquidation of the company or closure of departments, etc.). As a general principle under the Turkish labour law, termination must be the "last resort" and the employer should look for alternative solutions if possible, and depending on the specifics of the case, should first warn the employee and grant certain time for the employee to remedy the situation before terminating the employment contract, if the situation can be remedied.

Unilateral Termination by the Employer Based on a Just Cause

An employer can terminate an employment agreement without being subject to any notice period/payment and severance payment if a "just cause" exists. Just causes are exhaustively listed under Article 25 of the TLC and categorized in certain main groups as follows: (i) health reasons, (ii) lack of good faith and moral character, and (iii) force majeure or the employee's absence from work. In order to terminate the employment contract based on just cause, the reasons referred to in the TLC should be at a level that creates an unbearable situation for the employer to continue the employment. If the indications are not severe enough for termination based on just cause, the employee may be dismissed based on the valid causes explained above.

Mass Lay-Off

TLC defines the term "mass layoff" as termination of employment contracts in a number and ratio that exceeds the number and ratio limits specified in TLC due to economic, technologic, structural, or other similar reasons arising from the establishment, workplace, or necessities of the work. The employer must notify the relevant union's representatives (if any) at the workplace, the local area directorate of the Ministry of Labour and Social Security, and the Turkish Employment Agency of its decision to initiate a mass layoff process in writing thirty (30) days in advance of the said mass lay-off.

Mutual Termination

An employment relationship may be mutually terminated by the parties amicably by signing a settlement agreement. In the event of terminating employment through a settlement agreement, all of the accumulated employee rights plus an additional reasonable benefit (i.e., additional settlement payment) should be paid to the employee prior to the execution date of the agreement. For settlement agreements to be considered valid, as per the Turkish Court of Appeal's precedent, an employee should derive reasonable benefit which is the additional settlement payment.

Consequences of Termination

The employer is required to make the below payments to employees if the employment agreement is terminated, irrespective of whether it is based on valid cause or a settlement agreement:

Notice Payment

If the employment agreement is terminated by the employer, a notice period, the length of which is determined in accordance with the duration of employment of the relevant employee, must be given to the employee. The employer can either (i) grant a notice period to the employee and continue to employ the employee during such period or (ii) make a notice payment to the employee corresponding to the total employee benefits to be earned during the applicable notice period in lieu of the applicable notice period. The TLC indicates the minimum notice periods as: (i) 2 weeks if the length of employment is less than 6 months, (ii) 4 weeks if the length of employment is 6-18 months, (iii) 6 weeks if the length of employment is 18-36 months, and (iv) 8 weeks if the length of employment is more than 3 years. These periods can be extended with an employment agreement but cannot be reduced.

Severance Payment

In the event that an employment agreement of an employee who has been working for the same employer for more than one year is terminated by the employer, the employee is entitled to severance payment unless their employment agreement has been terminated based on just cause due to ethical misconduct. In principle, the amount of severance payment is calculated by multiplying the employee's most recent monthly salary by the number of years they have been employed with the employer. However, the government periodically fixes a maximum amount for the severance payment, which is TRY 23,489.83 (≈EUR 800) for 2023. If the monthly salary of the employee is higher than the maximum amount, then the severance payment will be calculated by multiplying TRY 23,489.83 with the number of years of employment, not the actual salary of the employee.

Accrued but unpaid employee receivables (unpaid salary, overtime work, unused annual leave, additional benefits, etc.)

In addition to the notice and severance payments, the employer is required to pay the employee an amount corresponding to unpaid salary, unused leave days, earned overtime payments, and/or bonuses etc.

Restitution of Employment Lawsuit

Upon termination, an employee benefitting from job security may initiate a lawsuit within one month of termination requesting restitution of employment by alleging that their termination was unlawful. The burden lies with the employer to prove that it had valid/just cause for termination. If the court determines that no valid/just exists in the relevant case, it orders the employer to either (i) re-employ the employee and re-employ them to their former position, and pay an amount of up to 4 months' salary for the period in which the employee did not work, or (ii) pay non-restitution compensation that varies from 4 to 8 months' salary of the employee, plus up to 4 months' salary for the period in which the employee could not work.

Compliance with Health and Safety Regulations

The Occupational Health and Safety Law numbered 6331 ("OHS Law") and its secondary regulations impose different obligations on employers to ensure workplace health and safety based on the number of employees and the hazard class of the relevant workplace. As per the OHS Law, workplaces should take certain actions including: taking health and safety precautions, conducting risk assessment, preparing emergency plans, establishing occupational health and safety board, appointing occupational safety expert, appointing company doctor, establishing examination and first-aid rooms, conducting regular health inspections, appointing employee representatives, training employees, and establishing nursing rooms and day-cares, among others. Non-compliance with such occupational health and safety obligations is subject to heavy administrative sanctions.

Transfer of Employees and Outsourcing the Work

Transfer of Employees

The transfer of employees can be conducted by means of (i) transferring employment contracts, (ii) transferring the workplace, or (iii) transfer by merger/demerger.

Transfer of Employment Contracts

Employee consent is required to transfer employment agreements. Upon such transfer, the transferee employer will become a party to the employment agreement together with all of the rights and liabilities associated therewith. In practice, this may be done by way of either obtaining a separate consent letter from the employee or through execution of a tripartite transfer agreement by and among the transferor employer, transferee employer, and the relevant employee. The transferor employer ceases to be liable for any employment-related rights that will arise after the date of the transfer, whereas the transferee employer will become liable for such rights from the date of the transfer (i.e., the employee's commencement date of employment with the transferee employer). The transferee and the transferor employees will be jointly liable for two years for the employee receivables that have accrued before the transfer date.

Transfer of Workplace

As a result of workplace transfers as per Article 6 of the TLC, the transferee employer becomes party to the existing individual employment agreements, assuming all rights and obligations, and the employment relationships and contracts that are in force on the date of the transfer are also automatically transferred simultaneously with the business or related business unit/department to the transferee employer with all rights and obligations. Employee are not entitled to object to such transfer or terminate their employment contract based on the transfer of workplace. The transferee and the transferor employees will be jointly liable for two years for the employee receivables that have accrued before the transfer date.

Transfer by merger/demerger (spin-off)

If the employees are transferred by means of a merger or demerger (spin-off), this would constitute an automatic transfer and the transferring employees would be entitled to object to the transfer and terminate their employment contract within a reasonable period following completion of the spin-off as per Articles 158 and 178 of the Turkish Commercial Code numbered 6102. Employees who raise an objection will be entitled to terminate their respective employment contracts upon expiry of the statutory notice periods. The transferee and the transferor employees will be jointly liable for the employee receivables that have accrued before the transfer date; however, the legislation does not set out any time limit for such joint liability.

Subcontracting

Subcontracting is an outsourcing method permitted under the TLC provided that it meets certain criteria. As per the TLC, subcontracting is only allowed for: (i) auxiliary work related to the production of goods and services (such as cleaning, security, catering, etc.) and (ii) work that constitutes a certain portion of the main activity that is necessary for the enterprise and the business which requires technological expertise.

Further, in order to form a legally permitted subcontracting relationship, certain requirements must be met, such as: (i) The principal employer should have its own employees working in its workplace for the production of goods and services; (ii) for each subcontracting relationship, the subcontractor should exclusively engage a certain group of its employees only for the tasks received from the workplace of the principal employer; (iii) the subcontractor should not be a former employee of the principal employer; and (iv) the contract between the subcontractor and the principal employer should be made in writing and include certain items as provided under the applicable legislation.

A subcontracting relationship not established in accordance with the requirements is regarded as fictitious and the courts would categorize such relationship, from the liabilities perspective, as an employment relationship between the principal employer and the employees of the subcontractor.

Disclaimer

While this chapter has endeavored to provide a glance at the legislation governing employment relationships in Türkiye, it is advised to first consult legal and accounting professionals for individual advice and not rely on the content of this chapter.

Real Estate

Categories of Property Rights

Simple Freehold Ownership

The most basic category of property rights is simple freehold ownership *(mülkiyet).* Freehold ownership gives the property owner the right to use, benefit from, and dispose of a piece of property.

Leasehold Ownership

Turkish law permits granting a third party the right to build on a piece of property *(üst hakkı),* and the holder of such a right becomes the owner of any structures built on this land in exercise of this right.

Condominium Ownership

Turkish law permits condominium ownership, which allows independent units in a completed structure to be owned separately from the main structure.

Usufruct/Servitude Right

Turkish law permits separating the right to use and to benefit from a piece of property from the right to disposal, and the complete right of use and benefit can be granted to a third party in what is called a usufruct/servitude right *(intifa/irtifak hakkı).*

Land Registers

All interests in real property become effective at the time they are registered at the Land Registry Office, which provides a definitive record of real estate ownership. These records are open to the public for inspection and are reliably accurate. Therefore, parties acquiring interest in real properties in accordance with the land registry records in good faith keep their interest even if the land registry records are found to be inaccurate.

Transfer Formalities

Agreements for purchasing or selling real property and creating or transferring interests in real property must be in writing, and in principle, must be executed before the Land Registry Office or notaries public. Promise to sell agreements concerning real properties can be executed before notaries public – where parties have relative freedom to agree on commercial terms.

Construction

For any new construction, refurbishment, or major modifications to buildings, a permit from the relevant municipality is required. Construction permits are subject to various requirements set out by the legislation as well as restrictions (e.g., setback distances, ratio of footprint to parcel area, construction coefficient), which are regulated under the applicable zoning plans. If the construction is not in compliance with the construction permit, the municipality will not allow the construction to be occupied until the deficiencies are corrected.

It is generally not possible to alter zoning restrictions for particular parcels through agreements with public authorities, especially after an amendment introduced to the Zoning Law in 2020 specifically prohibiting zoning plan amendments for particular parcels that increase the population, building density, number of stories, and building height.

Leasehold Types and Formalities

The regulation of ground leases and building leases differ. However, both residential and workplace leases are substantially governed by the same rules. In principle, lease agreements are freely negotiable. However, the Turkish Code of Obligations ("TCO") mandates some substantial conditions protecting lessees.

- → Rental fees are freely negotiable. However, stipulating additional payment obligations other than rental fees and ancillary costs is prohibited.
- → As per the TCO, if the rental fee is denominated in Turkish liras, the rent may be increased annually up to the consumer price index (12 months' average) but not higher. However, in an attempt to curb the effect inflation may have on consumers, the rental increase rate for residential leases that will be renewed by 1 July 2024 has been temporarily capped at 25%. In any case, after the first five-year period, the lessor may ask the court to re-determine the rental fee in accordance with current rates applicable to similar properties.
- → As per the TCO, if the rental fee is denominated in foreign currency, the rental fee may not be increased within the first five-year period.
- → There is no minimum or maximum limit for lease terms. As per the TCO provisions, for residential and workplace leases, a lessee has the right to occupy the leased property for another 11 years once the lease term expires.
- → For residential and workplace leases, in principle, the lessor may terminate the lease only in strict conditions mandated by the TCO. Some of the most commonly used avenues for termination are as follows:
  1. The lessor serves written notice to the lessee twice in a single lease year for failure to pay rent,
  2. The lessee undertakes to vacate the leased property before executing the lease agreement,
  3. The lessor or the lessor's family needs to use the leased property themselves,
  4. Material repairs are required on the leased property, or
  5. The lessee has a material failure in using the leased property in accordance with the terms of the lease agreement.

Real Estate Investment Vehicles

Special purpose vehicles (SPVs), real estate investment companies (REICs), and real estate investment funds (REIFs) are the types of entities available to investors to hold real estate assets. REICs and REIFs are preferred by real estate investors due to certain tax exemptions granted to such entities. REICs and REIFs are also preferable because these entities may create large-scale funds generated from the capital contributions of different investors. SPVs may also be advantageous as they are not subject to certain restrictions and specific conditions stipulated under the capital markets legislation, such as valuation conducted under said legislation.

Real Estate Investment Financing

Financing Acquisitions of Commercial Real Estate

Acquisitions of commercial real estate are generally financed by loans and sales revenue generated from the project. Real estate investment funds, lease certificates, and real estate investment companies are capital market instruments used to finance acquisitions of large real estate portfolios or companies holding real estate.

Typical Security Package

Real estate investors generally use securities such as a mortgages, share pledges, personal guarantees, and assignment of receivables.

Turkish law recognizes two types of mortgages: (i) principal amount mortgages and (ii) maximum amount mortgages. Principal amount mortgages are established to secure amounts that have already been lent to borrowers and contain the unconditional and absolute debt acknowledgement of the borrower. Maximum amount mortgages can secure amounts higher than the principal amount, incorporating various expenses in advance that may be incurred by the mortgagee but that do not permit the collection of any amounts above the ceiling amount.

Considerations In Structuring a Security Package

- → Turkish law prohibits companies from providing securities to third parties to facilitate the acquisition of its own shares. This provision does not apply to (i) transactions conducted for the purpose of the activity of financial institutions and (ii) securities, advance payments, and loans granted to employees of the company or its parent company in order to acquire the shares of the company.
- → Subordination arrangements are not expressly recognized in the Turkish execution laws. Therefore, parties are free to create a contractual subordination obligation, but this will not prevent any enforcement proceedings to be initiated before execution offices.
- → Turkish law prohibits parent companies from exercising their dominance over their subsidiaries to the detriment of such subsidiary. When granting upstream securities or guarantees for a parent company, it may be difficult for board members to specify a convincing reasonable cause for the subsidiary to enter into such an arrangement to the benefit of its holding company or group companies.
- → In principle, securities established in favor of a lender do not become void by a borrower's insolvency. However, certain claw back rules apply to securities granted by financially distressed parties.

Real Estate Due Diligence

Title and Encumbrances

When purchasing real estate or financing real estate investment projects, investors inspect the land registry records. As the land registry records are authoritative, a thorough inspection of these public records generally suffices to provide assurance to purchasers in terms of the property rights of the seller and any encumbrances over the target property.

In principle, shores and forests cannot be subject to private property. However, there are ways for administrative bodies to grant private parties the right to use such areas. Therefore, generally for real estate used for tourism activities, agreements and deeds establishing the relevant investor's right to enjoy shores and forests are reviewed as well.

Zoning and Planning

Investors also review the usage restrictions present in the zoning plans applicable to the property by paying a visit to the relevant municipality. A review of the municipality files also reveals any non-compliance with the zoning plans and the relevant construction and occupancy permits granted by the relevant municipality.

The zoning plans provide specific instructions on how each parcel may be developed or used, and these instructions reveal both the general plan for use of the land in the locality and indicate how each parcel fits into the whole.

Areas of Special Protection

Moreover, certain areas bearing special historical, natural, or urban importance are protected by strict rules. Accordingly, new constructions as well as repair and refurbishments on such properties are subject to permission from the local heritage protection boards. Incompliances can lead to serious fines and even imprisonment.

Restrictions on Foreign Investment

Special purpose vehicles (SPVs), real estate investment companies (REICs), and real estate investment funds (REIFs) are the types of entities available to investors to hold real estate assets. REICs and REIFs are preferred by real estate investors due to certain tax exemptions granted to such entities. REICs and REIFs are also preferable because these entities may create large-scale funds generated from the capital contributions of different investors. SPVs may also be advantageous as they are not subject to certain restrictions and specific conditions stipulated under the capital markets legislation, such as valuation conducted under said legislation.

Disclaimer

While this chapter has endeavored to provide a glance at the legislation governing real estate investments in Türkiye, any business interested in operating in Türkiye is advised to first consult legal and accounting professionals for individual advice and not rely on the content of this chapter.

COMPENDIUM

2024

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