Compendium

e – iure

Austria | Canada | Chipre | Hong Kong | Italy | Lithuania | Poland | Portugal | Serbia | Spain | Sweden | Turkey | UK | Ukraine

Index

Austria

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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.

To represent and advise its national and international clients as effectively as possible, Kraft & Wildenhofer‘s expertise is available in the following fields:

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 (GDPR)

Intellectual Property
Trademarks
Model and design

Litigitation

Debt Collection

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Regulations and Rules

The main statutes in corporate law are the Code of Enterprises *(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),* 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 Civil Law Association *(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).*

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 35,000. 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) shareholders assembly *(Generalversammlung).* A supervisory board *(Aufsichtsrat)* is only compulsory for large companies (e.g. more than 300 employees) and optional for the others.

The shareholders 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. 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. 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 free employees *("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

In 2013 a reform was issued allowing the foundation of a company with limited liability with a minimum capital of EUR 10,000, which has to be paid in half. This privilege of foundation *("Gründungsprivileg")* has to be mentioned in the company register. With a change of the articles of association and payment of the missing "normal" minimum capital of EUR 35,000 this privilege ends. In any case the privilege ends 10 years after foundation, which means that the capital has to be increased to EUR 35,000. The main advantage of this reform is a reduction of foundations costs.

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.

▶ 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.

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,.
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> **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.

▶ Individual Taxes

Different from the corporate income tax the individual income tax is not a flat tax. The tax rate here is progressive (7 rates, maximum rate is 55%).

Partnerships as such are not a subject of taxation, but the partners are. The profits of the partnership are first calculated for the partnership as a whole and then shared amongst the partners. The partners have to pay income tax (or corporate income tax if the partner is a corporation) to their portion of the profit.

Territoriality and Residence

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.
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> **Extraordinary expenses** *(außergewöhnliche Belastungen):* Payments incurred by a taxpayer because of extraordinary circumstances (e.g. natural catastrophes, children's tuition away from home, etc.).
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> **Several deductible amounts stipulated by law** *(Absetzbeträge),* e.g.:
>
> Sole earners: EUR 494,--(with one child) + additional amount depending on the number of children)
>
> Sole earners with children and no spouse or partner: EUR 494,--+ 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 400,--)

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).

Territoriality and Residence

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%).

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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.

Employment Contracts

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. the periods of termination. However as of January 1, 2021 the regulations regarding termination of white-collar workers also apply to blue-collar workers. Furthermore, in many sectors there are different collective bargaining 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. The conclusion of a free labour contract just to avoid labour law is deemed as illegal, in that case labour law nevertheless applies entirely.

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: in case of white-collar workers, it may run from 6 weeks (in the first two years of service) to 5 months (after 25 years of service). A white-collar worker on the other hand must comply with a termination period of one month. The statutory 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 of a white collar worker may terminate the contract to the end of each quarter; the white-collar employee may terminate employment to the end of each month. 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 the case of blue-collar workers, the applicable termination period is two weeks for both parties. The period may be lengthened or shortened by collective bargaining or by contract. There are no certain termination dates, however termination dates can often be found in collective bargaining agreements or in the employment contracts. 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 freelance 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 1, 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. 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 bargaining 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 against.

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

Collective Bargaining Agreements, Company Agreements

The parties of collective bargaining agreements are the Austrian Trade Union Federation and statutory employer organisations, in particular the chamber of commerce *(Wirtschaftskammer)* and its sub-organizations. Generally collective bargaining 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 bargaining agreements applicable only in a certain province. The collective bargaining agreements apply to all employees in the specific branch, no matter if they are members of the trade union or not. Collective bargaining 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 bargaining 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 agreement 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 bargaining agreements.

Wages and Other Types of Compensation

There is no statutory minimum salary in Austria, but minimum salaries are stipulated in the collective bargaining agreements. Those minimum salaries depend on the duties and the years of service. Usually collective bargaining agreements grant 14 payments a year (so called 13th and 14th salary or Christmas and vacation pay, these payments are subject to a reduced income tax at a 6% rate).

Other types of compensation in Austria are the provision of a company housing or a company car, contributions to pension funds or meals at a reduced price. Since collective bargaining agreements usually stipulate a salary paid in cash (transferred to the bank account of the employee), those remunerations in kind have no great importance in Austria. If an employer repeatedly grants additional benefits (e.g. a bonus at the end of the year) to the employee, the employee can become entitled to those benefits in the future *(betriebliche Übung).* To avoid entitlement of the employee, the employer has to explicitly reserve the right to terminate the practice at will.

The normal statutory working time is 8 hours a day respectively 40 hours a week. Many collective bargaining agreements stipulate shorter working-times (38.5 hours a week are common). Overtime hours have to be paid at the normal hourly rate plus 50% (collective bargaining agreements may stipulate higher extra payments in particular for overtime hours on Sundays). It is permissible to agree on a lump-sum for overtime hours or an all-in-salary as long as the lump-sum or the all-in-

salary exceeds the minimum payment for overtime hours set by the applicable collective bargaining agreement. Besides payment for overtime hours, it is also possible that the employee takes a compensatory time off, whereby 1 overtime hour is equal to at least 1 1/2 hours of extra compensatory time.

Employment Regulations

Austrian labour law is split up into many different statutes. For white-collar workers the Act on White-Collar Workers *(Angestelltengesetz)* is of great importance. Other important acts are the Labour Relations Act *(Arbeitsverfassungsgesetz),* the Vacation Act *(Urlaubsgesetz)* and the Working Time Act *(Arbeitszeitgesetz).*

Social Security Costs

The employer must notify the beginning and the end of an employment to the social insurance agency. The employer is liable for the payment of the social security costs. The contributions must be paid monthly by the last day of the month. The social security contributions consist of an employee's contribution, which is deducted from the salary and an employer's contribution, which must be paid in addition to the salary. The employer is liable for the payment of the employer's contribution as well as the employee's contribution.

The employees contribution is currently (2020) 18.12% of the salary for white- and blue-collar workers.

The employers contribution is currently (2020) 21.38% of the salary for white- and blue collar workers.

There is a ceiling on the basis for contribution *(Höchstbeitragsgrundlage)* of EUR 5,220 per month (2020), which means no social insurance contributions have to be paid for the part of the salary exceeding this ceiling.

Generally, all parts of the remuneration (including remuneration in kind and overtime payments) are basis for the social insurance contribution, but there are a few exceptions, e.g. work clothes, meals at a reduced price, contributions to a pension's fund.

Health and Safety

Austrian labour law includes detailed provisions on occupational safety and health which the employer has to comply with. The employer has the duty to take measures to protect the life, the health and the morality of his employees at their work place. These regulations cover the size, lightning and ventilation of rooms, fire prevention, first aid, compulsory safety instructions etc. Compliance with these provisions is monitored by the Work Inspection Authority *(Arbeitsinspektorat).* Depending on the numbers of employees, one or more persons responsible for safety *(Sicherheitsvertrauensperson)* have to be appointed.

Important statutes in this field are the Act on Safety and Protection of Health at Work (*ArbeitnehmerInnenschutzgesetz)* and the Act on Work Inspection *(Arbeitsinspektionsgesetz).*

Contracting and Outsourcing of Work or Services

The outsourcing of work may be deemed as transfer of business *(Betriebsübergang),* in that case the corresponding regulations apply (liability of the old owner, position of the employee must not deteriorate). In general the transfer of business has no consequence for the employees being affected – the new owner of the company enters into the existing contracts. An important exception exists for the transfer of a business by share deal: since the employer (being the company itself) is still the same, no transfer of business is made and the above mentioned protection provisions are not applicable.

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).*

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 (except Croatia) as well as EEA-citizens and Swiss-nationals are entitled to work in Austria without a work permit. Currently special transition rules still apply for citizens of Croatia. After June 30, 2020 Croatian citizens will have free access to the Austrian labour market as well.

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.

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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":** 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):* 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 surface of another one's property. Unlike the construction right, the *"Superaedifikat"* is considered movable 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, administrated 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 *(Urkundensammlung).* 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 easements.

The Austrian land register is a public data bank, therefore everyone is entitled to inspect all documents. Furthermore the Land Register is subject to the principle of priority, which means that a right registered first prevails 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 constituted 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 Register (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 favourable 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.

Canada

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Introduction

A variety of legal arrangements may be used to carry on commercial activities in Canada. These include sole proprietorships, partnerships, limited partnerships, corporations, franchises and joint ventures. As well, there are a number of different legal methods of carrying on non-profit activities; groups having objects of a religious, philanthropic, charitable, scientific, artistic, social, professional or sporting character may operate as unincorporated associations or non-for-profit corporations. This chapter will discuss the legal characteristics of a corporation with share capital, which is the business entity used most frequently to carry on commercial activities in Canada.

The Corporation and Shareholder liability

A corporation is a legal entity separate in law from its owners, the shareholders of the corporation. A corporation may own property, carry on business, incur liabilities, and possess rights such as the right to sue in its own name. A corporation has perpetual existence beyond the lifetimes of its shareholders, officers and directors; it exists until it is dissolved. The shareholders own the corporation through their ownership in shares but do not own the business or the property belonging to the corporation, and the rights and liabilities of the corporation are not the rights and liabilities of the shareholders. The shareholders are said to have "limited liability" because their liability in connection with the property or business owned by the corporation is limited to the value of the assets (money, property or services) they have transferred to the corporation in exchange for shares in the corporation. It is only in exceptional circumstances that the courts will look behind the separate legal personality of a corporation and impose personal liability on a shareholder. These exceptional circumstances were outlined in Yaiguaje v. Chevron Canada Corporation, where a proceeding was initiated in Ontario for the enforcement of an Ecuadorian judgment against a subsidiary of Chevron Corporation. The plaintiffs wanted the holding corporation's assets to satisfy the judgment debt of the subsidiary. The court outlined three scenarios where looking beyond the separate legal personalities is possible: when the court is construing a statute, contract, or other document; when the court is satisfied that a company is a "mere façade"; and where the company is an authorized agent for those who control it or its members. Outside of these exceptional circumstances, a shareholder's liability to creditors of the corporation is limited to the amount of his or her investment and his or her personal assets are shielded from being used to satisfy the

liabilities of the business. That said, if a corporation requires financing, lenders will often seek personal guarantees from major shareholders before making loans to a corporation, particularly if it has few assets of its own. Such guarantees can expose a shareholder's personal assets. Normally though, not all corporate debts will be guaranteed by the shareholders as, for example, debts to trade creditors.

Statutes that govern Corporations

Canada has a federal system of government, and it is therefore possible to incorporate at either of two levels:

> federally, under the Canada Business Corporations Act (the "CBCA"); or
>
> provincially or territorially, under the relevant legislation in each province or territory (Canada is divided into 10 provinces and 3 territories), such as the Business Corporations Act of Ontario (the "OBCA").

Once having chosen the corporation as the appropriate form of business entity, one must consider in which jurisdiction to incorporate. For the purpose of this chapter, it will be assumed that the choice is only between the federal and Ontario jurisdictions.

The CBCA provides for a right to incorporation through the issuance of Articles of Incorporation. A federal corporation may, subject to the licensing requirements (if any) of each province, carry on business anywhere in Canada and use its name in any province as of right. Federally incorporated corporations must have a minimum of one director in the case of privately held corporations, and three directors in the case of corporations that offer their securities to the public. Directors must be natural persons. For public corporations, at least two of the directors must not be officers or employees of the corporation or any of its affiliates. Directors are responsible for the management of the business and affairs of the corporation. There is also a general requirement that at least 25% of a corporation's directors be resident Canadians, or if the corporation has fewer than 4 directors, that at least one be a resident Canadian, the concept of "residency" being defined in the statute. This is the case even if a corporation is foreign-controlled. In certain industries that are subject to ownership restrictions (such as airlines and telecommunications) or corporations in certain cultural sectors (such as video or film distribution), corporations must generally have a majority of resident Canadian directors.

Ontario corporations are also incorporated by Articles of Incorporation. An Ontario corporation must either register or obtain an extra-provincial licence in order to carry on business in any other province and, unlike a federal corporation, this registration or licence may or may not be granted if the name of the Ontario corporation is not acceptable in the province where the application for registration or licence is being made. An Ontario corporation that is not offering its securities to the public need have only one director, who need not be a shareholder. An Ontario corporation that is offering its securities to the public must have a minimum of three directors, at least one-third of whom shall not be officers, directors or employees of the corporation or its affiliates.

As under the CBCA, at least 25 percent of the directors of an Ontario corporation must be resident Canadians, or if the corporation has fewer than four directors, at least one must be a resident Canadian. Furthermore, unless the Articles of Incorporation otherwise provide, a majority of directors' meetings in each fiscal year must be held in Canada. Quorum for a meeting of directors is often set out in a corporation's by-laws, and if it is not, quorum will by default be a majority of the directors (or the minimum number of directors) of the corporation, and in no case may quorum be less than two-fifths of the total (or minimum) number of directors. A resident Canadian is defined in the legislation as an individual who is resident in Canada and is either a Canadian citizen or, in certain circumstances, a permanent resident.

Branch operation

It is possible for a foreign corporation to do business in Canada without incorporating by carrying on business through a "branch operation". In order to do so a company must register as an "extra-provincial corporation" in Ontario and any other province in which it carries on business. The provincial naming rules apply to branch operations, meaning that the corporation's corporate name may not be registered in a province if it is the same as or similar to one that is already in use in that province, and in Quebec, a foreign corporation must register a French language name. Depending on the nature of the activities undertaken, provincial registration may be required even if the corporation does not have a "permanent establishment" in the province for income tax purposes. While there is provision for penalties for failure to register, we know of no instance where such provision has been invoked and a penalty levied. If unregistered, however, an extraprovincial corporation is not capable of registering an interest in land or maintaining a proceeding in a court in Ontario in respect of any contract made in whole or in part in Ontario in connection with business carried on in Ontario. It should be noted that if a company carries on business in Canada through a branch, it is required to keep books and accounting records at the Canadian place of business and to open such records upon request for audit by Canadian taxation authorities.

Process of Incorporation

Incorporation under both the CBCA and OBCA is accomplished by delivering Articles of Incorporation in the form prescribed in the regulations to the appropriate government department, together with the required supporting material and fees. The Articles must contain the following information about the corporation: name, registered office address; number of directors and the name(s) of the first director(s); restrictions on the nature of the business that can be carried on by the corporation (if any); the corporation's capital structure; and restrictions on the transfer of shares (if any). On receipt of the Articles conforming to the applicable regulations, the applicable government authority issues a Certificate of Incorporation to the corporation and the corporation comes into existence on the date shown on the Certificate. Once the Articles have been processed, both the CBCA and OBCA require that certain corporate records must be kept by the corporation, including a copy of the Articles and by-laws and all amendments thereto, registers indicating the owners of shares and recording all share transfers, a copy of any unanimous shareholder agreement known to the directors, minutes of meetings and resolutions of shareholders, copies of certain notices required by the statute, adequate accounting records and records containing the minutes of meetings and resolutions of the directors and any committee thereof. The Ontario statute also requires the corporation to maintain a director's register, although it is commonplace for corporations in any Canadian jurisdiction to do so. Except for the Articles, the corporate records listed above are not public documents. Recent amendments to the OCBA also require Ontario corporations to maintain records of all real property held by those corporations. Unlike other records of the corporation, this real estate register must be kept at the registered office of the corporation and must include information about the acquisition of the real property by the corporation, and certain information about the real property itself such as the municipal address, property identification number, legal description and tax roll number.

It is typical to prepare a general by-law to fix the general rules governing the operation of the corporation, for example, meetings, notice, quorum for meetings, officers, proxies, execution of documents and other matters of a continuing nature.

The corporation may change the corporate characteristics set out in its Articles such as the corporation's capital structure. The general rule is that the Articles can be amended only by means of a special resolution passed by the shareholders. A special resolution is defined as a resolution passed by two-thirds of shareholders who voted in respect thereof at a meeting of shareholders, or a resolution that is signed by all of the shareholders who are entitled to vote on that resolution. After a special resolution amending the articles of a corporation has been passed, Articles of Amendment that contain the amendment must be sent to the appropriate government department, which will then issue a Certificate of Amendment to the corporation. There are a few exceptions to the general rule that a corporation's articles must be amended by a special resolution. For example, a change in the directors or in the address of the registered office usually do not require an amendment to the Articles. Instead, only a notice of such changes is sent to the appropriate government department.

Unless the Articles, by-laws or a unanimous shareholder agreement provide otherwise, the directors of a corporation may make, amend or repeal any by-laws that regulate the business or affairs of a corporation. A by-law or an amendment or repeal of a by-law is effective as soon as a directors' resolution is passed at a meeting or signed by all the directors. Once the directors make, amend or repeal a by-law, they must submit the by-law to the shareholders of the corporation at the next meeting of shareholders. The shareholders will then confirm, reject or amend the by-law. If a by-law, or an amendment or repeal of a by-law is rejected by the shareholders, or if the directors do not submit the by-law, amendment or repeal to the shareholders, it ceases to be effective on the date of rejection or on the date of the meeting of shareholders at which it should have been submitted. A by-law or an amendment to or repeal of a by-law may also be proposed by any shareholder entitled to vote at a meeting of shareholders. If the by-law, amendment or repeal is passed at a meeting of shareholders, it is effective from the date of such adoption, and no action by the directors is required. An ordinary resolution of shareholders is required to approve or confirm a by-law or an amendment or repeal of a by-law. If it is desirable to create rules which cannot be altered except by a greater majority of the shareholders, those provisions can be included in the Articles by way of an amendment, and any future change would then require a special resolution of shareholders. Both CBCA and OBCA corporations must file annual information returns with the appropriate government department.

Previously, federally incorporated corporations only needed to retain a register of its registered shareholders. As of June 13, 2019, private corporations are required to revise their registry to include more information about those who maintain "significant control" towards the corporation.

Significant control refers to a) a registered holder or the beneficiary owner, or b) an individual or group acting jointly with direct or indirect control over a significant number of shares of the corporation. A "significant number" of shares is established where an individual or group carries 25% of voting rights or 25% of the total fair market value of all the outstanding shares of the corporation.

The requirements apply to all trustees, beneficiaries, and settlors of a trust. In addition, they also apply for other entities, as information must be collected from individual(s) who directly or indirectly control 25% or more of the entity. However, public "reporting issuers" and companies listed on a stock exchange, are exempt from these requirements.

Share Capital

A corporation can be incorporated with only one class of shares, which may be designated by any name that the incorporator wishes. Typically where there is one class of shares, these will be denominated as "common" shares. However, in Canada, the name given to a class of shares does not affect the rights of those shares, although there are certain informal naming conventions that are often followed. Where a corporation has only one class of shares, the rights of the holders of that class of shares must be equal in all respects and must include a specific set of rights which are: (1) the right to vote at any meeting of shareholders of the corporation; (2) the right to receive the remaining property of the corporation on dissolution; and (3) the right to receive dividends if and when declared by the directors of the corporation. Where the Articles provide for more than one class of shares, each of the three (3) rights set out above must be attached to at least one class of the authorized shares, but all of the rights are not required to be attached to any one class. It is to be noted though that the OBCA and CBCA grant voting rights even to non-voting shares in certain circumstances. These circumstances generally refer to situations in which the rights of one class of shares would be prejudiced by the change to the Articles, such as when a new class of shares is declared that has dividend right superior to those of an existing class. In that case, the existing class would have to approve the proposed amendment by two-thirds majority (or unanimously in writing), whether or not that class otherwise has voting rights. If an amendment is approved by special resolution in circumstances where a class was entitled to vote separately, the shareholders of that class who voted against the amendment are entitled to have the corporation purchase their shares for "fair value". Other fundamental changes to the corporation also require the approval from each class of shares. These include amalgamations, arrangements, the sale of all or substantially all of the corporation's assets and the dissolution of the corporation. These changes must be approved by a special resolution of each class of shareholders, whether or not such class of shares otherwise has voting rights.

Most corporations (other than publicly traded corporations) have tight restrictions on the transfer of shares. Such restrictions are usually found in the Articles as well as in shareholder agreements. Typically, the consent of at least the majority of shareholders or directors is required before a share transfer in a private corporation is permissible. Subject to the Articles, by-laws, any unanimous shareholder agreement, and applicable securities laws, the directors may issue shares at any time and to such persons and for such consideration as they determine and may declare dividends at any time.

Meetings of Directors and Shareholders

Once the corporation is organized it is customary for the directors to meet at least once per year prior to the annual shareholders' meeting to approve the corporation's financial statements so that they can be presented to the shareholders (shareholders do not technically approve the financial statements, but have a right to receive them at each annual meeting).

Except where the articles or the by-laws of the corporation provide otherwise, the majority of the meetings of the directors of an Ontario corporation in any year must be held in Canada. There is no similar CBCA requirement. This requirement is not applicable where a written resolution is passed and signed by all of the directors or shareholders entitled to vote on that resolution, as applicable.

Under both the OBCA and CBCA the shareholders of a corporation are required to hold annual meetings, which must occur within 15 months of the previous meeting. In the case of a CBCA corporation such meeting must also occur within 6 months of the end of the previous fiscal year. Meetings of shareholders of CBCA corporations must be held in Canada unless all shareholders agree to a meeting outside of Canada. For an OBCA corporation, the directors, subject to the Articles and any unanimous shareholder agreement, may determine the place of the shareholders meeting, failing which it will be held at the corporation's registered office in Ontario. At an annual meeting, the shareholders will carry out certain prescribed business such as receiving and considering the financial statements for the previous financial year, electing directors for the subsequent financial year, appointing auditors for the next year (or, in the case of private corporations, dispensing with the need to do so), and passing resolutions dealing with any other matters referred to in the notice of the meeting of shareholders. Shareholders may elect directors for a term not exceeding three years. A director not elected for an expressly stated term ceases to hold office at the close of the first annual meeting of shareholders following his or her election. However, if no directors are elected at a meeting of shareholders, the incumbent directors continue in office until their successors are elected. After the shareholders' annual meeting, the newly-elected directors would meet to elect the president and other officers of the corporation. Directors are authorized to fix the remuneration of the directors, officers and employees of the corporation. The directors' discretion in this regard may be limited by provisions in the Articles, the by-laws or a unanimous shareholder agreement.

Directors' and Officers' duties and liabilities

The following is not meant to be an exhaustive review of possible sources of liability for directors and officers, but is merely indicative of the scope of such liability.

A director's duty is owed first and foremost to the corporation. Both legislative statutes and the common law establish the parameters of a director's duties.

Recent amendments to the CBCA clarify the fiduciary duties of directors and officers of a corporation. In particular, the changes enumerate the factors that the directors and officers should consider when making decisions, namely the interests of: shareholders, employees, retirees and pensioners, creditors, consumers, governments, the environment, and the long-term interests of the corporation.

Some of these duties and obligations, specifically, the fiduciary duty, the standard of care and some of the statutory liabilities, apply with equal force to officers. It is the duty of the directors to manage or supervise the management of the business and affairs of a corporation. Unless provided for in a unanimous shareholder agreement, the shareholders of a corporation cannot usurp the directors' power to manage the corporation. Of course, shareholders can also be directors of a corporation, in which case, they will take on the duties and liabilities of directors. Shareholders can exercise indirect control over the business and affairs of the corporation since they elect the directors.

The CBCA and OBCA impose a fiduciary duty on directors and officers of a corporation with respect to the management and operation of the corporation. The fiduciary duty states that every director and officer must act honestly and in good faith with a view to the best interests of the corporation. This duty recognizes that directors and officers are in a position of trust over the actions of a corporation. In this regard, directors and officers cannot engage in certain activities such

as, putting their personal interests in conflict with the best interests of the corporation, competing with the corporation, or taking a corporate opportunity for personal profit that a corporation either could have obtained for itself or was actively seeking. Directors and officers also have a duty to disclose their interest in a material contract or transaction of the corporation.

In addition to the fiduciary duty, directors and officers of a corporation must also meet a minimum standard of care with respect to the exercise of their duties, that is, every director and officer, in exercising his or her powers and discharging his or her duties, must exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The courts have tempered the effect of the duty of care in some respect by developing the business judgment rule. This rule provides that business decisions are presumed not to be a breach of duty in the absence of fraud, illegality, bad faith or conflict of interest on the part of the decision maker, as long as there is a rational connection to a business purpose. The intent of this rule is to prevent courts from second-guessing the business decisions of management with the benefit of hindsight, or from setting a standard of conduct that is so high that it would hinder directors from doing what they think is best for the corporation.

Both the fiduciary duty and the duty of care are absolute, meaning directors and officers cannot contract out of, or otherwise excuse themselves from these obligations.

In addition to directors' and officers' fiduciary duties and the standard of care which they must observe, there are other specific statutory liabilities imposed upon directors personally. Many of these specific liabilities are imposed upon directors for making errors which could have an adverse effect on the financial position of the corporation. For example, under both the CBCA and OBCA, directors may not declare a dividend if there are reasonable grounds for believing that after the payment of the dividend, the corporation would become insolvent. If directors pay dividends in these circumstances, they will normally be jointly and severally liable for the amount of dividends paid and not recovered by the corporation. Other errors that expose directors to liability include liability for authorizing the issue of shares for inadequate consideration, an improper loan, payment or an improper indemnity, an improper payment to a shareholder, an improper commission, and an improper redemption, purchase or other acquisition of shares.

A director is not liable for breach of fiduciary duty or standard of care or for any specific liability discussed above if the director acted in good faith in reliance upon financial statements of the corporation which an officer of the corporation or the auditor represents to reflect fairly the financial condition of the corporation, or upon a report of a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by such a person.

Another important statutory liability imposed on directors is personal liability for as much as six months' wages of employees together with as much as 12 months' vacation pay. As a result, if a corporation becomes insolvent, this obligation can impose a significant financial obligation on the corporation's directors.

There are many other statutes which impose civil and criminal liability on directors and officers of a corporation for outstanding liabilities and obligations of a corporation. Most of these are related to matters such as taxation, the environment, employees and reporting requirements.

Public Companies

All Canadian provinces have some form of legislation (such as the Securities Act and the regulations made thereunder in Ontario) restricting sales of securities to the public. The term "securities" is broadly defined and includes the shares of a corporation as well as many debt instruments such as bonds, options to acquire shares, etc. In order to trade in a security, a corporation must qualify the securities that will be issued to, and traded by, the public with the appropriate regulatory body (in most Canadian jurisdictions, this body is the Securities Commission) and comply with all the statutory rules and conditions imposed by the regulatory body. Issuers of securities who offer securities to the public (for example, a corporation whose shares are listed for trading on a Canadian stock exchange) as well as certain persons having close connections to the issuer ("insiders") must comply with all statutory laws and conditions imposed by the regulatory bodies that have jurisdiction over it. Failure to comply can lead to high monetary penalties and criminal conviction.

The process for becoming a publicly traded corporation (technically known as a "reporting issuer") is somewhat complex. In addition to retaining a registered dealer to underwrite the offering, the distribution of securities requires the preparation and filing of a prospectus with the applicable regulatory bodies. A prospectus is a comprehensive disclosure document which is intended to provide full, true, and plain disclosure of all material facts in respect of the securities offered by the corporation. It includes information about the corporation, a description of the share capital and the class of shares or other securities to be sold including their offering price. The prospectus must also contain historical audited financial statements of the issuer.

Canada currently does not have a single central securities regulator. Therefore, an issuer seeking to qualify its securities for sale to the public across Canada must file a prospectus with the thirteen provincial and territorial regulators. That said, there exists reciprocal accommodations between the various regulators such that the process is not as onerous as it might sound. Only once the prospectus has been filed and receipts have been issued for it by the regulatory body may the securities be sold to the public. In 2004, all provinces and territories (except Ontario) signed the Provincial/Territorial Memorandum of Understanding Regarding Securities Regulation (MOU), which established the passport system. The passport system enables market participants to clear a prospectus, obtain an exemption, or to register as a dealer or adviser by obtaining a decision from their province or territory and have it apply in all other jurisdictions.

The information contained in a prospectus must also be continually updated to remain accurate. Thus, "publicly offered" corporations or "public companies" are required to comply with the requirements for continuous disclosure. The continuous disclosure regime primarily deals with the publication and distribution of financial information on an ongoing basis and the preparation of informational documents in conjunction with meetings of shareholders. In addition, public companies are required, where a "material change" occurs in the affairs of a reporting issuer, to forthwith issue and file a news release authorized by a senior officer, disclosing the nature and substance of the change, and thereafter file a "material change report" within 10 days of the date on which the change occurred. A "material change" is a change in the business, operations or capital of a com-

pany that would reasonably be expected to have a significant effect on the market price or value of its securities or, a decision to implement such a change by the board of directors (or other persons acting in a similar capacity) who believe that confirmation of the decision by the board of directors (or other persons acting in a similar capacity) is probable.

Securities laws provide for exemptions whereby an issuer is not required to meet all the requirements demanded of a public corporation, and particularly the requirement that securities be qualified by prospectus. For example, most securities laws have an exemption for private corporations. This is known as the "private issuer" exemption in Ontario. In order to qualify for this exemption, a corporation must have the following characteristics:

> The constitutive documents of the corporation restrict the rights of shareholders to transfer their shares;
>
> the total number of shareholders of the corporation does not exceed 50, excluding current and employees of the company; and
>
> the securities of the corporation have only been issued to certain prescribed classes of persons, including:
>
> - Directors, officers, employees, founders or control persons of the issuer;
> - Certain immediate family members of a director, executive officer, founder or control person (or of a spouse of these persons);
> - Close personal friends or close business associates of a director, executive officer, founder or control person;
> - Current securityholders of the issuer; and
> - Accredited investors (described in more detail below).

If a corporation meets these qualifications it may issue shares to the prescribed groups of individuals mentioned above. Thus, most small to mid-size corporations are able to allow sales of treasury shares by meeting the above requirements (and not filing a prospectus).

There are a number of other exemptions available under Canadian securities laws, the most common of which is the "accredited investor" exemption. This exemption permits companies to raise any amount of investment at any time from any number of accredited investors who purchase securities for their own account. While there are many classes of accredited investors, the most commonly used are: (1) the class based on the net worth of the investor, under which the investor, either alone or with his or her spouse, has net financial assets (generally cash or securities but not real estate or non-financial personal property) with a value of over $1 million (Cdn.); or (2) individuals with net income (before tax) in each of the last two calendar years of over $200,000 (individually) or over $300,000 (with a spouse) and who in either case has a reasonable expectation of the same level in the current year; or (3) corporations, partnerships, limited partnerships or other entities with net assets of at least $5 million (Cdn.) as indicated on its most recently prepared financial statements.

Other commonly used exemptions are the "Family, Friends and Business Associates" exemption, which is available to close relatives, personal friends and business associates of the issuer's directors and officers, where the investor can demonstrate that they have a sufficiently close relationship to fall under the exemption, and the "Minimum Amount Exemption", which allows for the issuance of shares to investors who invest at least $150,000.

Taxes on Corporate Income

In Canada, corporations may be subject to both federal and provincial income taxes. Unlike individuals, which are subject to progressive tax rates, corporations are subject to flat rates of tax. The tax rate payable by a corporation depends on the type of corporation and the source of its income. The federal income tax payable by a corporation pursuant to the Income Tax Act (Canada) (the "Tax Act") is comprised of the basic federal corporate rate. Currently, there is no federal surtax: the 4% surtax was abolished as from 2008. The basic federal corporate rate is 38% minus a provincial abatement of 10%. However, this abatement only applies where a corporation earns income that is attributable to any province in Canada. In 2018, the basic federal rate after applying the provincial abatement is reduced to a net rate of 15%, but only on certain income, and excludes income earned from a personal service business or from a corporation that is, throughout the year, an investment corporation or a mutual fund corporation, as defined in the Tax Act. Financial institutions and insurance corporations with permanent establishments in Canada that have taxable capital employed in Canada in excess of $1 billion are subject to a capital tax at a single tax rate of 1.25%.

In Ontario, a provincial tax of 11.5% is imposed under the Corporations Tax Act (Ontario) on corporations carrying on business through a permanent establishment in the province. A corporation will have a permanent establishment in a province if it has a fixed place of business there. It may also have a permanent establishment in certain other circumstances, such as when it carries on business through an employee or agent, or uses substantial machinery or equipment in a province.

Corporate Residence

The application of Canadian income tax is based on a taxpayer's residence. Tax residency under the Tax Act is a question of fact and is established based on the location of the "central management and control" of the corporation. Moreover, the Tax Act provides for deeming rules whereby a corporation may be deemed resident in Canada. For instance, a Canadian subsidiary incorporated in Canada after April 26, 1965, or prior to that date if it carried on business or was resident in Canada at any time thereafter, is considered to be resident in Canada for tax purposes and is taxed in Canada on its world-wide income regardless of where such income is earned. The subsidiary is subject to Canadian federal income tax as well as provincial income tax in any province in which the company maintains a permanent establishment.

A non-resident corporation which carries on business in Canada is subject to Canadian income tax on the portion of its world-wide income earned in Canada. However, Canada has entered into numerous tax treaties which may affect the foregoing principle, for example by providing that the business profits of corporations resident in a treaty country are only subject to tax in Canada if they are attributable to a permanent establishment in Canada. The application of branch taxes is usually subject to modification in Canada's international tax agreements.

Other Taxes

Sales taxes

Sales taxes are imposed by federal legislation and also by all provincial governments with the exception of Alberta and the territories, which are the Northwest Territories, Nunavut and Yukon.

Since 1991, Canada has had a value-added sales tax on goods and services ("GST"), which is provided for in the Excise Tax Act (Canada). GST is imposed at a rate of 5% on the consideration paid in respect of virtually all goods and services provided in Canada. Generally, the tax is paid by the purchase of the good or service to the vendor, who collects the tax on behalf of the government. The vendor is entitled to claim a credit for the GST paid by the purchaser in respect of the GST paid by the vendor itself on goods or services acquired for the conduct of the vendor's commercial activity in Canada. The difference between the total amount collected by the vendor from its clients and the total amount paid by the vendor to it suppliers is remitted to the tax authorities. In the case of goods imported into Canada, the GST is paid to the taxing authority directly, based on the duty-paid value of the goods, with an off-setting credit available to a registered importer in respect of the GST paid, provided the goods are used by the importer for a commercial activity in Canada.

No GST is paid on basic groceries, prescription drugs, medical and educational services and residential rents.

Some provinces such as Ontario have chosen to harmonize their sales taxes with the GST, resulting in a combined sales tax referred to as the harmonized sales tax (the "HST"). For example, the HST is levied on supplies made in the province of Ontario at a rate of 13%, consisting of an 8% Ontario component and a 5% federal component.

Custom duties and excise taxes

Customs duties may vary depending on the category of goods and the place they were produced. Free trade agreements, such as the NAFTA and the recent United States-Mexico-Canada Agreement (USMCA) may either eliminate or reduce duties. Canada's Customs Tariff is based on the Harmonized Commodity Description and Coding System, developed by the World Customs Organization (WCO).

A federal value added tax (Goods and Services Tax (GST) is levied on the provision of some imports. The province of Quebec also levies a value added tax named Quebec Sales Tax (QST) on the provision of some imports into Quebec. The rules for the QST are in general harmonized with the GST, but the tax is managed individually by the province under its own statute. Note that in Quebec, the QST applies in addition to the GST.

Besides that, the provinces of British Columbia (BC), Saskatchewan (SK) and Manitoba (MB) applies the provincial sales tax (PST) over some imports into the respective province in addition to GST.

The Excise Tax Act (Canada) provides for excise taxes on numerous products imported into or manufactured in Canada. Some of these taxes are ad valorem, meaning that they are imposed on the value of the good such as cannabis, whereas other excise taxes are based upon quantity or volume, as in the case for beer, wine, spirits, and tobacco.

Branch income

It is possible for a foreign enterprise to do business in Canada without incorporating a company in Canada by operating through a "branch operation". In such case, the enterprise would be required to register as an extra-provincial corporation in Ontario and any other province in which it carries on business. Depending on the nature of the activities undertaken, such registration may be required even if the corporation does not have a permanent establishment for income tax purposes.

A non-resident corporation that carries on business in Canada is generally subject to corporate income tax at the same rates as similarly situated Canadian resident corporations (as discussed above). In addition a non-incorporated branch may also be subject to an additional 25% branch tax (subject to potential rate reduction under a bilateral tax treaty) imposed by the federal government. This tax is imposed on the portion of the branch's net after-tax Canadian income that is not re-invested in the Canadian business. This tax measure is intended to eliminate the more favourable tax treatment of branches relative to that of subsidiaries by effectively taking the place of the 25% withholding tax which is levied on dividends paid by a Canadian subsidiary to its non-resident parent. The branch tax may be more onerous though in that it is payable in the year in which income is earned regardless of whether the income is in fact distributed to the parent in that year. Withholding tax, on the other hand, is only payable when a dividend is paid, such that the tax can be postponed until actual payment.

Income determination

The Tax Act provides that a taxpayer's income from a business or property is the profit from that source for the taxation year. "Profit" is to be computed initially using applicable general commercial and accounting norms, but is subject to many specific adjustments under the Act.

Deductions

Generally, in order to be deductible, expenses must be incurred in the year for the purpose of gaining or producing income from business or property and they must be reasonable in the circumstances. In general, only current expenses are deductible in computing taxable income. Capital expenditures are not generally deductible, but an amount representing depreciation may be deducted pursuant to the capital cost allowance regime contained in the Tax Act and the Income Tax Regulations.

Inter-Corporate loans

Particular consideration should be given to loan transactions between a non-resident parent company and its Canadian subsidiary and to interest charged with respect to such loans. The Tax Act generally disallows the deduction of interest payable by a Canadian subsidiary on debts owed to specified non-resident persons, to the extent that the ratio of such debt to the subsidiary's equity exceeds 1.5:1. These so called Thin Capitalization Rules have been modified in recent years. Specifically, the determination of equity has been adjusted for the 1.5:1 ratio insofar as non-arm's length sales of shares by non-residents and any surplus that arose when the corporation was resident are no longer included in calculating the equity amount. This will potentially reduce the amount of interest that can be deducted from a corporation's capitalization.

A "specified non-resident" is any non-resident who owns, or is related to a person who owns either 25% or more of the voting shares of the Canadian-resident corporation, or 25% or more of the fair market value of all of the issued and outstanding shares of the capital stock of the corporation. Special rules apply to debts owed to partnerships of which the Canadian-resident corporation is a member and debts owed to non-resident corporations and trusts that carry on business in Canada.

Inter-Company dividends

Generally, dividends received by corporate shareholders are included in income but are deducted when calculating taxable income. This deduction prevents tax from being paid many times over on the same amount. Dividends will only be taxed in the hands of the ultimate shareholder who is an individual. However, this treatment is reserved to dividends paid by taxable Canadian corporations or by corporations residing in Canada which are controlled by the corporate shareholder. The Tax Act generally imposes a 25% withholding tax on dividends paid by a Canadian subsidiary to its non-resident shareholder, subject to potential rate reduction under a bilateral tax treaty.

Tax incentives

A Canadian-controlled private corporation ("CCPC") is entitled to claim a small business deduction on active business income (ABI) earned in Canada. A CCPC generally includes a private corporation resident in Canada that is not controlled by one or more non-residents and/or public corporations. The small business deduction is a reduced rate of tax that is available on active business income earned by a CCPC, but only on the first $500,000 of active business income. Such incentive is reduced on a declining basis when a CCPC's taxable capital reaches $10 million, and is eliminated when taxable capital reaches $15 million.

Generous tax incentives also exist to encourage investment in research and development activities. For example, a scientific research and experimental development investment tax credit is available on qualified capital and non-capital expenditures. This credit can reduce tax payable or even result in a tax refund. CCPCs may be eligible for the credit at a rate of 35% on the first $3 million dollars of annual eligible expenditures and 15% thereafter. Other Canadian companies are eligible for a 15% credit. To be eligible, the research and development activities must be carried on in Canada. To claim the credit, the taxpayer will require extensive supporting documentation meticulously showing the various steps, results and conclusions achieved in order to prove that a scientific advancement has taken place.

Moreover there are planned changes towards the taxation regime surrounding exercised stock options starting January 1, 2020. Initially, the Tax Act permitted a 50 percent deduction for employees towards the net gain resulting from the difference in market value between the grant and exercise of stock options. Under the prospective changes, this capital gain-like deduction will be capped at the first $200 000 of exercised stock options per year. There are planned exemptions to this change. Employees from CCPCs and other non-CCPCs classified as start-up, emerging, or scale-up companies are exempt and can enjoy the preexisting deduction available towards all exercised stock option gains. It has not been specifically determined how the exception applies to non-CCPCs or who may fall under this exception, as such companies are not clearly defined. Nevertheless, the upcoming changes will mainly target employees of larger non-CCPCs outside of the planned exemptions.

Withholding Taxes

Canada imposes withholding tax at the rate of 25% (reduced by most bilateral tax treaties) on various types of "passive" income received by non-residents from Canadian sources. Withholding tax applies to, among others, management or administration fees, interests, dividends, rents and royalties paid by a resident of Canada to a non-resident. There are certain circumstances where a non-resident may be deemed by the Tax Act to be resident in Canada and thus subject to withholding tax on payments made by it to another non-resident.

The Canadian tax system is a self reporting and self assessing system which imposes the obligation on individuals, corporations and trusts to file an income tax return on all taxable amounts for the preceding fiscal year. Individuals are required to file their tax returns each year by April 30, or by June 15 if the individual received business income. Corporations are required to file their income tax returns within six (6) months of their fiscal year-end.

Income tax in Ontario is administered federally; therefore a separate provincial income tax return is not required.

The Tax Act confers upon the Minister of National Revenue a number of powers such as that to require persons to provide information to facilitate the administration or enforcement of the legislation. Typically, the Minister can use special execution measures and enjoys super-priorities vis-à-vis other creditors of a taxpayer who is in default of the Tax Act. The Minister of National Revenue has a duty to examine a taxpayer's income tax return in order to determine whether or not there is applicable tax, interest or penalties due. A notice of assessment is then sent confirming the amount of tax owing or the amount of the tax refund due to the taxpayer. In the absence of fraud or misrepresentation attributable to neglect, carelessness or wilful default, the Minister of National Revenue may not reassess (issue a revised assessment) after three years (or four years in certain cases) has passed since the original notice of assessment was mailed.

Classes or types of Contracts

There are 2 main types of employment contracts: the individual contract of employment and the collective agreement. The individual contract of employment is between an employer and an individual. It is the result of either a written agreement setting out all the terms of employment or it can stem from oral representations between the parties. The individual contract of employment is often a combination of oral and written terms.

The collective agreement is defined in the Canada Labour Code as an agreement in writing entered into between an employer and bargaining agent acting on behalf of the employees (most commonly a union) containing provisions respecting terms and conditions of employment and related matters.

Employment regulations

In Ontario, the applicable regulations in the context of employment and labour law are the regulations under the *Employment Standards Act* and the Ontario *Labour Relations Act.* At the federal level, the applicable regulations are under the *Canada Labour Code.*

Cost of dismissal and wrongful dismissal

An employer generally has the right to dismiss an employee at any time if it has just cause to do so. However, it must at all times respect the contract of employment and applicable legislation. In Ontario, Sections 57 and 58 of the Ontario *Employment Standards Act* in particular, must be considered when determining when and how to dismiss an employee. These provisions provide minimum entitlements to employees with respect to the amount of notice of termination which they are owed. The minimum notice entitlements are based on the employee's length of service with the employer as an employee. For example, if an individual has been an employee for between 6 and 7

years, the employer is required to give at least 6 weeks of notice before termination. It should be noted that absent a provision in the employment agreement specifically stating otherwise, these minimum notice periods do not prevent an employee from seeking a more substantial notice period at common law. Employers are able to increase the notice entitlements to their employees by contract, but will at all times be bound by the minimum standards regardless of the terms of the employment agreement.

What constitutes "reasonable notice" at common law will vary depending on the circumstances of each case. When determining whether the employee was given reasonable notice, courts will usually be more generous than the statutory minimums provide, and will consider factors such as (1) the availability of similar employment; (2) the age of the employee; (3) the length of service of the employee; and (4) the experience and qualifications of the employee. For example, an older employee who occupies a high ranked position in a company is generally entitled to a longer period of notice than a young clerical worker as it is expected that more time will be required for them to find replacement employment.

In any event, an employer also has the option of paying an employee wages in lieu of notice. The amount of wages that must be paid is determined by calculating what the employee would have been paid during the notice period to which they would have been entitled. The employee, for his or her part, has a duty to mitigate his or her losses, by taking reasonable steps to find alternate employment upon being given notice of termination.

Special Regime for employment Contracts for Directors

In Ontario directors are excluded from the protections offered by both the *Labour Relations Act,* which governs collective bargaining, and the *Employment Standards Act* which establishes minimum standards for employees in the employment relationship.

Employees' representatives and Union Representation

Historically, trade unions emerged out of unacceptable employment practices. They have been the response to the inequality in bargaining power that traditionally exists between an employer and its employees. As a result, unions have enabled workers across the country to establish acceptable work conditions and employment contracts that better reflect the values and needs of employees. In a unionized context, the individual contract of employment is replaced by the collective agreement.

In Ontario, the *Labour Relations Act* defines a trade union as "an organization of employees formed for purposes that include the regulation of relations between employees and employers and includes a provincial, national, or international trade union, a certified council of trade unions and a designated or certified employee bargaining agency."

In order for a union to represent its members' interests, it must be certified pursuant to the Ontario *Labour Relations Act.* The certification process has several steps which include: (1) Delivery of an application for certification by the union; (2) Service of the application on the employer and filing with the Ontario Labour Relations Board; (3) Delivery of a response to the application by the employer; (4) Service of the employer's response on the union and filing at the Ontario Labour Relations Board; (5) Selection of a date for a certification vote by the Ontario Labour Relations Board; (6) the certification vote; and (7) Delivery of a copy of the vote decision to the employer and the union by the Ontario Labour Relations Board. If a majority of the employees vote for union representation, the union will be certified to represent their interests.

Once certification is complete, the employer will be forced to deal with the union, as opposed to individual employees. Accordingly, the union has the responsibility of looking after the employees' interests.

Wages

In Ontario, employees may be paid based on an hourly rate, a fixed salary, a fluctuating salary, commission, or a piecework rate basis.

The minimum wage is governed by the *Employment Standards Act,* which has established the general minimum wage in Ontario $14.00 per hour as of October 1, 2019. However, there are other minimum wage rates that apply to certain individuals such as students under 18 years of age, employees who serve liquor as part of their regular work, hunting or fishing guides and homeworkers.

Employers must pay their employees overtime pay equal to at least one-and-one-half times their regular rate of pay for each overtime hour worked in excess of 44 hours in a given week. It is possible to set a different weekly threshold or to agree to average the number of hours worked across a certain number of weeks provided such arrangement is agreed to by the employer and employee and approved by the Director of Employment Standards.

Since January 1, 2019, employers are required to pay their employees for a minimum number of hours worked in certain circumstances. Specifically, if an employee regularly works more than 3 hours per day, but is provided with less than 3 hours' work on a given day, that employee is entitled to 3 hours' wages for that day. Furthermore, if an employer cancels a shift of an employee with less than 48 hours' notice, the employee is entitled to be paid 3 hours' wages for the cancelled shift. Finally, all on-call workers must be paid a minimum of 3 hours' wages for each 24-hour period in which they are required to be on-call, regardless of whether they actually work during those periods. These requirements will not apply in cases of extreme weather, power outages and similar circumstances outside of the employers' control.

Part-time, contract, temporary and seasonal workers are entitled to the same pay rate as full-time employees that perform substantially similar work, however there are exceptions to this rule which take into account seniority, quality of work and other objective factors. Employees may request a review of their pay if they suspect that they are being underpaid compared to other employees performing similar tasks. If a discrepancy is found in the review, the employer will be obligated to adjust the employee's pay or issue a written response stating the basis for the employer's objection to such adjustment. Following a wage review the employer is prohibited from reducing the higher-paid employee's wages to make both employees' pay consistent.

Vacation

In Ontario, employers are required to provide their employees with a minimum amount of paid vacation which varies based on seniority. Employees who have worked less than 5 years with an employer are entitled to 2 weeks' vacation and employees who have worked for an employer for 5 years or more are entitled to 3 weeks' vacation.

Federal employees

Under the *Budget Implementation Act,* 2017 and the *Budget Implementation Act,* 2018, there are numerous amendments to federal labour standards, which regulates the relationship between federally regulated employers and employees.

Federally regulated employers must provide 24 hours written notice of changes to a work shift and 96 hours of notice for changes to a work schedule. Employees have the right to refuse overtime to

carry out responsibilities to the health or care of a family member or to the education of a family member younger than 18 years old. Employees may also take unpaid breaks for medical or nursing reasons.

After six months of continuous work, non-unionized employees have the right to request from their employer changes to their work schedule, location, hours, and other employment terms, whereas the employer may only refuse such a request on reasonable grounds such as it having overly burdensome costs to the business, or an excessively detrimental effect on the quality or quantity of the work provided.

There are also new allotments for leaves of absence, which include leave for:

> traditional indigenous practice (five days per calendar year),
> personal leave (five days, three paid),
> family violence (five paid days per year after 3 months of continuous employment),
> jury duty (as long as required),
> mandated by health care practitioner (instead of qualified medical professional),
> bereavement (2 extra days unpaid in addition to the pre-existing 3 paid),
> reduction in reservist leave (reduced by three months),
> medical leave (up to 17 weeks)

Vacation entitlements can be interrupted or postponed in favour of another form of leave of absence. In addition, employees are entitled to varying levels of holiday pay regardless of the length of their employment.

Social Security

The Canada Pension Plan ("CPP") is an earnings-related insurance plan to which every Canadian over the age of 18 who earns a salary must contribute unless they fall into one of the exceptions. There are 3 main types of CPP payments: (1) disability benefits; (2) retirement pension; and (3) survivor benefits.

Employment Insurance ("EI") is a system that was established to provide temporary financial assistance to unemployed Canadians while they search for new employment or while they enhance their skills.

The amount that an employee will contribute to his or her CPP varies depending on his or her salary. The maximum pensionable earnings for 2019 is set at $57,400 and there is a minimum level, which has been frozen to $3,500. The maximum contribution for an employee in 2019 is set at a rate of 5.1% of contributory wages and salaries. An employee's maximum contribution to the plan in 2019 is set at $2,748.90. Self-employed workers must also contribute to their CPP. The maximum contribution for 2019 is set at a rate of 9.9% of contributory self-employed earnings.

Although the rate of pay is higher when an employee works overtime, EI still applies at the employee's regular rate of pay. Meaning, every hour of overtime worked is the equivalent of 1 hour of insurable employment.

An employer's maximum CPP contribution for 2019 is set at 5.1% of contributory wages and salaries. An employer's EI rate for 2019 is set at 1.62% with maximum insurable earnings of $53,100.

Health and Safety

In Ontario, Health and Safety in the workplace is regulated under the *Occupational Health and Safety Act,* the *Workplace Safety and Insurance Act* and the regulations enacted thereunder. Employers have a general duty to take every precaution reasonable in the circumstances for the protection of their workers. This duty includes an obligation to provide a safe work environment, to educate and train workers in their workplace, and in some circumstances to provide workers with written instructions in respect of their workplace obligations. Employers must have a written occupational health and safety policy, which must be reviewed annually and posted in the workplace in a conspicuous location. Employers must also appoint health and safety representatives in the workplace and assist them with establishing an occupational health service.

Employers must also post a copy of the *Occupational Health and Safety Act* and materials explaining the Act in a conspicuous location in the workplace in English and also in the majority language of the workplace. Employers have a duty to appoint competent supervisors and to employ workers of legal age, which varies from 14 to 18 depending on the industry. Lastly, employers have a duty to keep records of biological, chemical and physical agents in the workplace and the handling, storage, use and disposal of these agents.

Contracting and Outsourcing

Individuals and organizations will commonly structure their working relationship such that the individual provides services as an independent contractor, either personally or through a company, rather than as an employee. Under this arrangement both parties can realize certain benefits such as exemptions to employment standards legislation and requirements related to collecting and remitting statutory deductions from employee pay. It should be noted however that under recently enacted legislation, employers who misclassify employees as independent contractors may be subject to fines and prosecution. Misclassifying employees in this way could can also pose other risks, such as liability for unremitted income tax.

In order to determine whether a person is an employee or an independent contractor, the court will evaluate the parties' relationship by considering a number of factors such as: (1) the degree or absence of control, exercised by the alleged employer; (2) the ownership of the tools; (3) the chance of profit or loss; and (4) the integration of the alleged employee's work into the alleged employer's business. For example, a person would be considered an employee if the employer exercises a high degree of control such as determining his or her work hours, if the employer owns the tools with which the employee accomplishes his or her work, if the employee has no chance of profit or loss and if the employee's work is an integral part of the employer's business such as a window installer for a windows and doors business.

With the gradual implementation of the *Canada Europe Trade Agreement* ("CETA", there has been a reduction or elimination of residency requirements between Europe and Canada for certain groups of workers, leading to increased cohesion and integration of European and Canadian labour markets.

In this vein, CETA is aimed at four categories of workers:

> key personnel, including intra-corporate transferees, investors, senior personnel, graduate trainees and business visitors for investment purposes;
> contractual service suppliers;
> independent professionals; and
> short-term business visitors.

In order to reflect these changes, there are new Labour Market Impact Assessment (LMIA) exemptions, which have been expanded to facilitate the provision of work permits or reduce the need for them. In addition, certain workers can stay in Canada for a period of up to three years with additional opportunities to extend this length.

Despite these changes, CETA does not go so far as to address individuals seeking permanent integration into the Canadian labour market.

Workplace harassment and violence

To tackle the issue of workplace harassment and violence, the federal government has modernized the Canada Labour Code with An *Act to amend the Canada Labour Code (harassment and violence), the Parliamentary Employment and Staff Relations Act and the Budget Implementation Act, 2017,* also known as Bill C65.

Bill C65's Regulations modify the workplace violence and harassment requirements within Canada for federal workers only. The definitions of harassment and violence have been broadened by C65 to include "any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee."

Most of C65's additional requirements mandate employers to provide information and access to resources and support services to employees related to harassment and violence. Through these changes, employers must provide training and resources to their employees related to harassment and violence. In addition, the requirements mandate an organized complaint investigation and resolution process to aid victims of workplace violence or harassment.

As for the remaining Canadian workforce left uncovered by C65, there is a gradual rollout of provincial workplace anti-harassment legislation. To illustrate, planned Ontario Bill 111 seeks to amend the *Occupational Health and Safety Act* to protect Ontario's workers and victims of harassment from discipline, dismissal or other forms of reprisal that stem from them pursuing harassment claims or invoking their rights under the Act.

Provincial and federal legislation overall indicates a trend to help ensure workplaces are more inclusive and safe environments free from harassment, violence, or any other abuse.

Investment Canada Act

The *Investment Canada Act* provides that if a nonCanadian person or entity proposes to establish a business in Canada which is either:

> unrelated to any other business being carried on in Canada by that nonCanadian, or
>
> is a related business but is one which falls within a business activity related to Canada's cultural heritage or national identity that has been prescribed by the Government of Canada,

then a notice of establishment of business must be filed with Industry Canada.

The stated purpose of the Act is to encourage investment in Canada which contributes to economic growth and employment opportunities and to provide for the review of significant investments in Canada by non-Canadians in order to ensure that such investments benefit Canada.

Notification of the establishment of the business to Industry Canada involves disclosure of information about the nonCanadian investor and the business.

If the new business involves an activity relating to Canada's heritage or national identity, the establishment of the business can be made reviewable by the Government of Canada after notice of the new business has been filed. In such case an event, the nonCanadian will be required to file an application for review with Industry Canada and to demonstrate that the business will be of net benefit to Canada before being allowed to commence business activities.

If a nonCanadian person or entity wishes to acquire an existing Canadian business by way of a direct or indirect acquisition, the Investment Canada Act requires that either a notice or an application for review be filed depending on the manner of acquisition and whether the value of the business being acquired exceeds the prescribed review threshold.

The Investment Canada Act sets out factors to be considered when determining whether net benefit to Canada has been demonstrated. Considerations include the effect of the investment on the level of economic activity in Canada; the degree and significance of participation by Canadians in the business; the effect of the investment on productivity, industrial efficiency, technological development, product innovation and product variety in Canada; the effect of the investment on competition within any industry or industries in Canada; the compatibility of the investment with national industrial, economic and cultural policy objectives as enunciated by the federal or provin-

cial governments; and the contribution of the investment to Canada's ability to compete in world markets. This list is by no means exhaustive, and the circumstances of each investment will result in varying weights being attributed to each factor.

Bill S-257 is currently at the first reading stages in the Senate and would amend the Investment Canada Act by implementing a mandatory national security review process any time a foreign investment is proposed by a state-owned enterprise. Previously, these security reviews were predominately discretionary.

Alongside these prospective rule revisions are revised thresholds that will trigger the necessity for review. Where the investor is a non-state-owned enterprise, or "trade agreement investor", the threshold for reviews is increased to $1 568 000 000. For WTO investors that are not state-owned enterprises or non-WTO investors that are not state-owned enterprises that are "controlled by a WTO investor", the new threshold is $1 045 000 000. The threshold for acquisitions of Canadian companies by non-Canadian WTO investors which are state-owned is increased to $416 000 000 in the value of assets.

Left untouched was the review threshold for an investor that is not a "WTO investor" (as defined in the Act), which stands at $5,000,000 in asset value for direct acquisitions of Canadian businesses and $50,000,000 in asset value for indirect acquisitions.

All acquisitions involving assets in excess of the thresholds set out above are reviewable transactions. Advice should be obtained prior to entering into any acquisition transaction so that the specific threshold applicable to the target business can be determined.

In the case of reviewable transactions, the non-Canadian person or entity is required to file an application for review with Industry Canada and to demonstrate that the acquisition of the Canadian business will be of net benefit to Canada.

The Investment Canada Act also imposes time limits to ensure the prompt review of applications for review and the issuance of decisions. Noncompliance with the Investment Canada Act can lead to the imposition of civil and criminal penalties.

Competition Act

All businesses operating in Canada are subject to the provisions of the *Competition Act,* which is Canada's antitrust legislation. The Act envisages the categorization of various anticompetitive practices into criminal law prohibitions and civil law matters. Included in the criminal law regime are fraudulent and deceitful practices such as bidrigging, conspiracy relating to professional sport, pyramid selling, and making false or misleading representations. Included in the civil law regime are matters that although not criminal, could potentially impact on competition in the marketplace are therefore undesirable as a matter of public policy. These include provisions relating to price maintenance, refusal to deal, consignment selling, exclusive dealing, tied selling, abuse of dominance (monopoly laws), refusal to supply by a foreign supplier, and enforcement of foreign judgments, laws and directives.

It is to be noted that the last of these matters is of particular relevance to a branch operation in Canada. The Competition Tribunal has the power to forbid the implementation by a Canadian company of a foreign court order or foreign law purporting to direct the conduct of a Canadian company or Canadian subsidiary of a foreign company, if such implementation will have an adverse effect on competition, trade or industry in Canada. Any directive issued by a parent to a branch or subsidiary can be similarly impugned if its effect on Canadian competition, trade or industry is likely to be adverse.

The Commissioner of Competition is responsible for the administration and enforcement of the *Competition Act.* The Competition Tribunal, in effect a civil court, is responsible for adjudicating civil law competition matters and issuing appropriate remedial orders. The legislation permits the Tribunal to issue consent orders agreed to by the Commissioner and the parties against whom the order is to be directed.

Foreign purchasers of a Canadian company may be subject to examination by the Commissioner of Competition in respect of the competitive effects of the transaction. While all merger and

acquisition transactions in Canada are technically subject to examination by the Commissioner of Competition, compared to other jurisdictions, competition review is relatively infrequent. The overarching consideration in these analyses is whether or not the transaction is likely to lessen competition substantially in the market, although the relevant market will vary in type and in scope from one transaction to the next. In most circumstances, particularly in small transactions, no such review will take place. However, the *Competition Act* includes certain thresholds that if met, make a transaction notifiable, and require the parties thereto to proactively disclose certain information to the Competition Commissioner, such as a description of the proposed transaction, a copy of each legal document that is to be used to implement the proposed transaction, and information about the parties involved.

Where the Competition Tribunal determines that a merger or proposed merger is likely to prevent or lessen competition in the relevant market it can make an order to dissolve a completed merger, to dispose of certain assets or shares, or prevent a proposed merger in whole or in part. Often, to avoid any uncertainty regarding whether their proposed merger will be considered to have an adverse effect on competition, parties to large merger or acquisition transactions will seek an advance ruling certificate from the Competition Commissioner before entering into the transaction, which states that the Commissioner is satisfied that the particular transaction will not adversely affect competition and that the transaction will not be challenged if it is substantially completed within one year of the certificate's issuance.

Changes to the *Competition Act* have widened its scope to include not only corporations, partnerships, sole proprietorships, and trusts, but also unincorporated organizations capable of conducting business, which all fall under the hyperonym "entities".

Trade Legislation

Imports to Canada are subject to the provisions of a variety of statutes including the *Customs Act, Customs Tariff, Special Import Measures Act, Export and Import Permits Act and the Excise Tax Act.*

The *Customs Act* sets out the administration of the *Customs Tariff,* which lists the tariff items and duty rates applicable to goods imported into Canada.

The *Export and Import Permits Act* requires import permits for a range of commodities listed in the Import Control List, which includes many agricultural and textile products as well as many chemicals, firearms and other weapons. There is also an Export Control List which requires permits for exports of a few prescribed items from Canada. These include many advanced technological goods and weapons which may be of strategic value.

Canada's antidumping and countervailing duty laws are contained in the *Special Import Measures Act.* The Act provides Canadian industries with recourse to antidumping and countervailing duties in the event they are being materially injured from goods that are dumped into Canada or benefit from goods that are subsidized by foreign governments.

When goods are imported into Canada, excise tax may be payable by the importer at the time the goods are imported. Excise taxes are charged on fuel-inefficient vehicles, automobile air conditioners and certain petroleum products, and the amount of excise tax payable by importers is set out in the Excise Tax Act.

The previously in-force Canada-U.S. *Free Trade Agreement* (the "FTA") which was signed in 1988 had an enormous impact on Canada's trade laws vis-à-vis the United States. Several industry sectors, including energy, agriculture, transportation and automotive products, have seen a continuing liberalization of rules pertaining to cross-border trade since it was first signed. This trend has continued under the *North American Free Trade Agreement* ("NAFTA"), which came into force on January 1, 1994. On September 30, 2018, Canada and the United States announced that, together

with Mexico, it had agreed to a new trilateral agreement, simply called the *United-States-Mexico-Canada Agreement* ("USMCA"). By and large, its contents are very similar to those of NAFTA. However, Canada has removed itself from the obligations tied to one of NAFTA's three investor state dispute settlement mechanisms, known as Chapter 11. Chapter 11 was the most controversial of the mechanisms as it permitted multinational corporations to sue participating governments over allegedly discriminatory government policies. Canada was often disadvantaged by this system and, because of Canada's withdrawal, Chapter 11 no longer applies in Canada

The key feature of NAFTA/USMCA is the elimination of duties and certain other restrictions on substantially all trade in goods among Canada, the U.S. and Mexico. The NAFTA/USMCA did not affect the phase-out of tariffs which had been agreed upon under the FTA. The phase-out of FTA tariffs was completed on January 1, 1998 and, as a result, tariffs on trade between Canada, Mexico, and the United States for all eligible goods were eliminated.

Also, the Canadian, American and Mexican regimes pertaining to dumping, subsidies and related trade disputes are subject to a dispute resolution mechanism under the NAFTA/USMCA. Where a private party notifies its government that it would like to seek binational panel review of an anti-dumping or countervailing duty order, the government concerned is required to initiate proceedings on its behalf.

Canada has recently signed two other significant international trade agreements, including the *Trans-Pacific Partnership* ("TPP") and the *Comprehensive Economic and Trade Agreement* ("CETA").

TPP is a comprehensive trade agreement between Canada and various other countries in Asia, Oceania, and the Americas. TPP addresses issues such as trade barriers, environmental protection, intellectual property and labour standards. In order to pave the way for the implementation of the Trans-Pacific Partnership, Bill C-79, which was assented to on October 25, 2018, amended particular Canadian legislation to bring them in conformity with TPP. Specifically, the Export and Import Permits Act, Financial Administration Act, Trade-Marks Act, Customs Act, Commercial Arbitration Act, Canadian International Trade Tribunal Act, Customs Tariff Act, and Investment Canada Act now include references to TPP within their frameworks.

CETA is a free-trade agreement between Canada and the European Union which was signed on October 30, 2016 and approved by the European Parliament on February 15, 2017. The Agreement has not yet formally come into force, but when it does it is expected to, among other things, CETA's goal is the elimination of 98% of the tariffs between Canada and the European Union and the provision of stricter enforcement of intellectual property rights. Notwithstanding the foregoing, CETA provisionally applies since September 21, 2017, with the vast majority of its provisions already taking effect.

Canadian immigration requirements for business people

General requirement

Canadian immigration law imposes certain requirements on foreign nationals wishing to work in Canada. These requirements are of particular interest to corporations that wish to transfer personnel to their Canadian branch or subsidiary or those who cannot fill roles locally and want to recruit from outside Canada.

Foreign nationals who are to be temporarily employed in Canada must apply through a Canadian government visa office abroad for a Work Permit, or, alternatively, if they do not need Temporary Resident Visas to enter Canada, at the Canadian border or port of entry. In order to obtain the permit, the Canadian employer must usually apply to Service Canada for a Labour Market Impact Assessment (LMIA). For the application to be approved, officials at that office must make a determination that the individual's admission to Canada will not adversely affect the employment

opportunities of Canadian residents and that there is a shortage of suitable Canadian citizens or permanent residents available to fill the position.

Special provisions permit non-Canadians to work in Canada without first obtaining a LMIA from Service Canada, in some exceptional circumstances. Most commonly, the LMIA requirements may be waived in the case of intra-corporate transfers where an employee of a corporation located outside Canada seeks to enter Canada to work in the corporation's Canadian branch or subsidiary at a senior managerial level or a "specialized knowledge" level for a temporary period. In such cases, the company must prove that the employee has worked for the related company abroad for one year in the last three, that the companies have a qualifying relationship and that the employee's role is senior managerial in nature or requires specialized knowledge not readily available locally.

Where an individual's employment will involve a permanent transfer to Canada, he or she should make an application for permanent residence in Canada, usually after arriving in Canada on a work permit. Applicants are assessed under a point system which allocates points based on various selection factors. The selection factors include education, age, knowledge of English or French, work experience in Canada and abroad, job offers, siblings in Canada, etc. These factors combine to create a "CRA" score which Immigration, Refugees and Citizenship Canada ("IRCC") uses to issue "invitations" to apply for permanent residence. The applicant must also meet the criteria for one of the "classes": the Federal Skilled Worker, Canadian Experience or Provincial Nominee classes.

There are special rules for individuals who apply for permanent residence as "self-employed" persons. This category applies to individuals who demonstrate the ability and intent to establish a business that would make a positive contribution to specified economic activities (cultural activities, athletics or farm management) in Canada. Each province also operates a "Provincial Nominee" program which grants access to permanent residence based on criteria that differ slightly from the federal programs.

Persons admitted to Canada under any of the categories may include in their application members of their immediate families. Immediate family members include the spouse and dependent children – generally those under the age of 22.

Spouses of foreign workers

The spouses of some foreign workers are entitled to work in Canada on "open" work permits. In order for a spouse to be able to work, the principal spouse must be working in a managerial, technical or highly-skilled occupation and have a work permit issued for six (6) months or more. These occupations are listed in a schedule published by the government of Canada.

Work permit exemptions under global skills strategy

In June 2017 IRCC announced provisions allowing highly skilled workers and researchers to enter Canada to work, exempt from the need for a work permit. Qualifying workers may only work in Canada for 15 days every 6 months or for a 30 day period every 12 months. Researchers may come to Canada for 120 days every 12 months.

North America free trade agreement

On September 30, 2018, Canada agreed to replace the existing *North American Free Trade Agreement* (NAFTA) with a new agreement which will bear the name *United States-Mexico-Canada Agreement* (USMCA). *The North American Free Trade Agreement* ("NAFTA") establishes a special regime for temporary entry of business persons and workers who are citizens of either the U.S. or Mexico and remains unchanged in the USMCA. Temporary business visitors are classified under the NAFTA/USMCA into four categories:

business visitors;

traders and investors;

professionals;

intra-company transferees.

The NAFTA/USMCA grants temporary entry with relaxed rules or LMIA exemptions to qualifying U.S. or Mexican nationals.

Business visitors

Business visitors are persons who intend to enter Canada for a temporary period of time equaling six (6) months or less for the purpose of performing certain occupational and business functions and who do not need work permits. Business visitors must not be involved in any hands-on or productive work in Canada other than those who qualify to provide after-sales services for industrial equipment/software sold to a Canadian company by a foreign entity.

Traders and Investors

The "Traders and Investors" classification covers business persons seeking to:

- carry on substantial trade in goods and services principally between the territory of the Party of which the business person is a citizen and the territory of the Party into which entry is sought; or
- establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital, in a capacity that is supervisory, executive or involves essential skills. Work permits are required but they are LMIA exempt.

Professionals

Professionals identified under the Agreement may obtain work permits exempt from LMIA. The professionals included in this classification extend beyond occupations traditionally recognized as professions to include such occupations as hotel managers, technical publication writers, and management consultants. In some instances, minimum academic or work experience is specified, and the professional activity that may be carried out in Canada is sometimes limited. For example, a U.S. or Mexican physician may only be involved in teaching or research in Canada, and not the active practice of clinical medicine.

A work permit valid initially for one to three years will be issued by Canadian immigration officials either at a Canadian consulate or at the port of entry into Canada. The U.S. or Mexican citizen must have documentary evidence of his or her education and professional qualifications as well as documentation verifying the work they will be doing in Canada for a Canadian employer or customer/client.

Intra-company Transferees

As discussed, Canadian immigration policies currently permit the issuance of work permits to senior managerial staff or specialized knowledge workers on an intra-company transfer work permit basis, LMIA exempt. Work permits can be obtained either at the border (including airports) or at a Canadian embassy or consulate ahead of time. Employees must be currently employed by and have worked for the related company abroad for one year in the preceding three. The company in Canada and the company abroad must also have a "qualifying" relationship.

Other free trade agreements

Canada has also entered into agreements, similar in some aspects to the NAFTA (and USMCA), with Chile ("CCFTA"), Peru (Canada-Peru FTA) and Colombia (Canada-Colombia FTA) and has limited immigration reciprocal arrangements under the General Agreement on Trade in Services ("GATS") as well. Canada has recently entered into an agreement with the European Union (The Canada-European Union Comprehensive Economic and Trade Agreement) ("CETA"). The agreement addresses the liberalization of cross-market "services" and does so in a number of ways including relaxed entry provisions for business visitors and sector-specific provisions for telecom and e-commerce services providers. In particular, CETA has reduced LMIA restrictions between Canada and Europe in relation to key personnel, contractual service suppliers, independent professionals and short-term business visitors. The Temporary Entry and Stay chapter focuses on reducing barriers (such as LMIA). The chapter discusses, as in the NAFTA/USMCA, the provisions for business visitors, intra-corporate transferees, investors, contract services suppliers and independent professionals (including a long list of professionals and some technicians).

Canada's evolving cannabis industry

Since the Canadian legalization of cannabis and cannabis products in 2018, cannabis has become one of Canada's fastest-growing industries. The Cannabis Act provided a framework for the control of the production, distribution, sale and possession of cannabis across Canada. However, The Cannabis Act prohibits any company from exporting or importing cannabis for any non-medical or non-scientific purposes.

In order to grow commercial cannabis, process cannabis, sell cannabis for medical purposes, conduct tests or research on cannabis, a license is required from Health Canada, which is responsible for regulating producers of cannabis. Cultivators and processors of cannabis also require a cannabis license and approval from the Canada Revenue Agency.

If one wants to sell cannabis for non-medical purposes, then they must adhere to provincial or territorial licensing regimes and legislation.

The Alcohol and Gaming Commission of Ontario is the only licensing authority for retail cannabis stores and allots retail licenses through a lottery system. In order to open up a retail cannabis store, one needs a Retail Operator License, Retail Store Authorization, and a Cannabis Retail Manager License. To meet the minimum requirements, the applicant must be at least 19 years old, financially responsible, and have no charges or convictions under the Cannabis License Act or ties to criminal organizations.

This is but a brief overview of the legislative regime surrounding all aspects of the cannabis industry. Any individual or group seeking to get involved in this rapidly growing field should consult relevant federal or provincial requirements for cannabis cultivation, processing, researching, or retail.

Types of Ownership

There are two usual forms of concurrent ownership: joint tenancy and tenancy in common. To create joint tenancy four so-called unities must be established, which together describe the need for near perfect equality between or among the joint tenants. Each joint tenant must be equal in nature, extent and duration (unity of interest); their interests must arise from the same instrument or act (unity of title); their interests must arise at the same time (unity of time); and their rights must relate to the same piece of property (unity of possession). The underlying notion is that in a joint tenancy there is effectively only one owner rather than joint tenants holding distinct shares. The most important trait of a joint tenancy is the right of survivorship, the *jus accrescendi.* Essentially, once a joint tenant dies, his or her interest is extinguished. In a joint tenancy, survivorship occurs automatically, by operation of law and therefore is an alternative to a transfer by last will and testament.

For a tenancy in common to exist, unity of possession must exist; however, any of the three other unities may not be present. For instance, there may not be a unity of interest if one-third of the interest in the property belongs to A and two-thirds belong to B. Unity of possession nevertheless remains intact as the individual shares remain undivided during the length of the relationship. There is no right to survivorship under a tenancy in common meaning, when a tenant in common dies, their interest in the property is divided among their heirs, by will or according to the law of intestacy.

If all four unities are present, the question of whether ownership is joint tenancy or tenancy in common will depend on the intention of the predecessor in title or of the tenants themselves. When there is no reference to either form, there is a presumption that the grantor intended to convey the property as a joint tenancy. However, the courts have shown a tendency to favour the tenancy in common. With the result that even the slightest indication by the grantor to create a tenancy in common will rebut this presumption and result in a tenancy in common. The court will determine whether there are any words of severance such as “equally amongst them” “respectively”, “between”, “each” or similar words or phrases which would indicate an intention to create distinct shares of the property. However, in a number of jurisdictions, including Ontario, this debate is now moot as property and conveyancing legislation has been enacted imposing a statutory presumption of tenancy in common.

Land registration system in Ontario

Land registration systems provide a uniform method of tracking instruments that create or dispose of interests in land and other instruments that affect the use of land. They serve the very important purpose of providing notice to the public about the various interests that individuals or other entities have in a piece of land. There are two such land registry systems in Ontario: the registry system, governed by the *Registry Act,* and the land titles system, governed by the *Land Titles Act.* The key difference between the two is that under the land registry system title to property is based on and evidenced by a set of historical legal instruments which have been deposited on title, key among them being one or more deeds. Under the land titles system on the other hand, each parcel of land is represented by a parcel register, which serves as the primary legal document on which title is based. The parcel register is a document in a prescribed form which provides a legal description, ownership information, and a history of transfers, easements, charges and other events which affect title. The parcel register under the Land Titles system is a document whose content is verified by the government of Ontario and which, subject to certain qualifications, can be relied upon as accurate. In recent years the government of Ontario has embarked on a project to convert all real property parcels to the Land Titles system, and at present nearly all real property in Ontario has been converted to the Land Titles system.

Leasehold types

A lease has been defined as a demise of land that confers exclusive occupation by a landlord to a tenant. There are five types of leases: (1) fixed term; (2) periodic tenancy; (3) tenancy at will; (4) tenancy at sufferance; and (5) perpetual lease. A fixed term lease is a lease that is for a specific duration with a particular commencement and termination date. A periodic tenancy is a lease that doesn't specify a particular end date, but does specify recurring periods of tenancy. A lease under periodic tenancy can be terminated by notice, the amount of which is typically equivalent to the length of the tenancy period unless it is a yearly tenancy, in which case a six-month notice period is required according to common law. This may vary from province to province depending on the presence of relevant statutory requirements. A tenancy at will does not have a set period or term and continues only as long as the tenant and landlord so desire. Under this arrangement either party has the power to terminate the tenancy. A tenancy at sufferance is the type of lease that tends to arise when a tenant continues to occupy leased property after their lease has expired. This type of lease continues in effect as long as the tenant remains in occupation of the property and continues to pay rent. A tenancy at sufferance ceases to exist when the landlord asks the tenant to vacate the premises. Perpetual leases, which have no fixed term and no right of termination on notice and can last forever, are very rare, but are sometimes still found in the law such as in certain Crown grants of land.

Lease formalities

A lease has been defined as a demise of land that confers exclusive occupation by a landlord to a tenant. There are five types of leases: (1) fixed term; (2) periodic tenancy; (3) tenancy at will; (4) tenancy at sufferance; and (5) perpetual lease. A fixed term lease is a lease that is for a specific duration with a particular commencement and termination date. A periodic tenancy is a lease that doesn't specify a particular end date, but does specify recurring periods of tenancy. A lease under periodic tenancy can be terminated by notice, the amount of which is typically equivalent to the length of the tenancy period unless it is a yearly tenancy, in which case a six-month notice period

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Mortgages and other security interests

A mortgage is an important security interest in real property that is conferred by the mortgagor (the borrower) on the mortgagee (the lender), typically in exchange for a loan used to purchase the real property in question. A mortgage provides the mortgagee with secured real property that it can realize upon if the repayment obligations are not complied with. Generally, legal title to the property will be conveyed to the mortgagee as security and the mortgagor will have a contractual right to redeem the mortgaged property or interest. However, in Ontario, legislation has reversed this system and provides that the mortgage is viewed as an encumbrance on the legal estate of the mortgagor. In most cases the mortgaged property will be a freehold estate, but can also be a leasehold or other interest such as an easement. Most standard loan transactions in Ontario are conducted with respect to a commitment which contains the standard terms and conditions of the contractual relationship such as the principal amount of the loan, the interest rate, the monthly payments, the period over which the loan is amortized and the maturity date of the charge at which time the amount outstanding must be repaid.

Enforcement of mortgage security

There are a number of remedies available to a mortgagee that is faced with a defaulting mortgagor. These include sale of the mortgaged property (either through power of sale or court order), obtaining title to the mortgaged property (either through foreclosure or acceptance of a “quit claim deed”), taking possession of the mortgaged property privately by court or order, or through a receiver, and obtaining a judgment against the mortgagor or owner of the property, or any guarantors if applicable.

A mortgagee may exercise a power of sale if it is expressly provided for in the provisions of the mortgage. If it does so, the mortgagee conveys the mortgaged property to a purchaser free and clear of the interest of the mortgagor and any other person having an interest in the property which ranks lower in priority than the mortgagee. A sale pursuant to court order or “judicial sale” has effectively the same result. By exercising a foreclosure action, the mortgagee will become the owner of the mortgaged property, and those interests in the property which rank lower in priority to the mortgagee will be extinguished. The decision as to which remedy to pursue will depend on the circumstances of the mortgagee, and will involve considerations of the time required to pursue each remedy (power of sale generally being the most expedient), the cost (including land transfer tax), the administrative burden of dealing with other encumbrances.... who may raise objections with the process, whether the mortgagee wishes to take control of the property, and the amount of debt owing. On this final consideration it is important to note that under a power of sale or judicial sale, if the sale is not sufficient to recover the amount of debt owing, the mortgagee retains a right

to pursue the mortgagor and others to recover the shortfall. Conversely, by obtaining a final order of foreclosure, the mortgagee is deemed to have accepted the property in full satisfaction of the debt. Therefore the mortgagee is precluded from making a claims against the mortgagor for any deficiency.

Transfer formalities in Ontario

Real estate purchase transactions typically have three stages: (1) negotiation and drafting of documents, (2) the title search and due diligence process, and (3) closing of the transaction. During the negotiation and drafting process, the key document is the agreement of purchase and sale which is a written, binding contract that includes all of the key terms of the transaction including a description of the land, the parties, the financial terms, deadlines and closing date, other prescribed terms and any other terms that are of importance to the parties.

Once the agreement of purchase and sale is received the purchaser will typically proceed to search title to the target property. A title search is a process by which all documents that are deposited or registered on title are reviewed to determine whether there are any encumbrances or other interests on title that would be problematic for a purchaser, such as an easement, lien, or mortgage that has not been discharged. A title search will also reveal information such as the legal description of the property, and whether it is in the Registry System or the Land Titles System. Beyond the title search a number of so-called "off-title searches" are also conducted on a property before purchase, which include searches related to the payment of realty taxes, water, sewer and utilities arrears, zoning compliance, work orders and building code compliance.

After completion of the title and off-title searches, a requisition letter is typically written by the purchaser's counsel to the vendor's counsel, requesting that certain defects in title be explained or rectified. Vendor's counsel will then reply to the letter and the parties will typically attempt to resolve any outstanding issues. The form and content of requisitions and replies are tightly prescribed by convention, and should be followed closely.

In preparation for closing the parties will begin drafting the required legal documents and identifying the issues that need to be attended to prior to the closing date. The legal documents that are typically required include the transfer/deed of land, mortgage document, discharge of existing mortgage, direction regarding title, statement of adjustments for expenses that arise post-closing (such as utilities charged up to the closing date), direction regarding funds, an income tax affidavit with respect to the vendor's residency status; a bill of sale if movable property is also being transferred to the purchaser; an insulation warranty to insure that there is no urea formaldehyde foam insulation in the structure; documentation relating to leases (if any) to indicate whether or not they will be assigned; and any undertakings and other documents dictated by the terms of the transaction.

On closing, the transfer of title to the target property will occur electronically unless the target property is registered under the Registry System in which case the lawyer or an agent will attend the land titles office to deposit the documents on title. Immediately prior to closing, the purchaser's lawyer will typically perform a follow-up title search to ensure no additional interests have been registered on title since the initial title search was performed. The purchaser's solicitor will in most cases also obtain an execution certificate for the vendor to determine whether or not there are any writs of execution issued against the vendor which could compromise the purchaser's title to the property. The closing process involves the execution and exchange of documents, and the exchange of keys and funds. Once the executed documents are exchanged the purchaser's solicitors will agree to lift the escrow conditions, register the documents and exchange the keys and funds.

Title insurance

Purchasers of real property in Canada will often obtain a title insurance policy to protect them against any losses that may arise from title defects that are not known to the purchaser at the time the property is acquired. Title defects are liens, encumbrances or other rights that a party other than the registered owner has over the title to property. Meaning the existence of an unknown title defect can in many cases compromise the registered owner's rights of ownership over their own property. Title insurance policies help insure against these risks by indemnifying purchasers of property for any damages arising out of title defects that are not discovered until after the property is transferred.

Title insurance policies can insure owners, lenders or both, and can vary from one jurisdiction to another and from one insurer to another. Typically title insurers will require the lawyer representing the purchaser to satisfy a number of requirements before the policy is issued. These include searching title, reporting any defects and recently registered instruments, providing the insurance company with certain information about the purchaser, and delivering a final report on title to the insurer.

Restrictions on acquisition: residency of the parties

Non-residents are generally not restricted from purchasing real property in Canada. However, if the vendor is a non-resident, certain special considerations are required. Specifically, if a vendor is a non-resident of Canada, pursuant to the *Income Tax Act* the purchaser must withhold a portion of the purchase price necessary to satisfy the vendor's tax liability. However, if the purchaser, after due inquiry has no reason to believe that the vendor is a non-resident of Canada it does not need to satisfy this requirement. The position of the Canada Revenue Agency is that "due inquiry" requires the purchaser to take prudent measures to confirm the vendor's residence status. This is most commonly achieved by the vendor providing to the purchaser on closing an affidavit stating that he or she is not a non-resident of Canada within the meaning of the *Income Tax Act.*

It is important to note that in order to combat rising house prices and the cost of living for Canadians, provincial governments have begun to impose additional taxation on non-residents who retain property in certain provinces. For example, Ontario adopted the Non-Resident Speculation Tax, which establishes a 15% tax on the purchase or acquisition of interest in property by non-citizens, permanent residents of Canada, or foreign corporations and taxable trustees in the so-called "Greater Golden Horseshoe" area, which encompasses notably the cities of Toronto, York, Niagara, Waterloo and many others.

Also, British Columbia implemented the Speculation and Vacancy Tax (SVT) on properties valued at more than $150,000. The SVT charges foreign owners and their satellite families 1% of the assessed value of their residential property per year, (whereas BC residents and other Canadians are charged .5%). Satellite families are households that make their income outside of Canada and declare less than 50% of their total combined household income for the year on Canadian income tax returns. The goal of the SVT is to target those who own residences in BC, but do not pay taxes or reside in BC. Broadly speaking, the SVT is not expected to apply to 99% of the population as there are numerous exemptions to it, for example, when the property is being occupied by residents.

Planning Act

The Planning Act must be given specific consideration in any transaction regarding the purchase and sale of property in Ontario. In particular, section 50 of the *Planning Act* creates strict regulations around the control of subdivisions in Ontario. The basic proposition underlying Section 50 is that a person cannot convey interest in land unless it falls within one of the exceptions listed in the Act. The exception most commonly relied on pertains to property that is described by a registered plan of subdivision. Another exception applies to property that is not within a registered plan of subdivision and allows the land-owner the carry out certain transactions (including a sale, transfer or mortgage) only if that person does not retain an ownership right in any land which abuts the target land. This exception has the effect of prohibiting a transaction where the land-owner owns land which abuts the target property. This prohibition commonly requires lawyers to search title on lands abutting the target property in a purchase transaction or seeking certain assurances from the vendor's lawyer in respect of compliance with the *Planning Act.* Compliance with the *Planning Act* is of critical importance to any transfer of property in Ontario. If it is not complied with, title will not legally pass from one party to another, regardless whether the purchase or other transaction has occurred between the parties.

Restrictions on acquisition: residency of the parties

In Ontario, all development and use of property, including subdivision planning, as well as any construction that occurs on such property must comply with the zoning by-laws and official city plans of the municipality in which the property is situated. Zoning by-laws are a method a municipality uses to control the use and type of development of the lands within its borders. The zoning by-law of a municipality will set out specific requirements that must be followed such as how certain property may be used, requirements for lot-size, frontage and setbacks, building heights, the number of parking spaces, the size of the back yard, etc.

Passing and amending zoning by-laws requires compliance with the circulation and notice provisions contained in the *Planning Act,* and includes avenues for appeal if an amendment is rejected. Proposed changes to a zoning by-law that are minor in nature can be effected by way of a "minor variance". To obtain a minor variance an application must be made to the local committee of adjustment, which will follow certain prescribed circulation and notice procedures and hold a hearing on the variance request.

If a structure is in violation of a zoning by-law but was built prior to its enactment it may be the case that such property has the designation of "legal non-conforming use". One must look to the by-law in question to determine the rights that property owners would acquire if a non-conforming structure predates the by-law's enactment.

Building permits are also required before constructing, demolishing, altering, or changing the use of a building or structure. All construction in Ontario must comply with the Ontario *Building Code Act* which requires owners to obtain building permits prior to construction in order to ensure compliance with basic Building Code standards and other municipal requirements.

Cyprus

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Michael Damianos & Co LLC is a Cyprus law firm based in Nicosia, Cyprus. The firm's practice is highly international with a strong corporate, banking, energy, shipping, data protection/privacy and private client focus.

The firm's founder is a Solicitor of the Supreme Court of England and Wales and a member of the Cyprus Bar Association. Before practicing in Cyprus, he qualified and worked as a solicitor at the London offices of two international law firms, where he was mainly involved in mergers and acquisitions (general), energy related mergers and acquisitions and energy related commercial and regulatory work.

The firm's objective and commitment is to provide best quality, practical and cost-effective advice/services to its clients and to rapidly respond to their instructions and needs. It has an expanding client base ranging from high-net-worth individuals through to a variety of corporate entities and multinational organizations (private/public company and funds) and despite the diversity of its clients, it recognizes that each client is unique with particular business concerns and needs and, therefore, it exercises a personal commitment to all of its clients.

Although a full service Cyprus law firm, our main areas of practice are international (and local) mergers and acquisitions, general corporate advice (including corporate disputes), winding up of companies, capital markets, banking, energy, general commercial work, shipping, data protection/privacy, real estate, and immigration to Cyprus for non-EU high-net-worth individuals.

The firm has managed to acquire extensive experience on the EU General Data Protection Regulation (the "GDPR") which came into force on 25 May 2018 and can assist its clients to comply with the provisions of the GDPR.

In addition to the firm's purely legal work, it also practices in the area of company formation and administration/corporate services. 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 to their needs.

Client centered

Banking
Capital Markets
Corporate/Insolvency
Cyprus Citizenship/Residence Permits
Cyprus International Trusts
Dispute Resolution
Energy/Commercial
Employment Law;
Intellectual Property
Private Client
Real Estate
Data protection/privacy
Shipping

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

Private limited company

The most common legal entity/vehicle for carrying out business in Cyprus is the private limited company 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 their share contribution.

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 companies, but some share capital must exist.

The Company must have a 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 limited company

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 their share contribution.

The minimum number of shareholders is seven and there is no maximum.

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 a 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.

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 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 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 persons (legal persons or natural persons) or more 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 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 the 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 the Trust (and she/he must be a licensed trustee such as a lawyer or an accountant). A Trust may last for an indefinite period. 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 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 the 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 the prevention of poverty or the promotion of education or health.

With respect to societies, there 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.

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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 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 the relevant individual is not 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%	2.500	3.775
36.301 – 60.000	30%	7.110	10.855
60.001 – above	35%		

There are various deductions in relation to the above tax rates such as payments to registered charities and payments into pension/insurance and social insurance plans.

A non-resident who takes up employment in Cyprus and becomes resident is permitted a 20% tax free allowance with a maximum of €8.550 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.

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 in 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 tax residents (individuals) at a flat rate of 17 %. Interest income is again only taxed in Cyprus against Cypriot tax residents (individuals and companies) at a flat rate of 30%.

Companies

A company resident in Cyprus is liable to tax on its worldwide income. A company is considered as resident in cyprus if its management and control is in Cyprus. Non-resident companies are liabile 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. 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 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 (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%), and (d) income on the liquidation of a Cypriot holding company.

Tonnage Tax System

An attractive tonnage tax system 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 profits.

Tonnage Tax System

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 is imposed on anything else under Cyprus law.

There is no inheritance tax in Cyprus.

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

Collective bargaining agreements

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 Cyprus, the minimum wage is set only for certain occupations (such as shop assistants, nurse's assistants, clerks, hairdressers and nursery assistants), as such occupations are not typically covered by collective bargaining agreements and employees working in such occupations do not typically have a lot of bargaining power. The minimum monthly wage upon recruitment is €870 and increases to €924 for employees who have completed a six-month period of employment at the same employer.

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 8% 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 8% 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 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 2 weeks before the expected birth week.

Women are entitled to a maternity grant of 72% of their insurable earnings from the Social Insurance Fund for 18 consecutive weeks, starting at least 2 weeks prior to the expected birth week.

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 2 consecutive weeks of paternity leave within the period starting from the birth week and ending 16 weeks thereafter. 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. Parental leave is unpaid.

Women are statutorily protected against termination of employment/notice of termination of employment during the period starting from the beginning of the pregnancy and ending 5 months after the end of their maternity leave provided that they notify their employer of their pregnancy in writing. 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.

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 minimum probation period of at least 26 weeks which may be extended up to 104 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).

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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.

Finally, 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.

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 the Registrar of Companies and Official Receiver and to the tax authorities before they start operations.

With regard 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 more or less 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 Registrar of Companies and Official Receiver and the tax authorities before it is up and running.

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.

Citizenship and Immigration Permits

The Cyprus government has introduced two schemes for granting foreign investors Cypriot citizenship and permanent residence in Cyprus.

▸ Cypriot citizenship

Investors can acquire the Cypriot citizenship under the Cyprus Investment Programme, by making an investment of at least €2.000.000 in one of the following categories: (i) real estate, land development and infrastructure projects, (ii) financial assets of Cypriot companies or organisations, (iii) alternative investment funds or financial assets of Cypriot companies/organisations that are licenced by the Cyprus Securities and Exchange Commission, or (iv) a combination of the above. Additionally, there is a requirement for a mandatory donation to the Research and Innovation Foundation and the Cyprus Land Development Corporation of at least €150.000 (i.e. a donation of at least €75.000 to each institution). The donation to the Research and Innovation Foundation requirement may be lifted under certain circumstances, namely if the applicant has invested at least €75.000 in a certified innovative enterprise or a certified social enterprise or has made an investment under category (ii) above (purchase/establishment/ participation in Cypriot companies or businesses) of a total amount equal to the 20% of the required investment amount (i.e. €400.000) in a company whose operations fall within the primary sector of the economy, or the secondary sector of the economy (excluding constructions), or in the sectors of research and development, education, health and renewable energy sources. The payment of the mandatory donations of at least €75.000 to (i) the Research and Innovation Foundation, and (ii) the Cyprus Land Development Corporation respectively will be made after the approval of the naturalization application by the Council of Ministers.

In addition to this, the investor must own a permanent privately-owned residence in Cyprus of at least €500.000 (+VAT if applicable). It is noted that in case the value of such residence exceeds the amount of €500.000, part of the additional amount can be used for supplementing the total amount of the investment made. It is further noted that if the investment is made solely into residential properties as per (i) above, the investor does not need to own a separate permanent privately-owned residence if at least one of the units is worth at least €500.000 +VAT, it has not been used already for the purposes of the Cyprus Investment Programme and the investor retains the possession of the residence for life, or if the investment is made into one residential property that is at least €2.000.000 +VAT and the investor retains the possession of the residence for life. In other words, if the applicant has invested in housing units that have already being used for the purpose of acquiring the Cypriot citizenship via the Programme, the total amount of the invest-

ments, including the privately-owned residence, must be at least €2,5 million.
Other non-financial requirements for eligibility are:

clean criminal record: the applicant must have a clean criminal record. Furthermore, his/her name must not be included in the list of persons whose assets, within the boundaries of the European Union, have been frozen as the result of sanctions. Moreover, an applicant whose application for citizenship in any other member-state of the European Union had been rejected, is not eligible to apply for the acquisition of the Cypriot citizenship through the Cyprus Investment Programme.

Schengen visa: The applicant must hold a valid Schengen visa. Third-country nationals that do not require an entry visa for travelling in European Union member-states, as well as citizens of European Union Member States are excluded from this obligation.

Cypriot citizenship through the Cypriot Investment Programme will not be granted to persons who fall into any of the following categories:

a. politically exposed persons holding a state office or who have held a state office in the last five years;

b. persons subject to criminal investigation without an indictment having been made;

c. persons subject to prosecution or defendants to criminal prosecution;

d. persons sentenced to imprisonment for serious offences (e.g. bribery of a public person, tax evasion etc.) and whose sentence has been time-barred;

e. persons who are connected to legal entities to which restrictive measures have been imposed by the European Union (EU);

f. persons who were connected to legal entities to which restrictive measures have been imposed by the EU but are no longer connected to such entities. The application for citizenship will be rejected even if the person had resigned at the time of the imposition of the restrictive measures. Only persons who resigned before the imposition of restrictive measures are excluded from this restriction;

g. persons subject to sanctions by third countries (e.g. the United States, Ukraine, Russia);

h. persons associated with legal entities to which sanctions have been imposed by third countries;

i. persons investigated/charged for criminal offences and who are wanted in the EU by EUROPOL or internationally by INTERPOL;

j. persons investigated/charged for criminal offences and who were wanted in the EU by EUROPOL or internationally by INTERPOL but are no longer wanted; and

k. persons subject to sanctions by the United Nations Security Council.

The investor's spouse/partner, children (minor and adult under certain circumstances), as well as the investor's parents (with the purchase of a permanent privately-owned residence) are also entitled to obtain Cypriot citizenship without the need to make a separate investment.
Only up to 700 Cypriot citizenships can be granted per annum.

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:

> deposit of €30.000 into a bank account in Cyprus, which will be pledged for a period of at least 3 years;
>
> provision of evidence of a secure annual income of at least €30.000 (plus €5.000 for every dependent person (spouse and children) and €8.000 for every dependent parent or parent-in-law); and
>
> purchase of real estate of total market value of at least €300.000 (+VAT).

It is noted that this type of permit does not allow the undertaking of any form of employment in Cyprus. Finally, holders of this permit must visit Cyprus once every two years in order to maintain it.

It should be noted that there are other types of residence permits to be acquired, including working permits that are not necessarily based on high investments, but such permits take longer to get and they are indeed more difficult to get.

Finally it should be noted that for all citizenship and other immigration programes, there are very high level anti-money laundering and terrorist activities checks, which suggests that it would be difficult for someone who is not completly clean to acquire citizenship or any type of permit.

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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.

Hong Kong

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Charltons is a leading boutique Hong Kong law firm. Charltons focuses on corporate finance and provides cutting edge legal advice to Hong Kong, PRC and international clients with an emphasis on the mining sector. Charltons is a Hong Kong law firm with offices in Shanghai, Beijing and Yangon.

Charltons is one of Hong Kong's leading focused corporate finance legal practices. Our clients shape our work. Their needs are our priority. We believe the maintenance of our clients' trust and confidence is paramount to our continued success. We therefore strive to perform to the highest possible standards. We are guided by a strong work ethic together with a consistent set of values. We exercise efficiency, confidentiality, and attention to detail in everything we do. Our simple, yet overriding goal is to provide our clients with the trusted and high quality legal support they need to achieve their business goals.

The Charltons team includes professionals from diverse cultural and academic backgrounds, with many lawyers dual qualified in Hong Kong and in various other major jurisdictions. Our global outlook coupled with our experience in servicing a PRC and international client base means we are Hong Kong Solicitors adept at handling complex cross border transactions. Our commitment to advancing the role of women in the legal profession is reflected in our team's composition. Approximately half of Charltons' associates are women while women are in the majority in the Beijing, Shanghai and Yangon offices, all of which are also managed by women.

Our commitment to excellence has made us the 'Best Boutique Law Firm' with Asian Legal Business for 2002, 2003, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016 and 2017.

Framework

The Companies Ordinance (Cap. 622) (the "Companies Ordinance") governs companies incorporated in Hong Kong and overseas companies registered in Hong Kong. Hong Kong's first Companies Ordinance was enacted in 1865 and was based upon the UK Companies Act 1862. It has since been revised to take into account changing practices in the commercial world, in particular in relation to enhanced transparency and disclosure of corporate transactions. The reforms and legislative changes are often similar to those introduced in other common law jurisdictions, such as Australia, Canada, Malaysia, New Zealand and Singapore, all of which have adopted the UK corporate model. When interpreting Hong Kong company law, Hong Kong courts may also make reference to a legal precedent or authority from these common law jurisdictions. The current Companies Ordinance came into force in March 2014. The previous Companies Ordinance (Cap. 32) was retitled as the "Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)" (the "C(WUMP)O") at the same time and that Ordinance retains the provisions relating to the winding-up and insolvency of companies and the prospectus regime governing public offerings of companies' shares and debentures. Further amendments to the Companies Ordinance came into effect on 1 March 2018 and on 1 February 2019.

Ownership restrictions

All entities doing business in Hong Kong, regardless of their corporate form, are required to obtain a business registration certificate from the Inland Revenue Department. Some are also required to register with the Companies Registry for incorporation. The application and registration procedures differ depending on whether the business is a sole proprietorship, a partnership (or other unincorporated body), a Hong Kong-incorporated company or an overseas company.

Sole Proprietorship or Partnership

Sole proprietorships or partnerships are required to obtain a business registration certificate from the Inland Revenue Department within one month from the date they commence business, but beyond this, there are few formalities with which they must comply. Whilst sole proprietorships and partnerships are not required to disclose information to the public, they must nevertheless keep accounts and are liable for profits tax.

Partnerships are governed by the Partnership Ordinance (Cap. 38). Both sole proprietorships and partners are liable for the debts of their business with unlimited liability. Whilst partnerships may be formed under the Limited Partnership Ordinance (Cap. 37), this ordinance is rarely used in practice.

Company

Limited company incorporated in Hong Kong

To incorporate a limited company in Hong Kong, certain documents must be filed with the Registrar of Companies and a business registration certificate must subsequently be obtained from the Inland Revenue Department. Under the one-stop company and business registration service jointly launched by the Companies Registry and the Inland Revenue Department, if an incorporation form (Form NNC1 or NNC1G) is submitted to the Companies Registry, a business registration application is deemed to be made at the same time, so that companies need only lodge a single application for both company and business registration. If the required incorporation documents and prescribed fees are submitted to the Registrar of Companies, a limited liability company can then collect both its business registration certificate (issued by the Inland Revenue Department) and its certificate of incorporation (issued by the Companies Registry) from the Companies Registry once the application has been approved. Depending on the method of submitting the application, a paper form or electronic form Certificate will be issued upon the approval of the application. Electronic and paper form Certificates have the same legal effect. In the case of applications lodged through the "e-Registry" or "CR eFiling", the Companies Registry will not entertain any request for the issue of paper certificates after the issue of electronic certificate. Following incorporation, limited companies are subject to continuing obligations as set out in the Companies Ordinance, which include a requirement to submit various documents to the Registrar of Companies, such as annual returns, notices of change of directors and of alteration of a company's share capital.

Companies incorporated in Hong Kong are generally required to comply with two main categories of continuing obligations: (i) updating on a case-by-case basis information filed with the Registrar of Companies; and (ii) filing certain documents with the Registrar of Companies on an annual basis. The continuing obligations include:

> Maintenance of registers (including registers of members, charges, directors, company secretaries and significant shareholders);
>
> Maintenance of proper accounting records (s. 51C, Inland Revenue Ordinance (Cap. 112));
>
> Holding an annual general meeting at least once every financial year (but this may be dispensed with in certain circumstances, e.g. if everything that is required to be done at the meeting is done by a written resolution and copies of the documents required to be laid or produced at the meeting are provided to each member on or before the circulation date of the written resolution (s. 612(1), Companies Ordinance (Cap. 622));
>
> Delivering to the Registrar of Companies an annual return within 42 days after the company's return date every year (s. 662(1), Companies Ordinance). The company's return date is the anniversary of its incorporation (for private companies) (s. 662(2), Companies Ordinance), 6 months after the end of its accounting reference period (for public companies)

(s. 662(4a), Companies Ordinance), or 9 months after the end of its accounting reference period (for companies limited by guarantee) (s. 662(4b), Companies Ordinance);

Preparation of the company's financial statements and directors' report by the company's directors (s. 379, Companies Ordinance);

Laying before the company in annual general meeting and sending to every member a copy of the reporting documents (i.e. financial statements, directors' report and auditor's report) (s. 429, Companies Ordinance);

Delivery of particulars of certain charges or security created to the Registrar of Companies; and

Notification to the Registrar of Companies when there are changes in certain details and particulars.

All documents filed with the Registrar of Companies are open to public inspection.

Private companies incorporated in Hong Kong are required to maintain a "Significant Controllers Register", containing up-to-date, accurate and adequate information about their significant controllers as defined in the Ordinance. Failure to keep a Significant Controllers Register can be prosecuted under the Companies Ordinance, and during 2018, 12 companies were convicted and fined for failing to comply with the requirements.

Reporting exemptions apply to allow the following types of company to adopt simplified accounting and financial reporting:

1) a private company which meets any two of the following requirements in the relevant financial year:

- total revenue not exceeding HK$100 million;
- total assets not exceeding HK$100 million; and
- an average of 100 or less employees (a "small private company");

2) a company limited by guarantee whose total revenue in the relevant financial year does not exceed HK$25 million (a "small guarantee company");

3) a group of small private companies where the holding company of a group and all its subsidiaries qualify as small private companies;

4) a group of small guarantee companies where the holding company and all subsidiaries of the group each meet the size criteria for qualification as a small guarantee company;

5) mixed groups made up only of small private companies and small guarantee companies and their non-Hong Kong equivalents;

Overseas company registered as a non-Hong Kong company in Hong Kong

Overseas companies that intend to establish a place of business in Hong Kong and do not wish to create a Hong Kong-incorporated subsidiary may register as non-Hong Kong companies under Part 16 of the Companies Ordinance.

Within one month after establishing a place of business in Hong Kong, an overseas-incorporated company must register as a non-Hong Kong company under Part 16 by registering certain documents with the Registrar of Companies. It is also required to obtain a business registration certificate from the Inland Revenue Department. Under the one-stop company and business registration service, non-Hong Kong companies are only required to lodge a single application for both company and business registration. If the required incorporation documents (application for regis-

tration as a Registered Non-Hong Kong Company (Form NN1) and Notice to Business Registration Office (IRBR2)) and prescribed fees are submitted to the Registrar of Companies, the company can collect both its business registration certificate (issued by the Inland Revenue Department) and certificate of incorporation (issued by the Companies Registry) from the Companies Registry on approval of the application.

A non-Hong Kong company registered under Part 16 of the Companies Ordinance must report to the Registrar of Companies any subsequent changes to its name, directors, company secretaries, authorised representatives, memorandum and articles of association, the address of its principal place of business and registered office, in each case within one month of the change by submitting the prescribed forms. The creation of certain types of charges on property situated in Hong Kong and charges on Hong Kong property which exist when the property is acquired must be registered with the Registrar of Companies (s.336, Companies Ordinance). Registered non-Hong Kong companies must keep copies of instruments creating registrable charges at their registered office.

Every year, a non-Hong Kong company must submit to the Registrar of Companies an annual return and a copy of its annual accounts (if applicable). Such obligations will cease if the company ceases to have a place of business in Hong Kong.

The Non-Hong Kong Companies (Disclosure of Company Name, Place of Incorporation and Members' Limited Liability) Regulation (Cap. 622M) (the "Regulation") came into effect on 1 August 2019 and aligned the obligations of non-Hong Kong companies in relation to the display of company names and disclosure of liability status with those of Hong Kong companies. Accordingly, non-Hong Kong companies are required to:

> display their name and place of incorporation at every business venue of the company in Hong Kong so that they may be easily seen by visitors to the business venue;
>
> state their name and place of incorporation in every communication document and transaction instrument of the company in Hong Kong;
>
> exhibit a notice of the fact that the liability of the members of the non-Hong Kong company is limited at every business venue of the company and state this fact in every communication document and transaction instrument of the company in Hong Kong, where applicable;
>
> state in every advertisement of the company in Hong Kong issued when it is in liquidation: (a) its name and place of incorporation, and (b) where applicable, that the liability of its members is limited;
>
> add "(in liquidation)" after its name if its name is not in Chinese or add "(正進行清盤)" after its name if it is in Chinese when displaying or stating its name when the non-Hong Kong company is in liquidation.

Types of Companies

▸ Private companies

Under section 11 of the Companies Ordinance, a private company is a company that is not a company limited by guarantee whose articles:

> restrict members' rights to transfer its shares;
>
> limit the number of its members to 50; and
>
> prohibit the company inviting members of the public to subscribe for its shares or debentures.

A private company does not need to file its reporting documents (financial statement, directors' report and auditor's report) with its annual return.

Public companies (non-listed)

Any company which is not a company limited by guarantee or a private company under the Companies Ordinance is a public company. A public company is subject to more disclosure requirements than a private company, e.g. a public company must submit to the Registrar of Companies its reporting documents which are open to inspection by the public. Public companies is subject to more stringent restrictions under the Companies Ordinance and the C(WUMP)O than private companies.

Listed companies

Listed companies in Hong Kong are companies listed on one of the two boards operated by the Stock Exchange of Hong Kong Limited (the "Exchange"), namely, the Main Board and GEM. The Main Board caters for companies with a profitable operating track record or that are able to meet alternative financial standards and is designed to give these companies an opportunity to raise further funds from the market in order to finance future growth. GEM, on the other hand, caters for small and medium-sized companies and has lower admission criteria – there is no profit requirement, but listing applicants must have operating cash flow of HK$30 million in the two financial years before listing. In February 2018, GEM was repositioned as a standalone market, and is no longer a stepping-stone to the Main Board. The majority of companies listed in Hong Kong are listed on the Main Board.

While a listing offers advantages and opportunities such as providing easier and greater access to new or additional capital, a listed company is subject to more stringent ongoing compliance obligations. In addition to the Companies Ordinance, listed companies are governed by the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (or the Rules Governing the Listing of Securities on the GEM of The Stock Exchange of Hong Kong Limited), as well as the Securities and Futures Ordinance (Cap. 571) and the C(WUMP)O.

Limited companies

The Companies Ordinance provides that limited companies can be either limited by shares or limited by guarantee.

Companies limited by shares

The articles of a company limited by shares will specify the maximum number of shares that it may issue. Liability of members of a company limited by shares is limited by the articles to any amount unpaid on the shares held by the members. Shares are usually fully paid when they are issued, in which case, even if the company is wound up and is unable to pay its debts, the members would not be liable to pay those debts.

Where shares have only been partly paid for on issue, however, a member is liable to pay the agreed balance according to the terms of issue or, if there are no terms, when called upon to do so. In the event of a company being wound up, members are liable to contribute to the assets of the company for (a) the company's debts and liabilities, (b) the costs, charges, and expenses of the winding up, and (c) the adjustment, among the members, of their rights, but their maximum contribution will be the amount unpaid on their shares.

Companies limited by guarantee

The liability of the members of a company limited by guarantee is limited by its articles to the amount that they undertake to contribute to its assets in the event of the company being wound up. The articles must specify the amount each member will contribute to the company's assets for the payment of (a) the company's debts and liabilities, (b) the costs, charges and expenses of winding up, and (c) the adjustment, among the members, of their rights. A company limited by guarantee must not have a share capital. It is commonly used when there is no intention to distribute the company's profits to its members and the members therefore do not need to hold shares. Companies limited by guarantee are typically used by charities and quasi-charitable organisations such as schools and hospitals, but is only a suitable corporate form if the company does not need an initial share capital.

Any provision in the articles of a company limited by guarantee, or in any resolution of the company, which purports to give any person a right to participate in its divisible profits, otherwise than as a member, will be void.

▶ Unlimited companies

A company is an unlimited company if there is no limit on the liability of its members. Unlimited companies must be formed with a share capital. If an unlimited liability company goes into liquidation, the members will be liable to pay whatever price they agreed for their shares; where this amount is inadequate to satisfy the debts and liabilities of the company together with the costs of winding-up, the members must contribute rateably according to their shareholdings.

▶ Dormant Companies

A private company may pass and deliver to the Registrar of Companies a special resolution declaring that the company will become dormant. Dormancy enables a private company to remain a registered company while at the same time being exempt from the requirements to hold annual general meetings, deliver annual returns, prepare financial statements and directors' reports, and appoint an auditor. Thus, the cost of maintaining a dormant company can be significantly lower than the cost of maintaining an active company.

A company ceases to be dormant if it delivers a special resolution declaring that the company intends to enter into an accounting transaction to the Registrar for registration, or if there is an accounting transaction in relation to the company. An accounting transaction is a transaction required by the Companies Ordinance to be entered in the company's accounting records, except the payment of certain fees.

Share Capital

The current Companies Ordinance which came in to force in 2014 adopts a mandatory system of no-par for all Hong Kong companies with a share capital and abolished the concept of par (or nominal) value of shares. The Companies Ordinance does not specify a minimum or maximum amount of authorised or issued share capital for either a public or a private company. The articles of a company with a share capital may state the maximum number of shares that the company may issue. A company may issue ordinary shares; shares with preferred, deferred, redemption or other special rights; or shares with any restrictions (whether in regard to dividends, voting, return of capital or otherwise) that the company may from time to time by ordinary resolution determine.

Under the Companies Ordinance, Hong Kong companies must have at least one member and that member may be a nominee of the beneficial owner. The member need not be resident or incorporated in Hong Kong and can be an individual or a corporation.

In Hong Kong, companies are typically incorporated with a share capital of HK$10,000 divided into 10,000 shares of HK$1 each.

Rights of Shareholders

The Companies Ordinance reserves certain matters for the decision of a company's shareholders. Decisions reserved for shareholders include:

> certain decisions of a company requiring a special resolution also require the approval of the court (i.e. reduction in a company's share capital requires confirmation by the court, unless the special resolution is supported by a solvency statement);
>
> the court may make an order if, on a petition by a member of a company, it considers that (i) the company's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of the members generally or of one or more members, or (ii) an actual or proposed act or omission of the company is or would be so prejudicial;
>
> directors must call a general meeting if the company has received requests from members representing at least 5% of the total voting rights of all the members having a right to vote at general meetings;
>
> a company is required to circulate a statement to members in relation to business to be dealt with at a general meeting, where the company has received requests to do so from (i) members representing at least 2.5% of the total voting rights of all the members who have a relevant right to vote, or (ii) at least 50 members who have a relevant right to vote;

the Financial Secretary may appoint a person to investigate a company's affairs on application by at least 100 members or members holding at least 10% of the issued shares (where the company has a share capital), or on application by at least 10% of the persons on the company's register of members (where the company does not have a share capital);

any member may bring an action in respect of misconduct (fraud, negligence, breach of duty or default in compliance with any Ordinance or rule of law) committed against a company; or

a member may in certain circumstances petition for the company to be wound up by the court.

▶ Directors

Requirements

Public companies and companies limited by guarantee must have at least two directors, and private companies must have at least one director. In the case of a private company that is not a member of a group of companies that includes a listed company, a body corporate can be appointed as a director, but it must have at least one director who is a natural person. Under the Companies Ordinance, a director can be of any nationality, must have attained the age of 18 and must not have been disqualified from acting as a director. When a company appoints a director, the company must notify the Registrar of Companies of the director's particulars including the director's name, usual residential address and identity card or passport number. The form delivered to the Registrar of Companies must include a statement that the director has accepted the appointment and has attained 18 years of age which must signed by the director.

A holding company is allowed to disclose the names of the directors of its subsidiary undertakings by providing the information on its website, or by keeping a list at its registered office and making it available for inspection.

Duties of directors of a company

Directors of companies owe a number of duties, which are based on the principle of showing the utmost good faith toward the company. Generally, directors' duties are owed only to the company itself; directors have been held to owe fiduciary duties to individual shareholders only in limited circumstances. Fiduciary duties of directors, which are generally based on equitable principles, mainly include:

a duty to act in good faith in the interests of the company;

a duty to exercise powers for a proper purpose for the benefit of members as a whole; and

a duty to avoid actual or potential conflicts of duty and interest.

Directors also owe a duty of reasonable care, skill and diligence to the company, which is codified in the Companies Ordinance. Under the Companies Ordinance, reasonable care, skill and diligence means the care, skill and diligence that would be exercised by a reasonably diligent person with:

- the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company (an objective test); and
- the general knowledge, skill and experience that the director has (a subjective test).

In addition to the general duties listed above, "A Guide on Directors' Duties" issued by the Companies Registry also includes the following general directors' duties:

- a duty not to delegate powers except with proper authorisation and a duty to exercise independent judgement;
- a duty not to enter into transactions in which directors have an interest except in compliance with the requirements of the law;
- a duty not to gain advantage from the use of the position as a director;
- a duty not to make unauthorised use of a company's property or information;
- a duty not to accept personal benefit from third parties conferred because of a position as a director;
- a duty to observe the company's constitution and resolutions; and
- a duty to keep accounting records.

Directors of companies listed on the Hong Kong Stock Exchange must also comply with their duties and obligations under the Exchange's Listing Rules and the Corporate Governance Code and Corporate Governance Report in Appendices 14 and 15 of the Main Board and GEM Listing Rules, respectively. Directors who breach their duties and obligations as a director may be liable to civil or criminal proceedings and may be disqualified from acting as a director.

▶ Disolution of a company

Deregistration of defunct private companies under the Companies Ordinance

A private company may make application to the Registrar of Companies for deregistration in accordance with Section 750 of the Companies Ordinance if:

- all the members of the company agree to the deregistration;
- the company has not commenced operation or business, or has not been in operation or carried on business during the 3 months immediately before the application;
- the company has no outstanding liabilities;
- the company is not a party to any legal proceedings;
- the company's assets do not consist of any immovable property situate in Hong Kong;
- if the company is a holding company, none of its subsidiary's assets consist of any immovable property situate in Hong Kong; and
- the company has obtained a written notice from the Commissioner of Inland Revenue stating that the Commissioner has no objection to the company being deregistered.

Winding up

A company may be wound up:

by the court, i.e. a compulsory winding up; or

voluntarily, either as:

- a members' voluntary winding up, or
- a creditors' voluntary winding up.

Compulsory winding up

A company may be wound up by the court in the following circumstances:

if a special resolution has been passed by the company that it should be wound up by the court;

if the company does not commence its business within one year from its incorporation, or suspends its business for a whole year;

if the company has no members;

if the company is unable to pay its debts. A company is deemed to be unable to pay its debts if:

- a creditor whose debt exceeds HK$10,000 serves a notice on the company requiring payment and is not paid within three weeks;
- an execution in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- the court is satisfied that the company is unable to pay its debts, taking into account its contingent and prospective liabilities;

if the articles of association of the company provide that on the occurrence of certain events the company is to be dissolved, and such events have occurred;

if the company is being carried on for an unlawful purpose or any purpose lawful in itself but which cannot be carried out by a company;

if the court is of the opinion that it is just and equitable that the company should be wound up;

if throughout a period of not less than six months ending on the date of the winding-up petition, the company has not had:

- in the case of a private company, at least one director, or
- in case of a public company, at least two directors; and
- a secretary;

if the company has failed to pay the annual registration; or

if the company has been persistently in breach of its statutory obligations.

Voluntary winding up

Section 228(1) of the C(WUMP)O provides that a company may by wound up voluntarily:

> when the period, if any, fixed by the articles for the duration of the company expires, or an event occurs on the occurrence of which the articles provide that the company is to be dissolved, and the company resolves (by ordinary resolution) to be wound up voluntarily;
>
> if a special resolution has been passed by the company that it should be wound up voluntarily;
>
> if the directors of the company or, in the case of a company having more than two directors, the majority of the directors, make and deliver to the Registrar of Companies a winding-up statement under Section 228A of the C(WUMP)O.

A company may be dissolved by a members' voluntary winding-up provided that the company is solvent and is able to pay its debts within 12 months of the commencement of winding-up. During the process of winding-up, the company is required to comply with all statutory obligations before the winding-up is completed, including but not limited to, settling the business registration fee and filing annual returns with the Companies Registry. If a company has been put into a members' voluntary winding-up and the liquidators are subsequently of the opinion that the company will not be able to pay its debts in full within the period stated in the certificate of solvency, the liquidators must summon a meeting of the creditors and lay before the meeting a statement of the assets, debts and liabilities of the company, i.e. the winding-up is converted into a creditors' voluntary winding up.

Liability of the members of the company

In the event of a company being wound up, every past and present member is liable to contribute to the assets of the company an amount sufficient to pay:

> the debts and liabilities of the company;
>
> the costs, charges, and expenses of winding-up; and
>
> for the adjustment of rights between the members.

This is subject to qualifications in relation to companies incorporated with limited liability:

> in a company limited by shares, no contribution is required from any past or present member which exceeds the amount, if any, that is unpaid on his shares; and
>
> in a company limited by guarantee, no contribution is required which exceeds the amount which was undertaken to be contributed in the event of the company being wound up.

Overview of Tax System

The Hong Kong tax system is relatively simple in comparison with some of the more complicated systems in other countries. In Hong Kong, there are three separate direct taxes which are levied under the Inland Revenue Ordinance (Cap. 112) (the "IRO"). The three taxes are: profits tax, salaries tax and property tax. The ambit of the IRO is limited territorially and it is only income with a Hong Kong source which, by and large, is subject to tax.

Profits Tax

The scope of the charge

Persons, including corporations, partnerships, trustees and bodies of persons carrying on any trade, profession or business in Hong Kong are chargeable to profits tax on the assessable profits arising in or derived from Hong Kong from such trade, profession or business. No distinction is made between residents and non-residents. A resident may therefore derive profits from abroad without being subject to tax; conversely, a non-resident may be chargeable to tax on profits arising in or derived from Hong Kong. Whether a business is carried on in Hong Kong and whether profits are derived from Hong Kong are largely questions of fact. However, some guidance on the principles applied can be found in cases which have been considered by the courts in Hong Kong and in other common law jurisdictions.

The basis of assessment

Tax is charged on the assessable profits for a year of assessment. The assessable profits for a business which makes up annual accounts are calculated on the profits of the year of account ending in the year of assessment. In the year of assessment itself, a provisional tax is required to be paid based on the profits assessed for the preceding year. The provisional payment is applied in the first instance against profits tax payable on assessable profits for that year of assessment when agreed in the following year. Any excess is then applied against the provisional profits tax payable for that succeeding year.

Tax rate

The Inland Revenue (Amendment) (No. 3) Ordinance 2018 introduced a two-tiered profits tax rate regime for corporations and unincorporated businesses (mostly partnerships and sole proprietorships) which took effect from the year of assessment 2018/19. Under the two-tiered 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, each representing half of the current rates. The profits tax rate for assessable profits above HK$2 million is unchanged at 16.5% for corporations and 15% for unincorporated businesses.

The two-tiered profits tax rates regime will benefit eligible enterprises with assessable profits, irrespective of their size. All entities with profits chargeable to profits tax in Hong Kong qualify for the two-tiered profits tax rates, except those with a connected entity which is nominated to be chargeable at the two-tiered rates. There is an extensive definition of "connected entity" in the legislation to ensure that a group of connected taxpayers can benefit from the one-half reduction only in respect of one of such connected taxpayers. For this purpose, the group will need to identify which entity will benefit and to make an election accordingly. The election, once made, is irrevocable in respect of a particular year of assessment.

Taxpayers who have elected into other preferential half-rate tax regimes (e.g., professional reinsurance companies, captive insurance companies, corporate treasury centres and aircraft leasing companies) are excluded from the two-tiered tax regime. In addition, any profits derived from qualifying debt instruments which are already taxed at concessionary tax rates (i.e., 7.5% or 8.25%, as the case may be) will be similarly excluded.

Exemptions and deductions

Dividends from a corporation which is subject to Hong Kong profits tax, as well as amounts already included in the assessable profits of other taxpayers chargeable to profits tax, are not included in the assessable profits of the recipient.

In general, all expenses, to the extent to which they have been incurred in the production of chargeable profits, are deductible. They include (but are not limited to):

> Rent paid by any tenant of buildings or land occupied for the purpose of producing the assessable profits;
>
> Bad and doubtful debts (subject to certain rules);
>
> Repairs of premises, plant, machinery or articles etc used in producing the profits;
>
> Expenditure for registration of a trademark, design or patent and expenditure on the purchase of patent rights or rights to any know-how for use in Hong Kong in the production of assessable profits; and
>
> Expenditure on Research and Development (R&D). According to the Inland Revenue (Amendment) (No.7) Ordinance 2018, type A R&D activities expenditures are qualified for the current 100 percent tax deduction, while type B expenditures are qualified for 300 percent deduction for the first HK$2 million of the aggregate amount of payments made to "designated local research institutions" for "qualifying R&D activities", and 200 percent for the remaining amount.

The Exemption from Profits Tax (Non-Renminbi Sovereign Bonds) Order took effect on 30 March 2018 to exempt a person from the payment of profits tax chargeable under Part 4 of the Inland Revenue Ordinance in respect of sums received by the person as interest paid on sovereign bonds denominated in currencies other than Renminbi ("RMB") issued in Hong Kong by the Central Peo-

ple's Government, or the profits from: (a) sale or other disposal of the bonds; or (b) on redemption, on maturity or presentment of the such non-RMB denominated bonds. A similar exemption from profits tax order was enacted on 1 March 2019, the *Exemption from Profits Tax (People's Bank of China Debt Instrument) Order,* which provided that a person is exempt from the payment of profits tax chargeable under Part 4 of the Ordinance in respect of the interest or profits on the sale or other disposal of a People's Bank of China debt instrument.

The Inland Revenue (Amendment) Ordinance 2019 ("2019 Amendment Ordinance") enacted on 14 February 2019 treats certain loss-absorbing capacity debt instruments as debt securities for profits tax purposes.

The Inland Revenue (Profits Tax Exemption for Funds) (Amendment) Ordinance 2019 which came into effect on 1 April 2019 creates a level playing field for privately offered onshore and offshore funds operating in Hong Kong. Under the Ordinance, all privately offered onshore and offshore funds operating in Hong Kong, regardless of their structure, their size or the purpose that they serve, can enjoy profits tax exemption for their transactions in specified assets subject to meeting certain conditions. Previously the exemption had only been available to offshore funds. The Ordinance also allows eligible funds to enjoy the profits tax exemption from investments in both overseas and local private companies, while it was previously only available for overseas private companies.

There are three tests for a fund to be exempted from profits tax: (1) under the immovable property test, a fund will not be taxed if it invests in a private company that holds not more than 10% of its assets in immovable property in Hong Kong; (2) under the holding period test, the fund must have held the investment in the private company for at least two years; and (3) under the short-term asset test, if the holding period test cannot be satisfied, a fund will be exempted from profits tax only if: (i) the fund does not have a controlling stake in the private company; or (ii) if the fund has a controlling stake in the private company, the latter does not hold more than 50% of the value of the company's assets in short-term assets (as defined in the IRO).

Tax incentives

Tax incentives are available in certain specific areas and these incentives include (but are not limited to):

> Immediate writing-off is allowed for capital expenditure on plant and machinery specifically and directly related to manufacturing processes, and on computer hardware and software.
>
> Capital expenditure on refurbishment of business premises is allowed to be written off over five years of assessment.
>
> Exemption from payment of tax on interest derived from any deposit placed in Hong Kong with an authorised institution (not applicable to interest received by or accrued to a financial institution).
>
> Accelerated deduction for capital expenditure on specified environmental protection facilities from the year of assessment 2008/09 onwards. For machinery or plant, 100% deduction will be allowed for the capital expenditure incurred in the first year of purchase. For installations forming part of a building or structure, 20% deduction will be allowed for each year in five consecutive years. Also, according to the Inland Revenue (Amendment) (no.5) Bill 2018, qualified energy efficiency and renewable energy installations can be 100% deducted from chargeable profits in one year (i.e. the year in which the expenditure is incurred).
>
> 100% deduction for capital expenditure on specified environmentally-friendly vehicles from year of assessment 2010/11 and onwards.

Loss relief

Losses incurred in an assessment year can be carried forward and set off against assessable profits in subsequent assessment years.

Books and records

All persons who carry on business in Hong Kong must keep sufficient records, in English or Chinese, of their income and expenditure to enable their assessable profits to be readily ascertained. There are statutory requirements to record certain specified details of every business transaction. Business records must be retained for at least 7 years after the date of the transaction to which they relate. Any person who fails to keep sufficient records may be subject to a fine of HK$100,000 (s. 51C, Inland Revenue Ordinance).

Salaries Tax

The Hong Kong tax system is relatively simple in comparison with some of the more complicated systems in other countries. In Hong Kong, there are three separate direct taxes which are levied under the Inland Revenue Ordinance (Cap. 112) (the "IRO"). The three taxes are: profits tax, salaries tax and property tax. The ambit of the IRO is limited territorially and it is only income with a Hong Kong source which, by and large, is subject to tax.

The scope of the charge

Salaries tax is charged on all income arising in or derived from Hong Kong from an office, employment or pension. In determining whether income "arises in or is derived from Hong Kong", it is necessary to establish where the employment, i.e. the source of income, is located. "Income arising in or derived from Hong Kong from any employment" includes all income derived from services rendered in Hong Kong, without in any way limiting the meaning of the expression.

The basis of assessment

Salaries tax is based on the chargeable income of the year of assessment, but the total amount of income for the year cannot be determined until the year is past. Accordingly, 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.

Individuals are taxed at progressive rates on their net chargeable income (i.e. assessable income after deductions and allowances, or at a standard rate of 15% on net chargeable income, whichever is the lower. As of financial year 2019/20, the maximum tax payable is thus limited to the standard rate of 15% of the person's income. As of the year of assessment 2018/19, salaries tax is otherwise charged at the following progressive rates:

Tax	Rate	Net chargable income
HK$1,000	2%	On the first HK$ 50,000
HK$3,000	6%	On the next HK$ 50,000
HK$5000	10%	On the next HK$ 50,000
HK$7,000	14%	On the next HK$50,000
HK$ (-)	17%	On the Remainder

Income of husband and wife

A married person is responsible for all aspects of his/her own salaries tax affairs including lodgment of returns and payment of tax assessed. However, if the total tax liability of a married couple under two separate assessments is greater than it would have otherwise been when their incomes are aggregated, they may elect to be jointly assessed.

Deductions allowed

The following deductions are allowed:

> Expenses wholly, exclusively and necessarily incurred in the production of assessable income, not being expenses of a private, domestic nature or capital expenditure.
>
> Donations paid to approved charities if the amount is not less than HK$100 and with the limitation that such allowance should not, from the year of assessment 2008/09 onwards, exceed 35% (25% for years of assessment 2005/06 to 2007/08) of the income after allowable expenses and depreciation allowances.
>
> Self-education expenses paid on fees (including tuition and examination fees) in relation to a "prescribed course of education", or on fees in respect of an examination set by specified education providers or trade, professional or business associations. The course and examination must be for gaining or maintaining a qualification for use in any employment.
>
> A "prescribed course of education" is a course undertaken at an education provider, specified education providers, such as a university, college, school, technical institution, training centre, or a training or development course provided by a trade, professional or business association or one accredited or recognised by specified professional bodies or institutions.
>
> The amount deducted should exclude any amount that has been or will be reimbursed by the employer or any other persons. The maximum deduction for the year of assessment 2017/18 onwards is HK$100,000.

Elderly residential care expenses paid by the person or his/her spouse to a residential care home in respect of the person's or his/her spouse's parent or grandparent. To be eligible for the deduction, the parent/grandparent must be 60 years old or above at any time in the year of assessment, unless he/she is entitled to claim an allowance under the Government's Disability Allowance Scheme. The residential care home must also be situated in Hong Kong and be licensed or exempted from licensing under the Residential Care Homes (Elderly Persons) Ordinance (Cap.459) or the Residential Care Homes (Persons with Disabilities) Ordinance (Cap.613), or be a nursing home registered under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap.165).

Should the deduction be allowed to a person, he or any other person is not entitled to claim dependent parent and grandparent allowance and additional dependent parent and grandparent allowance for the same parent/grandparent for the same year of assessment. The maximum deduction for each parent or grandparent is as follows:

Year of Assessment	Maximum deduction (in HK$)
2012/13 and 2013/14	$76,000
2014/15 and 2015/16	$80,000
2016/17 and 2017/18	$92,000
2018/19 onwards	$100,000

A taxpayer can, for any 15 years of assessment (not necessarily consecutive), claim deductions of HK$100,000 (maximum) a year for "home loan interest" paid on a home loan for the acquisition of a property unit which must be situated in Hong Kong and must be used as his/her place of residence during the year of assessment.

For mandatory contributions paid to a mandatory provident fund ("MPF") scheme by a taxpayer as a self-employed person, the maximum deduction for each year of assessment is:

Year of Assessment	Maximum deduction (in HK$)
2013/14	$15,000
2014/15	$17,500
2015/16 onwards	$18,000

Contributions paid to a recognised occupational retirement ("ROR") scheme are subject to the following restrictions:

- the amount deductible is the lesser of the actual amount contributed to the ROR scheme or the amount of mandatory contribution that person would have been required to pay had that scheme been an MPF scheme; and
- the maximum deduction for each year of assessment is:

Year of Assessment	Maximum deduction (in HK$)
2013/14	$15,000
2014/15	$17,500
2015/16 onwards	$18,000

The Inland Revenue (Amendment) (No. 8) Ordinance 2018, enacted on 9 November 2018, gives effect to a tax deduction under salaries tax and personal assessment to taxpayers who pay qualifying premiums under a certified plan of Voluntary Health Insurance Scheme for themselves or their specified relatives. The qualifying insured person must be: (i) a HKID card holder at any time during the year of assessment; or (ii) if aged under 11 and not a HKID card holder at any time during the year of assessment, his natural parent or adoptive parent must be a HKID card holder when the insured person was born or adopted. The deduction allowable to each taxpayer for each insured person should not exceed the qualifying premiums paid or the specified maximum deduction, whichever is lower. The specified maximum deduction for the year of assessment 2019/20 onwards is HK$8,000.

The Inland Revenue and MPF Schemes Legislation (Tax Deductions for Annuity Premiums and MPF Voluntary Contributions) (Amendment) Ordinance 2019 was enacted on 29 March 2019, and provides tax deductions for qualifying annuity premiums and tax deductible MPF voluntary contributions (TVC) under salaries tax and personal assessment. The maximum tax deductible limit is HK$60,000 each year per taxpayer. The deductions are applicable to a year of assessment commencing on or after 1 April 2019. For the tax deductions for qualifying annuity premiums, "qualifying annuity premiums" means the net sum of moneys that is payable under a qualifying deferred annuity policy to the insurer for writing or renewing the policy in so far as it relates to the provision of annuity payments. A qualifying deferred annuity policy is an insurance policy that is certified by the Insurance Authority. Only Hong Kong Identity Card holders are eligible for the tax deduction. For the tax deductions for the MPF voluntary contributions, contributions must be paid into a TVC account defined under the Mandatory Provident Fund Schemes Ordinance. The taxpayer must be the TVC account holder.

Inland Revenue (Amendment) (Tax Concessions) Ordinance 2019

The Inland Revenue (Amendment) (Tax Concessions) Ordinance 2019 was enacted on 6 November 2019 and provides one-off reductions in salaries tax, tax under personal assessment ("PA") and profits tax for the year of assessment 2018/19 by 100 percent, subject to a ceiling of HK$20,000 per case. The reductions were reflected in taxpayer's final tax payable for the year of assessment 2018/2019 and benefitted 1.91 million taxpayers of salaries tax and tax under PA.

Property Tax

The Hong Kong tax system is relatively simple in comparison with some of the more complicated systems in other countries. In Hong Kong, there are three separate direct taxes which are levied under the Inland Revenue Ordinance (Cap. 112) (the "IRO"). The three taxes are: profits tax, salaries tax and property tax. The ambit of the IRO is limited territorially and it is only income with a Hong Kong source which, by and large, is subject to tax.

The scope of the charge

Property tax is charged on the owners of land and/or buildings in Hong Kong and is computed at the standard rate on the net assessable value of the property. The standard rate is 16% for years of assessment 2004/05 to 2007/08 and 15% from year of assessment 2008/09 onwards.

The basis of assessment

The assessable value is computed by reference to the actual consideration payable to the owner in respect of the right of use of the property. Examples of consideration to be included in the assessable value are gross rent received or receivable, payment for the right of use of premises under licence, lump sum premium, service charges or management fees paid to the owner, and the owner's expenditure (e.g. repairs) borne by the tenant. The net assessable value is the assessable value (after deduction of rates agreed to be paid and paid by the owner and irrecoverable rent, but not other payments e.g. government rent and management fee) less a 20% statutory allowance for repairs and outgoings. However, any sums previously deducted as irrecoverable and then recovered should be treated as consideration in the year of recovery.

Completion of tax return

The Hong Kong tax system is relatively simple in comparison with some of the more complicated systems in other countries. In Hong Kong, there are three separate direct taxes which are levied under the Inland Revenue Ordinance (Cap. 112) (the "IRO"). The three taxes are: profits tax, salaries tax and property tax. The ambit of the IRO is limited territorially and it is only income with a Hong Kong source which, by and large, is subject to tax.

Double taxation

A taxpayer could be subject to both Hong Kong tax and overseas tax. The IRO provides that Hong Kong may make arrangement with other territories to afford relief from double taxation when the other jurisdiction imposes a tax similar in nature to a Hong Kong tax.

To prevent the double taxation of income between Hong Kong and the PRC, a comprehensive double taxation arrangement was signed between the two parties in August 2006. Such arrangement covers profits tax, salaries tax and property tax, whether or not the tax is charged under personal assessment, in Hong Kong; and individual income tax and enterprise income tax in the PRC.

In addition, comprehensive double tax agreements have been concluded by Hong Kong with various other countries. A complete list of the agreements with the respective dates of signature and the coming into effect is set out as follows.

Year of Assessment	Date of signature of agreement	Effective from (Year of Assessment)
Austria	25.05.2010	2012/2013
Belarus	16.01.2017	2018/2019
Belgium	10.12.2003	2004/2005
Brunei	20.03.2010	2011/2012
Cambodia	26.06.2019	Pending (as of November 2019)
Canada	11.11.2012	2014/2015
Czech	06.06.2011	2013/2014
Estonia	25.09.2019	Pending (as of November 2019)
Finland	24.05.2018	2019/2020
France	21.10.2010	2012/2013
Guernsey	22.04.2013	2014/2015
Hungary	12.05.2010	2012/2013
India	19.03.2018	2019/2020
Indonesia	23.03.2010	2013/2014
Ireland	22.06.2010	2012/2013
Japan	09.11.2010	2012/2013
Jersey	22.02.2012	2014/2015
Korea	08.07.2014	2017/2018
Kuwait	13.05.2010	2014/2015
Latvia	13.04.2016	2018/2019
Liechtenstein	12.08.2010	2012/2013
Luxembourg	02.11.2007	2008/2009
PRC	21.08.2006	2007/2008
Macao SAR	25.11.2019	Pending (as of November 2019)
Malaysia	25.04.2012	2013/2014

Malta	08.11.2011	2013/2014
Mexico	18.06.2012	2014/2015
Netherlands	22.03.2010	2012/2013
New Zealand	01.12.2010	2012/2013
Pakistan	17.02.2017	2018/2019
Portugal	22.03.2011	2013/2014
Qatar	13.05.2013	2014/2015
Romania	18.11.2015	01.01.2017
Russia	18.01.2016	2017/2018
Saudi Arabia	24.08.2017	2019/2020
South Africa	16.10.2014	2016/2017
Spain	01.04.2011	2013/2014
Switzerland	04.10.2011	2013/2014
Thailand	07.09.2005	2006/2007
United Arab Emirates	11.12.2014	2016/2017
United Kingdom	21.06.2010	2011/2012
Vietnam	16.12.2008	2010/2011

Stamp duty

Stamp duty is chargeable on the documents set out in the First Schedule to the Stamp Duty Ordinance (Cap. 117) which imposes fixed duty on some documents and an ad valorem duty on others.

Ad valorem stamp duty ("AVD") on immovable properties

According to the Stamp Duty (Amendment) (No. 2) Ordinance 2014 ("2014 (No. 2) Amendment Ordinance") gazetted on 25 July 2014, the AVD payable on certain instruments dealing with immovable properties executed on or after 23 February 2013 is computed at higher rates (Scale 1), unless specifically exempted or provided otherwise. The major exception, amongst others, is where the property is a residential property, and the purchaser/transferee is a Hong Kong permanent resident ("HKPR") who is acting on his/her own behalf and does not own any other residential property in Hong Kong at the time of acquisition. In such case, the instrument will be subject to

the AVD at lower rates (Scale 2). The 2014 (No. 2) Amendment Ordinance also advances the timing for charging the AVD on non-residential property transactions from the conveyance on sale to the agreement for sale executed on or after 23 February 2013.

The Stamp Duty (Amendment) Ordinance 2018 ("2018 Amendment Ordinance") was gazetted on 19 January 2018. Under the 2018 Amendment Ordinance, the AVD at Scale 1 is divided into Part 1 (a flat rate of 15%) and Part 2 (original Scale 1 rates under the 2014 (No. 2) Amendment Ordinance) with effect from 5 November 2016. Part 1 of Scale 1 applies to instruments of residential property and Part 2 of Scale 1 applies to instruments of non-residential property. The 2018 Amendment Ordinance provides that any instruments of residential property executed on or after 5 November 2016 for the sale and purchase or transfer of residential property, unless specifically exempted or provided otherwise, will be subject to the AVD at the rate under Part 1 of Scale 1, i.e. a flat rate of 15% of the consideration or value of the residential property, whichever is the higher. For HKPRs who change their residential property and wish to claim partial refund of the AVD paid on acquisition of the new property, the 2018 Amendment Ordinance also extends the time limit for the disposal of the original property from within 6 months to within 12 months after the date of conveyance of the new property, if the new property is acquired on or after 5 November 2016.

The Stamp Duty (Amendment) (No. 2) Ordinance 2018 ("2018 (No. 2) Amendment Ordinance") was gazetted on 20 April 2018. Under the 2018 (No. 2) Amendment Ordinance, unless specifically exempted or otherwise provided in the law, acquisition of more than 1 residential property under a single instrument executed on or after 12 April 2017 will be subject to the AVD at the rate under Part 1 of Scale 1 – a flat rate of 15%, even if the purchaser/transferee is a HKPR who is acting on his/her own behalf and does not own any other residential property in Hong Kong at the time of acquisition.

The rates at Scale 1 (higher rates) are as follows:

Part 1 of Scale 1
(Applicable to instruments of residential property executed on or after 5 November 2016): A flat rate of 15% of the consideration or value of the property (whichever is the higher)

Part 2 of Scale 1	
(Applicable to instruments of residential property executed on or after 23 February 2013 but before 5 November 2016 and instruments of non-residential property executed on or after 23 February 2013)	
Consideration or value of the property (whichever is the higher)	**Rates at Scale 1 (Part 2)**
Up to $2,000,000	1.50%
$2,000,001 to $2,176,470	$30,000+20% of the excess over $2,000,000
$2,176,471 to $3,000,000	3.00%
$3,000,001 to $3,290,330	$90,000+20% of the excess over $3,000,000
$3,290,331 to $4,000,000	4.50%
$4,000,001 to $4,428,580	$180,000+20% of the excess over $4,000,000
$4,428,581 to $6,000,000	6.00%
$6,000,001 to $6,720,000	$360,000+20% of the excess over $6,000,000
$6,720,001 to $20,000,000	7.50%
$20,000,001 to $21,739,130	$1,500,000+20% of the excess over $20,000,000
$21,739,131 and above	8.50%

The rates at Scale 2 (lower rates) are as follows:

Consideration or value of the property (whichever is the higher)	Rates at Scale 1 (Part 2)
Up to $2,000,000	$100
$2,000,001 to $2,351,760	$100+10% of the excess over $2,000,000
$2,351,761 to $3,000,000	1.5%
$3,000,001 to $3,290,320	$45,000+10% of the excess over $3,000,000
$3,290,321 to $4,000,000	2.25%
$4,000,001 to $4,428,570	$90,000+10% of the excess over $4,000,000
$4,428,571 to $6,000,000	3.00%
$6,000,001 to $6,720,000	$180,000+10% of the excess over $6,000,000
$6,720,001 to $20,000,000	3.75%
$20,000,001 to $21,739,120	$750,000+10% of the excess over $20,000,000
$21,739,121 and above	4.25%

Buyer's Stamp Duty ("BSD")

On 26 October 2012, the Government amended the Stamp Duty Ordinance to introduce with effect from 27 October 2012 a BSD on residential properties. Any residential property acquired by any person (including a company incorporated) except a HKPR will be subject to the BSD. BSD is to be charged at a flat rate of 15% on all residential properties, on top of the existing stamp duty and the special stamp duty, if applicable.

Special Stamp Duty ("SSD")

For a residential property acquired between 20 November 2010 and 26 October 2012 and disposed within 24 months from the date of acquisition, a SSD will be imposed in addition to the AVD. If a residential property was acquired before 20 November 2010, the subsequent disposal of that property at any time will not be subject to SSD. The amount of SSD is calculated by reference to the stated consideration or the market value of the property (whichever is higher) at the following regressive rates for different holding periods by the seller or transferor before the disposal:

Holding Period	Rate
6 months or less	15%
More than 6 months but for 12 months or less	10%
More than 12 months but for 24 months or less	5%

Likewise, for a residential property acquired on or after 27 October 2012 and disposed within 36 months from the date of acquisition, the amount of SSD is calculated as follows:

Holding Period	Rate
6 months or less	20%
More than 6 months but for 12 months or less	15%
More than 12 months but for 36 months or less	10%

Leases

Leases granted in consideration of premium only attract the same duties as for conveyances of land. For leases granted in consideration of both premium and rent, the premium attracts an ad valorem duty of 4.25% while the rate of duty on rents varies with the period of the lease (from 0.25% to 1% of the annual rent).

Hong Kong stock

Transactions in Hong Kong stock require the preparation of contract notes on which buyers and sellers each have to pay ad valorem duty at the rate of 0.1% of the consideration.

In all cases, the Collector of Stamp Revenue is empowered to charge duty based on the market value of the property conveyed or shares transferred if he is of the opinion that the consideration is inadequate.

Evasion of tax

All tax returns contain a declaration to the effect that the information returned therein is true, correct and complete. Understatement or omission of profits or income or the submission of false information constitutes an offence.

Submission of an incorrect tax return without reasonable excuse is an offence subject to a fine of HK$10,000 and a further fine of treble the amount of tax which has been undercharged and imprisonment of 6 months. The imposition of a penalty may, however, be dealt with administratively by the Commissioner of Inland Revenue.

The willful submission of an incorrect tax return with the intent to evade tax is a serious offence. On conviction, the maximum penalty is a fine of HK$50,000 plus a further fine of treble the amount of tax undercharged and imprisonment of 3 years.

Advance rulings

Subject to payments and certain regulations, a person may apply to the Commissioner of Inland Revenue for a ruling on how any provision of the IRO applies to him or the arrangement specified in the application.

Transfer pricing

The Inland Revenue (Amendment) (No. 6) Ordinance 2018 was gazetted on 13 July 2018. Transfer pricing rules recognise that transactions between connected parties and between unconnected parties should be the same for tax purposes. The main objectives of the Ordinance are to codify the transfer pricing principles, implement certain measures under the Base Erosion and Profit Shifting (BEPS) package and align the provisions in the Inland Revenue Ordinance with international tax requirements. The Ordinance introduced enhancements to double taxation relief provisions; transfer pricing rules and related provisions; transfer pricing documentation requirements relating to the master file and local file and country-by-country report; and amendments to preferential regimes, including extending tax concessions to domestic transactions and the prescription of thresholds for substantial activities requirements.

Automatic exchange of financial account information in tax matters ("AEOI")

The AEOI was established by the Organisation for Economic Cooperation and Development in July 2014 to enhance tax transparency and combat cross-border tax evasion. The Hong Kong Government introduced the Inland Revenue (Amendment) (No.3) Ordinance 2016, which commenced operation on 30 June 2016, to put in place a legislative framework for Hong Kong to implement AEOI.

Under the AEOI standard, financial institutions are required to identify financial accounts held by tax residents of reportable jurisdictions or held by passive non-financial entities whose controlling persons are tax residents of reportable jurisdictions in accordance with due diligence procedure. In order to determine whether reporting is required and to provide accurate information to the IRD for information exchange, banks are required to ascertain the tax residency of their customers and may need to obtain additional information or documentation from them.

The Inland Revenue (Amendment) (No.2) Ordinance 2019 was gazetted on 1 March 2019. It requires Mandatory Provident Fund Schemes (MPF), Occupational Retirement Schemes registered under the Occupational Retirement Schemes Ordinance, pooling agreements, approved pooled investment funds and credit unions to comply with the due diligence and reporting obligations relating to AEOI starting from 2020. If members of the institutions concerned are tax residents of reportable jurisdictions, these institutions will need to report in 2021 for the first time to the Inland Revenue Department the financial account information of the relevant members, covering the year 2020, for transmission to the relevant tax authorities. The Amendment Ordinance also increased the number of reportable jurisdictions from 75 to 126 with effect from 1 January 2020.

Hong Kong Employment Law Framework

Employment law in Hong Kong is derived from local legislation and the common law.

Legislation

The Employment Ordinance (Cap. 57) is the main piece of legislation governing employment law in Hong Kong. All employees covered by the Employment Ordinance, irrespective of their hours of work, are entitled to basic protection under the Employment Ordinance. Parties may not contract out of the Employment Ordinance provisions and any agreement attempting to do so is void.

The Minimum Wage Ordinance (Cap. 608) establishes a statutory minimum wage regime aimed at striking a balance between preventing excessively low wages and minimising the loss of low-paid jobs, while sustaining Hong Kong's economic growth and competitiveness.

The Employees' Compensation Ordinance (Cap. 282) establishes a no-fault, non-contributory employee compensation system for work injuries. Every employer must obtain an insurance policy in respect of its liability to compensate employees for work injuries.

The Mandatory Provident Fund Schemes Ordinance (Cap. 485) was launched in 2000 to provide retirement protection to the entire workforce in Hong Kong.

There are also certain anti-discrimination laws in force in Hong Kong to prohibit discrimination on grounds such as sex, pregnancy, marital status, disability, family status and race.

Common Law

Legislation comprises statutory regulations passed by governmental bodies, while common law is developed by judge-made court decisions. In this regard, case law is used by the court to interpret employment law, explain and expand the tests and definitions and fill the gaps using common law principles, such as the doctrine of estoppel.

The common law relies heavily on the contractual obligations and liabilities of both the employer and employee, and the employment contract is usually relied on where disputes arise. Whilst Hong Kong cases are binding on Hong Kong courts, case law from other common law jurisdictions may be considered and have persuasive authority in Hong Kong.

Employment Ordinance

Application of the Employment Ordinance

The Employment Ordinance applies to all employees with the following exceptions:

> a family member who lives in the same dwelling as the employer;
>
> an employee as defined in the Contracts for Employment Outside Hong Kong Ordinance (Cap. 78);
>
> a person serving under a crew agreement under the Merchant Shipping (Seafarers) Ordinance (Cap. 478), or on board a ship which is not registered in Hong Kong; and
>
> an apprentice whose contract of apprenticeship has been registered under the Apprenticeship Ordinance (Cap. 47), except with respect to certain provisions in that Ordinance.

All employees covered by the Employment Ordinance, irrespective of their hours of work, are entitled to basic protection under the Employment Ordinance including payment of wages, restrictions on deductions from wages and the granting of statutory holidays, etc.

Employees who are employed under a continuous contract are further entitled to benefits such as rest days, paid annual leave, sickness allowance, severance payment and long service payment.

Contract of Employment

A contract of employment is an agreement concerning employment conditions made between an employer and an employee. Employers and employees are free to negotiate and agree on the terms and conditions of employment provided that they do not violate the provisions of the Employment Ordinance. Any term of an employment contract which purports to extinguish or reduce any right, benefit or protection conferred upon the employee by the Employment Ordinance is void. Therefore, the Employment Ordinance will prevail if any contractual terms are less favourable than those provided for in the Ordinance.

Information on Conditions of Service. Before employment begins, an employer must clearly inform each employee of the conditions of employment under which he is to be employed with regard to:

> wages (see definition below);
>
> wage period;
>
> length of notice required to terminate the contract; and
>
> if the employee is entitled to an end of year payment, the end of year payment or proportion and the payment period.

Whenever there is any change in the conditions of service, whether these have merely been proposed to an employee or are actually in force, the employer shall inform him in an intelligible manner.

Wages

Definition. "Wages" means all remuneration, earnings, allowances (including travelling allowances and attendance allowances), attendance bonus, commission, overtime pay, tips and service charges payable to an employee in respect of work done or work to be done. However, wages do not include certain items such as accommodation or education provided by the employer, the employer's contribution to any retirement scheme, non-recurrent travel allowance, and commission or annual bonus which is of a gratuitous nature or paid only at the discretion of the employer.

Minimum Wage Ordinance. The Minimum Wage Ordinance provides a wage floor to protect grassroots employees. It came into effect on 1 May 2011 and s. 14 of the Ordinance provides that the Chief Executive must require a report of recommendation about the prescribed minimum hourly wage rate at least once in every 2 years. The next round of reviews and recommendations is expected to be launched before 2021. The current statutory minimum wage rate ("SMW rate") is HK$37.50 per hour, which came into effect on 1 May 2019. In essence, wages payable to an employee in respect of any wage period, when averaged over the total number of hours worked in the wage period, should be no less than the SMW rate.

> **Application of the Minimum Wage Ordinance.**
>
> SMW applies to all employees, whether they are monthly-rated, weekly-rated, daily-rated, hourly-rated, piece-rated, permanent, casual, full-time, part-time or other employees, and regardless of whether or not they are employed under a continuous contract as defined in the Employment Ordinance, except for: (i) persons to whom the Employment Ordinance does not apply; (ii) live-in domestic workers; (iii) student interns undergoing a period of work arranged or endorsed by a specified education institution or an institution in connection with a non-local education institution; and (iv) work experience students where the contract is for a continuous period of up to 59 days, provided that the student was not a party to another contract of work experience during the same calendar year.
>
> **Amount of minimum wage**
>
> Wages payable to an employee in respect of any wage period must not be less than the amount of minimum wage calculated as follows:

Minimum wage	=	Total number of hours worked by the employee in the wage period	×	SMW rate (i.e. HK$37.50)

Rest Days, Holidays and Leave

An employee must be allowed to enjoy rest days, statutory holidays and paid annual leave during employment.

Rest Days and Statutory Holiday. An employee employed under a continuous contract is entitled to at least one rest day in every seven days. While an employee may work voluntarily on a rest day, an employer must not compel an employee to work on a rest day except in cases of unforeseen emergency.

An employer is required to grant an employee a statutory holiday, or arrange an "alternative holiday" or "substituted holiday". "Buy-out" of a holiday, i.e. payment in lieu of granting a holiday, is not allowed.

Paid Annual Leave. An employee is entitled to annual leave with pay after having been employed under a continuous contract for 12 months. An employee's entitlement to paid annual leave increases progressively from seven days to a maximum of 14 days according to the length of service.

Sickness and Maternity Protection

Sick Leave. An employee employed under a continuous contract for a period of at least one month is entitled to sickness allowance. An employer is prohibited from terminating the employment contract of an employee on his paid sickness day, except in cases of summary dismissal due to the employee's serious misconduct.

Maternity Leave. A female employee under a continuous contract, subject to certain qualifying requirements under the Employment Ordinance, is entitled to a continuous period of 10 weeks' paid maternity leave. In the 2018 Hong Kong Policy Address, the Chief Executive proposed that the statutory maternity leave be extended to 14 weeks. The Government will fund the additional wages for the extended 4 weeks of maternity leave.

An employer is prohibited from dismissing a pregnant employee from the date on which she is confirmed to be pregnant by a medical certificate to the date on which she is due to return to work upon the expiry of her maternity leave.

Paternity Leave. Pursuant to the Employment (Amendment) (No.3) Ordinance 2018 (Amendment Ordinance), which came into effect on 18 January 2019, a male employee is entitled to 5 days' paternity leave for each child born on or after 18 January 2019. For children born between 27 February 2015 and 17 January 2019, male employees were entitled to 3 days' paternity leave.

End of Year Payment

The provisions concerning end of year payment apply to an employee employed under a continuous contract who, in accordance with a term of his contract is entitled to an end of year payment from his employer.

Such end of year payment means any annual payment (including double pay, 13th month payment, end of year bonus) of a contractual nature. It does not include any payment which is of a gratuitous nature or which is payable at the discretion of the employer.

Termination of Contract of Employment

Termination of Employment Contract by Notice or Payment in lieu of Notice. A contract of employment may be terminated by the employer or employee through giving the other party due notice or wages in lieu of notice. In the case of a continuous contract of employment, the length of notice or the amount of wages in lieu of notice required are:

Table 1

Employement Condition			Lenght of notice	Wages in lieu of notice
During Probation Period	Within the first month of probation		Not required	Not required
	After the first month of probatio	With agreement to the length of notice	As per agreement, but not less than 7 days	Table 2
		Without agreement to the length of notice	Not less than 7 days	Table 2
No/after probation period	With agreement to the length of notice		As per agreement, but not less than 7 days	Table 2
	Without agreement to the length of notice		Not less than 1 month	Table 2

Table 2

Notice period expressed in days or weeks	Average daily wages earned by an employee in the 12 month period preceding the day of termination of contract is given	×	Number of days in the noticeperiod for which wages would normally be payable to the employee	=	Wages in lieu of notice
Notice period expressed in month	Average daily wages earned by an employee in the 12 month period preceding the day when a notice of termination of contract is given	×	Number of months specified in the notice period	=	Wages in lieu of notice

Termination of Employment Contract Without Notice or Wages in lieu of Notice. An employer may summarily dismiss an employee without notice or payment in lieu of notice if the employee, in relation to his employment: (i) willfully disobeys a lawful and reasonable order; (ii) is guilty of misconduct; (iii) is guilty of fraud or dishonesty; or (iv) is habitually neglectful in his duties. Taking part in a strike is not a lawful ground for an employer to terminate an employee's contract of employment without notice or payment in lieu of notice.

> **NOTE:** summary dismissal is a serious disciplinary action. It only applies to cases where an employee has committed very serious misconduct or fails to improve after the employer's repeated warnings.

An employee may terminate his employment contract without notice or payment in lieu of notice if: (i) he reasonably fears physical danger by violence or disease; (ii) he is subjected to ill-treatment by the employer; or (iii) he has been employed for not less than five 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 is engaged to perform.

Statutory Restrictions on Termination of Employment Contract. An employer may not dismiss an employee under the following circumstances:

Maternity Protection	An employer may not dismiss a female employee who has been confirmed to be pregnant and has served a notice of pregnancy.
Paid Sick Leave	An employer may not dismiss an employee whilst the employee is on paid sick leave.
Giving evidence or information to the authorities	An employer may not dismiss an employee by reason of his giving evidence or information in any proceedings or inquiry in connection with the enforcement of the Employment Ordinance, work accidents or breach of work safety legislation.
Trade Union Activities	An employer may not dismiss an employee for trade union membership and activities.
Injury at work	An employer may not dismiss an injured employee before having entered into an agreement with the employee for the employee's compensation or before the issue of a certificate of assessment.

Termination Payments. The items and amount of payments payable to an employee on termination of employment or expiry of the contract depend on a number of factors such as the length of service, the terms of the employment contract and the reason for termination of the contract. Termination payments usually include:

> outstanding wages;
>
> wages in lieu of notice, if any;
>
> payment in lieu of any untaken annual leave, and any pro rata annual leave pay for the current leave year;
>
> any outstanding sum of end of year payment (where applicable);
>
> where appropriate, long service payment or severance payment; and
>
> other payments under the employment contract, such as, gratuity, provident fund, etc.

Employment Protection

The section of the Employment Ordinance on Employment Protection aims to discourage employers from dismissing, or varying the contractual employment terms of, their employees in order to evade their liabilities under the Employment Ordinance.

Pursuant to the Employment (Amendment) (No.2) Ordinance 2018 which comes into operation on 19 October 2018, where an employee has been unreasonably and unlawfully dismissed on or after

19 October 2018 and the employee makes a claim for reinstatement or re-engagement, the Labour Tribunal ("LT") may make an order for reinstatement or re-engagement without the need to secure the employer's agreement. The Amendment Ordinance provided that unreasonable and unlawful dismissal means: (1) the employee is dismissed other than for a valid reason as specified in the Employment Ordinance; and (2) the dismissal is in contravention of the law.1

Eligibility and Remedies for Employment Protection. An employee may claim for remedies against an employer in the following situations:

Situation	Conditions	Remedies
Unreasonable Dismissal	the employee has been employed under a continuous contract for a period of not less than 24 months; and the employee is dismissed other than for a valid reason as specified in the Ordinance.	An order for reinstatement or re-engagement; or An award of terminal payments
Unreasonable Variation of the Terms of the Employment Contract	the employee has been employed under a continuous contract; the terms of the employment contract are varied without the employee's consent; the employment contract does not contain an express term which allows such a variation; and the terms of the employment contract are varied other than for a valid reason as specified in the Ordinance	An order for reinstatement or re-engagement; or An award of terminal payments
Unreasonable and Unlawful Dismissal	the employee is dismissed other than for a valid reason as specified in the Ordinance; and the dismissal is in contravention of the law	An order for reinstatement or re-engagement; or An award of terminal payments; and/or An award of compensation not exceeding HK$150,000

Valid Reasons for Dismissal or Variation of the Terms of an Employment Contract. The five valid reasons for dismissal or variation of the terms of an employment contract are:

> the conduct of the employee
>
> the capability or qualifications of the employee for performing his work
>
> redundancy or other genuine operational requirements of the business
>
> statutory requirements (i.e. it would be contrary to the law to allow an employee to continue to work in his original position or to continue with the original terms of his employment contract)
>
> other substantial reasons

Unlawful Dismissal. Pursuant to "Statutory Restrictions on Termination of Employment Contract" in Chapter 9 of "A Concise Guide to the Employment Ordinance", dismissal which is in contravention of the law included dismissal (1) during pregnancy and maternity leave; (2) during paid sick leave; (3) after work-related injury and before determination / settlement and/or payment of compensation under the Employees' Compensation Ordinance; (4) by reason of the employee exercising trade union rights; (5) by reason of the employee giving evidence for the enforcement of relevant labour legislation.

Remedies for Employment Protection. Remedies for Employment Protection, which are awarded by the Labour Tribunal, including an order of reinstatement or re-engagement, an award of terminal payments and an award of compensation. Under the Employment (Amendment) (No.2) Ordinance, the Tribunal can make orders of reinstatement or re-engagement without the employer's agreement if the Labour Tribunal considers that the order is appropriate and is reasonably practicable because the employee has been unreasonably and unlawfully dismissed. The amendment has changed the previous position where the Labour Tribunal have to obtain mutual consent of both the employer and the employee before an order for reinstatement or re-engagement could be made.

Reinstatement is re-employment of the employee by the employer and the employer is to treat the employee in all respects as if he/she had not been dismissed or as if there had been no variation of the terms of the contract of employment, while re-engagement is re-employment of the employee based on terms comparable to his/her original terms of the employment.

If the employer does not reinstate or re-engage the employee as required by the order, the employer shall pay to the employee a further sum, amounting to three times the employee's average monthly wages and subject to a ceiling of HK$72,500, on top of the above monetary remedies payable to the employee as ordered by the Labour Tribunal. The employer will commit a criminal offence if she/he willfully and without reasonable excuse fails to pay the further sum. It is liable to a fine not exceeding HK$350,000 and / or to imprisonment for up to three years.

Severance Payment and Long Service Payment

Eligibility for Severance Payment and Long Service Payment. An employee is eligible for severance payment or long service payment subject to the following conditions:

Entitlement	Severance Payment	Long Service Payment
Qualifying period of employment	Not less than 24 months under a continuous contract	Not less than 5 years under a continuous contract
Conditions/ Requirements	The employee is dismissed by reason of redundancy*	The employee is dismissed but: • he is not summarily dismissed due to his serious misconduct; • his dismissal is not by reason of redundancy
	Employment contract of a fixed term expires without being renewed by reason of redundancy	Employment contract of a fixed term expires without being renewed*
	The employee is laid off	The employee dies
		The employee resigns on ground of ill health
		The employee, aged 65 or above, resigns on ground of old age

* An employee will not be simultaneously entitled to both long service payment and severance payment.

Meaning of Redundancy. An employee is taken to be dismissed by reason of redundancy if the dismissal is due to the fact that: (i) the employer closes his business; (ii) the employer has ceased the business in the place where the employee was employed; or (iii) the requirement of the business for employees to carry out work of a particular kind ceases or diminishes.

Meaning of Lay-off. If an employee is employed on such terms and conditions that his remuneration depends on his being provided by the employer with work of the kind he is employed to do, he will be taken to be laid-off if the total number of days on which no work is provided or no wages are paid exceeds: (i) half of the total number of normal working days in any four consecutive weeks; or (ii) one-third of the total number of normal working days in any 26 consecutive weeks.

Amount of Severance Payment/ Long Service Payment. The following formula applies to the calculation of both severance payment and long service payment:

Monthly-paid employee	reckonable years of (last month wages x 2/3)	x	service
Daily-rated/piece-rated employee	Any 18 days' wages chosen by the employee out of his last 30 normal working days	x	Reckonable years of service

Protection Against Anti-Union Discrimination

Right of an Employee to Participate in Trade Unions. Every employee has the right to be a member or an officer of a trade union and to take part in the activities of the trade union.

An employer must not prevent or deter an employee from exercising any of the above rights and must not dismiss, penalise or discriminate against an employee for exercising such rights.

The Employees' Compensation Ordinance (ECO)

Application of the Employees' Compensation Ordinance

The Employees' Compensation Ordinance applies to all full-time or part-time employees who are employed under contracts of service or apprenticeship, including domestic helpers, agricultural employees, crew members of a Hong Kong ship, and any person employed in any capacity on board of a Hong Kong ship.

The Employees' Compensation Ordinance also applies to employees employed in Hong Kong by local employers injured while working outside Hong Kong. Even if the employer is a person carrying on business outside Hong Kong, or the employee is a crew member of a foreign ship, the Employees' Compensation Ordinance still applies if the employer submits to the jurisdiction of the courts of Hong Kong.

The Employees' Compensation Ordinance does not however apply to casual employees, outworkers or members of the employer's family who live with him.

Statutory Liability of the Employer

Injury by Accident. If an employee sustains an injury or dies as a result of an accident arising out of and in the course of his employment, his employer is generally liable to pay compensation under the Employees' Compensation Ordinance.

Occupational Disease. An employee suffering incapacity arising from an occupational disease as defined in the Employees' Compensation Ordinance is entitled to receive the same compensation as that payable to an employee injured in an accident arising out of and in the course of employment, subject to certain qualifying requirements.

Where an employee suffers from a disease outside the scope of the Employees' Compensation Ordinance, he/she may still claim compensation thereunder if the disease is certified to be a personal injury by accident arising out of and in the course of employment.

Compulsory Insurance

The Employees' Compensation Ordinance obliges an employer to take out a policy of insurance to cover its liabilities both under the Employees' Compensation Ordinance and at common law for injuries at work in respect of all its employees. As specified in the ECO, when an insured employer is liable to pay employee's compensation to his employee in respect of a work injury, such sum shall become due and payable by the insurer, notwithstanding anything to the contrary in the policy of insurance.

No. of Employees	Amount of Insurance Cover per Event
not more than 200	not less than $100 million
more than 200	not less than $200 million

Claims for Damages by Action at Common Law

Against a third party	Against an employer
By an employee. When an employee is injured in circumstances which created legal liability in some person other than the employer, he may take proceedings to recover damages from the third party, as well as claiming compensation against the employer.	The Ordinance does not limit the civil liability of an employer. Thus, when an injury to an employee is caused by the negligence or other wrongful act of an employer, the employee may recover compensation and also sue for damages, but the damages awarded will be reduced by the value of the compensation paid or payable under the Ordinance.
By an employer. Similarly, an employer who is liable to pay compensation may take action against a third party to recover the compensation, indemnity or any sum payable to the employee contractually.	

Mandatory Provident Fund Schemes Ordinance

To provide retirement protection to the entire workforce in Hong Kong, a mandatory provident fund ("MPF") system was introduced under the Mandatory Provident Fund ("MPF") Schemes Ordinance in 2000. It requires both employees (with the exception of certain exempt persons) and employers to make regular contributions into a registered MPF scheme. Every employer is obliged to contribute an amount equal to at least 5% of an employee's salary (subject to the maximum level of income, currently set at HK$30,000 per month) to such MPF scheme. The Mandatory Provident Fund Authority (MPFA) conducted its periodic review on the maximum and minimum level of income in July 2018, subject to the proposed changes, the maximum income level will be adjusted to HK$48,000 while the minimum income level would be adjusted to HK$8,250.2 Every employee is also required to contribute at least 5% of his/her salary to the scheme, also subject to the same maximum level of income.

The Hong Kong Government is working on abolishing the MPF offsetting arrangement. Under the current scheme, in order to mitigate the financial burdens on the employers, they can offset any severance payments and long service payments against accrued benefits that derives from or at-

tributes to the employee's contribution to the MPF. In view of this, the Government had proposed certain supportive measures to assist Hong Kong employers after the abolishment of the offsetting arrangement, such as setting up the designated saving accounts ("DSA") under their own name and to save up in advance to prepare for potential severance payment and long service payment expenses in future.

Also, the Government will provide a two-tier subsidy to share employers' severance payment and long service payment expenses. The first tier subsidy lasts for 12 years while the duration of the second-tier subsidy is extended to 25 years to help enterprises adopting the policy change. The Government targets to secure the passage of the relevant legislative amendments by the Legislative Council by 2022 and to fully implement the abolition of the "offsetting" two years later.

The Hong Kong Government published the Inland Revenue and MPF Schemes Legislation (Tax Deductions for Annuity Premiums and MPF Voluntary Contributions) (Amendments) Bill 2018 in the Gazette dated 7 December 2018. The Bill seeks to introduce tax deductions for deferred annuity premiums and Mandatory Provident Fund Tax Deductible Voluntary Contributions to encourage voluntary savings for retirement. The maximum tax deductible limit for a taxpayer under the Amendment Bill is HK$ 60,000.

Occupational Retirement Schemes Ordinance. A number of employers had been operating voluntary retirement schemes regulated under the Occupational Retirement Schemes Ordinance (Cap. 426) ("ORSO") before the introduction of the MPF scheme. Many such voluntary ORSO schemes obtained MPF exemption and continue to operate. Members of an MPF-exempted ORSO scheme, as well as new employees eligible to join an MPF-exempted ORSO scheme after the commencement of the MPF system, have a one-off option to choose between the ORSO scheme and an MPF scheme.

On April 2018, the Hong Kong Government published the Occupational Retirement Schemes (Amendment) Bill 2019, seeking to update the Occupational Retirement Schemes Ordinance in order to prevent the misuse of Occupation Retirement scheme (ORSO schemes) as an investment vehicle open to persons who are not employees of the relevant employers of the schemes.

Among other things, the Amendment Bill will (1) enhance the powers of the Registrar, i.e. the Mandatory Provident Fund Schemes Authority (MPFA), to ensure that schemes regulated under the ORSO are genuinely employment-based retirement schemes; and (2) improve the governance of ORSO schemes. The Amendment Bill also proposes to improve the governance of ORSO schemes by enhancing the Registrar's regulatory powers and abolishing the current criterion for accepting new ORSO exemption applications for schemes that have not more than 10 per cent or 50 of the scheme's members, whichever is less, who are Hong Kong permanent identity card holders.

Anti-discrimination legislation

There are certain anti-discrimination laws in force in Hong Kong: the Sex Discrimination Ordinance (Cap. 480) (SDO), the Disability Discrimination Ordinance (Cap. 487) (DDO), the Family Status Discrimination Ordinance (Cap. 527) (FSDO) and the Race Discrimination Ordinance (Cap. 282) (RDO), which prohibit discrimination on the basis of sex, pregnancy, marital status, disability, family status and race. In cases where the employer treats an employee less favourably due to his behaviour is sufficient to constitute a discriminatory claim even though the employer was not actually beware of any disabilities suffered by the employee (see M v Secretary of Justice CACV 265/2007). Also, there are provisions in the Employment Ordinance guarding against discrimination on the ground of trade union membership.

Further, it is noteworthy that as of November 2019, there are no laws against discrimination on the grounds of sexual orientation and gender identity in spite of the effort of the Hong Kong Equal Opportunities Commission in formulating such anti-discrimination protections against sexual orientation and gender identity, and adding new provisions into existing anti-discrimination laws.

The Discrimination Legislation (Miscellaneous Amendments) Bill was gazetted on 30 November 2018 and was introduced to the Hong Kong Legislative Council on 12 December 2018. There are eight amendments to the existing anti-discrimination laws, including:

> Amendments to the SDO, prohibiting discrimination against breastfeeding;
>
> Amending the RDO, to prevent an associate of a person from direct racial discrimination;
>
> Amending the RDO relating to discrimination by imputation;
>
> Amendments to the SDO, the DDO, and the RDO prohibiting harassment at workplace;
>
> Amending the DDO and RDO, prohibiting harassment in relation to the provisions of goods, etc.;
>
> Amendments to the DDO and RDO prohibiting certain acts of harassment committed outside Hong Kong;
>
> Amendments to the SDO and DDO prohibiting harassment against members of a club (including applicants);
>
> Amending SDO, SFDO and RDO to remove the intention requirement for an award of damages.

Regulation of working hours

Regulating working hours and legislating standardised working hours have long been a subject of debate in Hong Kong. However, the lack of consensus among stakeholders in formulating such a framework leads the Hong Kong Government to announce in May 2018 that the legislation plan and relevant work has been suspended. Instead, the Government is planning to introduce a non-legally binding guidelines in relation to standardised working hours for 11 specific industries by 2020.

Occupational Safety and Health Regulation

The Occupational Safety and Health Ordinance (Cap. 509) provides for the safety and health protection to employees in workplaces, both industrial and non-industrial. Subject to a few exception such as places where only self-employed persons work, apart from industrial workspace such as factories, construction sites and catering establishments, non-industrial workplaces such as offices, laboratories, shopping arcades, educational institutions are also covered under the Occupational Safety and Health Ordinance.

The Occupational Safety and Health Regulation sets down some basic requirements for workplace environment control, accident prevention and first aid. For example, measures taken to provide a safe and healthy work environment included keeping the workplace clean and ensuring that it is adequately lit and ventilated, and providing adequate drainage. There are other legislations relating

to occupational safety and health, including Display Screen Equipment Regulation, and Factories and Industrial Undertakings Ordinance.

The Commissioner of Labour is empowered to issue improvement notices and suspension notices against activity of workplace which may create an imminent hazard to the employees. Failure to comply with the notices constitutes an offence punishable by a fine of H$200,000 and HK$500,000 respectively and imprisonment of up to 12 months. In March 2019, the Labour Department proposed a maximum fines for the offences to be pegged to the turnover of the convicted entities and pitched at 10% of the turnover or HK$6 million, whichever is the greater, while the maximum imprisonment term to be increased to two years. As regards those extremely serious cases tried as indictable offences, the maximum imprisonment term will be pitched at three years.

Hong Kong's foreign investment climate

The Hong Kong Special Administrative Region ("HKSAR" or "Hong Kong") is receptive to foreign investment and does not discriminate between foreign and domestic investors. Attracting foreign investment is a priority of the government and is widely considered beneficial, even crucial, for Hong Kong's economic stability. InvestHK, a department of the HKSAR government responsible for attracting foreign direct investment, announced on 21 January 2019 that it had assisted 436 overseas and Mainland China companies to set up or expand in Hong Kong in 2018, an all-time high and a year-on-year increase of 8.5 percent.1 It is quite common to have a 100-percent foreign investment in certain industries. As of September 2019, 12,213 non-Hong Kong companies are registered in Hong Kong. The number of overseas companies which have registered a place of business in Hong Kong has increased in recent years with 1028 registrations in 2017 and 1193 registrations in 2018.2

Hong Kong's predictable business environment, rule of law, stable and low tax regime, free flow of information and capital, good infrastructure and proximity to the People's Republic of China ("PRC") make it a desirable platform for investors. Hong Kong was the world's freest economy in the 2019 Index of Economic Freedom, compiled by The Heritage Foundation and The Wall Street Journal with a score of 90.2.3 The city also ranked first in "Business Freedom", "Trade Freedom" and "Financial Freedom". Hong Kong also benefits from low taxation with a corporate profits tax rate of 16.5% and a standard rate of salaries tax of 15%. There is no value added tax or capital gains tax in Hong Kong.

Foreign direct investment into Hong Kong amounted to US$104 billion in 2018. Hong Kong currently ranks third globally in terms of foreign direct investment inflows, after the United States and the PRC. 4 According to the World Bank's Doing Business 2019 Report, Hong Kong is ranked fourth globally for ease of doing business, having ranked fifth in the same report in 2018. 5

Hong Kong Basic Law regarding foreign investment

The Basic Law of the HKSAR has provisions safeguarding Hong Kong's free enterprise system and liberal investment regime (Chapter V).

Among other things, the Basic Law seeks to uphold the principles of a low tax policy (Article 108), secure free convertibility of the Hong Kong dollar and free flow of capital (Article 112), maintain the status of a free port with no tariffs unless otherwise prescribed by law (Article 114), and preserve free trade, and free movement of goods, intangible assets and capital (Article 115).

Business Entities available to foreign investors

Types of business structures

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. Foreign investors may make use of all available forms of Hong Kong business entities.

Overseas companies that intend to establish an office in Hong Kong and do not wish to create a Hong Kong-incorporated subsidiary may register as non-Hong Kong companies under Part 16 of the Companies Ordinance (Cap. 622) (the "Companies Ordinance"). Hong Kong registered foreign corporations, with the exception of certain provisions, are not governed by the provisions of the Companies Ordinance. While the Companies Ordinance governs the formation and dissolution of Hong Kong companies, the creation and dissolution of a foreign corporation are governed by the law of its place of incorporation.

Within one month after establishing a place of business in Hong Kong, an overseas incorporated company must register as a non-Hong Kong company under Part 16 of the Companies Ordinance by registering certain documents with the Registrar of Companies and must obtain a business registration certificate from the Inland Revenue Department.

A one-stop company and business registration service means that non-Hong Kong companies are only required to lodge a single application for both company and business registration. If the required incorporation documents (application for registration as a Registered Non-Hong Kong Company (Form NN1) and Notice to Business Registration Office (IRER2)) and the prescribed fees are submitted to the Registrar of Companies, the company can collect both its business registration certificate (issued by the Inland Revenue Department) and certificate of incorporation (issued by the Companies Registry) from the Companies Registry once the application has been approved.

A non-Hong Kong company registered under Part 16 of the Companies Ordinance must report to the Registrar of Companies any subsequent changes to its name, directors, company secretary, authorised representatives, memorandum and articles, the address of its principal place of business and registered office, each within one month of the change by submitting the prescribed forms. The creation of a charge on property situated in Hong Kong and any existing charge on property situated in Hong Kong which is acquired by a non-Hong Kong company must be registered with the Registrar of Companies. Registered non-Hong Kong companies must keep copies of instruments creating registrable charges at their registered office.

Every year, a non-Hong Kong company must submit to the Registrar of Companies an annual return and a copy of its annual accounts (if applicable). Such obligations will cease if the company ceases to have a place of business in Hong Kong.

The Non-Hong Kong Companies (Disclosure of Company Name, Place of Incorporation and Members' Limited Liability) Regulation (Cap. 622M) (the "Regulation") came into effect on 1 August 2019 and aligned the obligations of non-Hong Kong companies in relation to the display of company names and disclosure of liability status with those of Hong Kong companies. Accordingly, non-Hong Kong companies are required to:

> display their name and place of incorporation at every business venue of the company in Hong Kong so that they may be easily seen by visitors to the business venue;
>
> state their name and place of incorporation in every communication document and transaction instrument of the company in Hong Kong;

exhibit a notice of the fact that the liability of the members of the non-Hong Kong company is limited at every business venue of the company and state this fact in every communication document and transaction instrument of the company in Hong Kong, where applicable;

state in every advertisement of the company in Hong Kong issued when it is in liquidation: (a) its name and place of incorporation, and (b) where applicable, that the liability of its members is limited; and

add "(in liquidation)" after its name if its name is not in Chinese or add "(正進行清盤)" after its name if it is in Chinese when displaying or stating its name when the non-Hong Kong company is in liquidation.

Directors

Under the Companies Ordinance, a director can be of any nationality as long as he has attained the age of 18 and has not been disqualified from acting as a director. He can also be resident in Hong Kong or overseas. Therefore, he does not have to reside in Hong Kong when he is acting as a director. When a company appoints a director, the company must send a specific form to the Registrar of Companies of such appointment setting out the director's name and usual residential address and the number of his identity card or passport, and including a statement signed by the director that he accepts the appointment and has attained 18 years of age.

Directors of Hong Kong companies owe a number of duties, which are based on the principle of showing the utmost good faith toward the company. Generally, directors' duties are owed only to the company itself; directors have been held to owe fiduciary duties to individual shareholders only in limited circumstances. Fiduciary duties of directors, which are generally based on equitable principles, mainly include:

a duty to act in good faith in the interests of the company;

a duty to exercise powers for a proper purpose for the benefit of members as a whole; and

a duty to avoid actual or potential conflicts of duty and interest.

Directors of Hong Kong companies also owe a statutory duty of reasonable care, skill and diligence to the company under s. 465 of the Companies Ordinance. The Companies Ordinance requires a director to exercise reasonable care, skill and diligence, meaning the care, skill and diligence that would be exercised by a reasonably diligent person with:

the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company (an objective test); and

the general knowledge, skill and experience that the director has (a subjective test).

This section also applies to a shadow director of a Hong Kong company.

In addition to the general duties listed above, "A Guide on Directors' Duties" issued by the Companies Registry also includes the following general directors' duties:

a duty not to delegate powers except with proper authorisation and a duty to exercise independent judgement;

a duty to exercise care, skill and diligence;

a duty not to gain advantage from the use of a position as a director;

a duty not to make unauthorised use of a company's property or information;

a duty not to accept personal benefit from third parties conferred because of a position as a director;

a duty to observe the company's constitution and resolutions; and

a duty to keep proper accounting records.

The directors of a non-Hong Kong company are not generally required to comply with s. 465 of the Companies Ordinance unless the company is listed on the Stock Exchange of Hong Kong Limited (the "Exchange"). The duties of directors of unlisted non-Hong Kong companies will be determined according to the law of their jurisdiction of incorporation. Directors of non-Hong Kong companies listed on the Exchange owe the same statutory duty of reasonable care, skill and diligence to the company under s. 465 of the Companies Ordinance as Hong Kong companies since the Exchange's Listing Rules require directors of listed companies to fulfil fiduciary duties and duties of skill, care and diligence to the standard required by Hong Kong law. Directors of listed companies must also comply with their duties and obligations as directors of a listed company under the Exchange's Listing Rules and the Corporate Governance Code and Corporate Governance Report in Appendix 14 of the Listing Rules.

Directors who breach their duties and obligations as a director may be liable to civil or criminal proceedings and may be disqualified from acting as a director. The directors of companies listed on the Exchange may also be sanctioned, typically by way of public censure, for breach of the Listing Rules and/or the undertaking given to the Exchange to comply, and to procure the company's compliance, with the Listing Rules.

Foreign investment incentives

According to the 2019 Annual Survey conducted jointly by InvestHK and the Census and Statistics Department, 9,040 businesses operating in Hong Kong had parent companies overseas and in Mainland China in 2019. Among them, 1,541 had set up regional headquarters in Hong Kong, up 9.1 percent from the number in 2017.

There are no specially enacted incentives for foreign investment. However, all foreign companies benefit from the Hong Kong government's policy of providing an appealing climate for investment. It promotes fair competition and does not discriminate between foreign and domestic investors. The Hong Kong Financial Secretary's 2019-20 Budget continued to support the expansion of market coverage to create business opportunities for enterprises. The Government has expanded its Free Trade Agreement (FTA) and Investment Promotion and Protection Agreement networks to provide protection for foreign businesses exploring and investing in the Hong Kong market.

Hong Kong generally has lower rates of tax than most other Asian jurisdictions and its tax environment is relatively simple. In particular, there are:

> no tax on capital gains;
>
> no tax on profits arising in or derived from outside Hong Kong;
>
> no tax on dividends; and
>
> no estate duty.

There are three separate direct taxes which are levied under the Inland Revenue Ordinance (Cap. 112) (the "IRO"). The three taxes are: profits tax, salaries tax and property tax. The ambit of the IRO is limited territorially and it is only income with a Hong Kong source which, by and large, is subject to tax.

Profits tax

Persons, including corporations, partnerships, trustees and bodies of persons carrying on any trade, profession or business in Hong Kong are chargeable to profits tax on the assessable profits arising in or derived from Hong Kong from such trade, profession or business. No distinction is made between residents and non-residents. A resident may therefore derive profits from abroad without being subject to tax; conversely, a non-resident may be chargeable to tax on profits arising in or derived from Hong Kong. Whether a business is carried on in Hong Kong and whether profits are derived from Hong Kong are largely questions of fact. However, guidance on the principles applied can be found in cases which have been considered by the courts in Hong Kong and in other common law jurisdictions.

Tax rates

The Inland Revenue (Amendment) (No. 3) Ordinance 2018 introduced a two-tiered profits tax rate regime for corporations and unincorporated businesses (mostly partnerships and sole proprietorships) which took effect from the year of assessment 2018/19. Under the two-tiered 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. The profits tax rate for assessable profits above HK$2 million is unchanged at 16.5% for corporations and 15% for unincorporated businesses.

All entities with profits chargeable to profits tax in Hong Kong qualify for the two-tiered profits tax rates, except those with a connected entity which is nominated to be chargeable at the two-tiered rates. There is an extensive definition of "connected entity" to ensure that a group of connected taxpayers can benefit from the one-half reduction only in respect of one of such connected taxpayers. For this purpose, the group will need to identify which entity will benefit and to make an election accordingly. The election, once made, is irrevocable in respect of a particular year of assessment.

Taxpayers who have elected into other preferential half-rate tax regimes (e.g., professional reinsurance companies, captive insurance companies, corporate treasury centres and aircraft leasing companies) are excluded from the two-tiered tax regime. In addition, any profits derived from qualifying debt instruments which are already taxed at concessionary tax rates (i.e., 7.5% or 8.25%, as the case may be) will be similarly excluded.

Tax incentives and allowances

In terms of tax incentives and allowances available in Hong Kong, no distinction is made between residents and non-residents. Foreign investors may make use of all types of tax incentives and tax allowances available in Hong Kong. The tax incentives include (but are not limited to):

Immediate writing-off is allowed for capital expenditure on plant and machinery specifically and directly related to manufacturing processes, and on computer hardware and software.

Capital expenditure on refurbishment of business premises is allowed to be written off over five years of assessment.

There is an exemption from payment of tax on interest derived from any deposit placed in Hong Kong with an authorised institution (but this is not applicable to interest received by or accrued to a financial institution).

Accelerated deduction for capital expenditure on specified environmental protection facilities from year of assessment 2008/09 onwards. For machinery or plant, 100% deduction will be allowed for the capital expenditure incurred. For installations forming part of a building or structure, 20% deduction will be allowed for each year in five consecutive years.

100% deduction for capital expenditure on specified environmentally-friendly vehicles from year of assessment 2010/11 and onwards.

Generally, all outgoings and expenses are deductible to the extent that they have been incurred in the production of chargeable profits. They include (but are not limited to):

Rent paid by any tenant of buildings or land occupied for the purpose of producing the assessable profits.

Bad and doubtful debts (subject to certain rules).

Repairs of premises, plant, machinery, implements, utensils or articles used in producing profits (other than the cost of improvements).

Expenditure for registration of a trademark, design or patent and expenditure on the purchase of patent rights or rights to any know-how for use in Hong Kong in the production of assessable profits.

Expenditure on research and development (subject to certain rules).

Donations of an aggregate of not less than HK$100 made to approved charities with the restriction that such donation shall not exceed 35% from year of assessment 2008/09 onwards of the adjusted assessable profits

Inland Revenue (Amendment) (Tax Concessions) Ordinance 2019

The Inland Revenue (Amendment) (Tax Concessions) Ordinance 2019 enacted on 6 November 2019 gives effect to tax concessions proposed in the Government's 2019-20 Budget. The concessions provide one-off reductions in salaries tax, tax under personal assessment and profits tax for the year of assessment 2018/19 by 100 percent, subject to a ceiling of HK$20,000 per case. The reductions were reflected in taxpayers' final tax payable for the year of assessment 2018/19 and benefit 145,000 tax-paying corporations and unincorporated businesses.

Foreign investment restrictions

As previously discussed, Hong Kong does not generally subject foreign investments to special regulatory regimes or requirements.

However, there are restrictions in certain areas. For example, there are restrictions on voting control by non-Hong Kong residents and corporations in the broadcasting sector. The Hong Kong government considers that such restrictions are justified as the media has an extensive reach and the potential to influence a large proportion of the population.

Television broadcasting restrictions

Pursuant to the Broadcasting Ordinance (Cap.562) (the "BO"), an 'unqualified voting controller' (that is, a person who alone or with others, directly or indirectly, has the ability to control the exercise of the right to vote, who has not been ordinarily resident in Hong Kong for a period of seven years) is prohibited from holding or acquiring specified thresholds in aggregate of the total voting control of a domestic free television programme service licensee without the prior written consent of the Broadcasting Authority.

There are no equivalent restrictions on voting control by non-residents for domestic pay television programme service licensees or non-domestic television programme service licensees.

Sound broadcasting restrictions

Pursuant to the Telecommunications Ordinance (Cap. 106) (the "TO"), the aggregate of the voting shares in a sound broadcasting licensee in which 'unqualified persons' (that is, persons not ordinarily resident in Hong Kong for seven years) have, directly or indirectly, any right, title or interest, must not exceed 49 per cent of the total number of voting shares in the licensee. Under the TO, a licence will only be granted to or held by a "corporation that is:

> a company formed and registered in Hong Kong under the Companies Ordinance;
>
> not a subsidiary; and
>
> empowered under its articles of association to comply fully with the provisions of the TO and the terms and conditions of its licence."

Investment as Entrepreneur

Hong Kong maintains an Investment as Entrepreneur visa scheme to facilitate the entry for residence by persons who want to establish or join a business in Hong Kong, and are in a position to make a substantial contribution to Hong Kong's economy.

Applicants are required to (i) have a good education background, as well as proven professional abilities and/or relevant experience and achievements, (ii) have no record of serious crime, and (iii) be in a position to make a substantial contribution to Hong Kong's economy.

The Hong Kong authorities consider several factors in determining economic contribution, including but not limited to, a two-year business plan, business turnover, financial resources, investment sum, number of jobs created locally and the introduction of new technology or skills. The Hong Kong Immigration Department requires detailed documentation to support these factors.

Notably, there are no prescribed minimum investment requirements.

An essential requirement is that the applicant be supported by a local sponsor, which may be an individual or a company. Individuals who are sponsors must be over 18, a bona fide Hong Kong resident and acquainted with the applicant.

Technology Talent Admission Scheme ("TechTAS")

Hong Kong has also launched the TechTAS to facilitate local R&D work. The TechTAS is a three-year pilot scheme. Under the scheme, eligible technology companies/institutes can admit overseas and Mainland technology talent to carry out R&D work for them. To be eligible, a technology company/institute must be: (i) a tenant/incubatee of the Hong Kong Science and Technology Parks Corporation and Hong Kong Cyberport Management Company Limited; and (ii) engaged in the area of biotechnology, artificial intelligence, cybersecurity, robotics, data analytics, financial technologies or material science.

Eligible technology companies/institutes will have to apply for a quota. After the allocation of quota, the company/institute can sponsor eligible persons to apply for an employment visa/entry permit within the validity period. The company/institute is also required to employ new local employees.

Exchange controls

There are no restrictions on foreign exchange transactions, capital movement or repatriation of funds, nor special approval or notification requirements for foreign investments in Hong Kong.

Foreign start-ups in Hong Kong

According to the 2019 Annual Survey of Companies in Hong Kong jointly conducted by InvestHK and the Census and Statistics Department, 3,184 start-ups were operating in major public and private co-work spaces and incubators in Hong Kong, up 42.8 percent from 2,229 in 2017. Hong Kong has a highly international start-up network. Among the founders of start-ups in Hong Kong, 34 percent are from outside Hong Kong, of whom the US made up the largest share (15.4 percent), followed by Mainland China (14 percent), the UK (12.5 percent), France (7 percent) and Australia (6.3 percent).

Types of Ownership

Leasehold Land

Since the return of sovereignty on 1 July 1997, virtually all land in Hong Kong is owned by the government of Hong Kong, which is part of the People's Republic of China. Therefore, all land in Hong Kong is leasehold land except for the land on which St. John's Cathedral is situated. Article 120 of the Basic Law provides that "all leases of land granted, decided upon or renewed before the establishment of the Hong Kong Special Administrative Region which extend beyond 30 June 1997, and all rights in relation to such leases, shall continue to be recognized and protected under the law of the Region." This confirms that all rights for land leases granted before the handover will remain unaffected.

Land is now mostly granted by way of conditions of sale, exchange, or grant ("Government Grant"). A Government Grant is a contract whereby once the conditions have been complied with, a government lease is deemed to be issued pursuant to section 14 of the Conveyancing and Property Ordinance (Cap. 219) ("CPO"). This is what is now known as a "Government Lease".

Subject to the terms of the Government Lease and other law and regulations relating to the use of a particular piece of land, a leaseholder of land is at liberty to deal with his or her leasehold interest in the lot granted by the government, including:

> the selling or disposal of his or her interest in the lot;
>
> dividing and sectioning the lot into smaller segments and selling off parts of them; or
>
> sub-dividing the lot by constructing and building structures over the lot and assigning all or part of the sub-divided units or flats (in case of multi-storey building) to different purchasers.

Joint ownership of leasehold land

Hong Kong allows co-ownership of a leasehold interest in real property in the form of either:

> joint tenants; or
>
> tenants-in-common.

Pursuant to the CPO, where the same estate or interest in land vests in 2 or more persons under an instrument or a will, it is be presumed that (unless a contrary intention is expressed in that instrument or will) the tenancy vests in those persons as tenants-in-common rather than as joint tenants.

Tenants-in-common jointly own the undivided shares of a property as a whole. However, each of the tenants-in-common may own the property in a ratio determined by them, i.e., either in equal shares or in different proportions.

Real property may also be held as joint tenants and each joint tenant will have an identical interest in terms of the extent, nature and duration with respect to the whole and every part of the real property. Joint tenancy gives rise to a right of survivorship in accordance with which the interest of a deceased joint tenant will automatically pass to and vest in the survivor(s).

Co-ownership by way of tenants-in-common differs materially from joint tenancy in that there is no automatic right of survivorship. A tenant-in-common's interest in property will be part of his or her estate and can pass either under a will or upon his or her intestacy.

Under the CPO, a company is capable of acquiring and holding real property as a co-owner in the same manner as if it were a natural person pursuant to the CPO.

Ownership of land and/or buildings

The ownership of a building situated on a certain lot of land is not implied in the "ownership" of that land. A deed of mutual covenant between all flat owners of a multi-unit building specifies the common parts of the building, the parts for the exclusive use of individual owners and the undivided shares of each flat. It also sets out the requirements and guidelines for various building management matters. The owner of an undivided share of the land will have the exclusive right to use and occupy the unit relating to that undivided share. Also, the ownership of a building will not necessarily imply the ownership of the land on which it is situated, and it is possible to have different owners of the land and the building erected on it.

Land registration

Hong Kong has a voluntary land registration system that is governed by the Land Registration Ordinance (Cap. 128) ("LRO").

The land registration system in Hong Kong functions to:

> protect the priority of registrable and registered interest;
>
> facilitate title tracing and checking; and
>
> giving notice of the registrable and registered interest to subsequent purchasers and mortgagees.

For the purpose of land registration, interests in land may be classified either as registrable (i.e., capable of being reduced into writing) or unregistrable (i.e., incapable of being reduced into writing).

Registrable interests such as deeds, conveyances, instruments in writing and judgments affecting real property in Hong Kong may be registered with the Land Registry and such registration:

> renders any registrable but unregistered interest unenforceable against any subsequent bona fide purchasers or mortgagees for valuable consideration; and
>
> precludes a registering party from being affected by any actual notice of a prior registrable but unregistered interest.

Registration of land provides priority according to the priority of the dates of registration of registered documents. However, the document registration system in Hong Kong does not cover unregistrable interests. Neither the CPO (in respect of the writing requirement) nor the LRO (in respect of the registration requirement) apply to unregistrable interests in land, such as any unwritten equities creating interests in land arising out of constructive trusts (e.g. the interest of a wife in real property arising from a promise or the husband and wife relationship) or resulting trusts (e.g. the interest of Party X in real property arising from contributions of purchase money or mortgage repayment by Party X in relation to real property purchased by Party Y).

The common law doctrine of notice determines the priority of unregistrable interests, under which priority may be given to those unwritten equity interests over a subsequent registered interest if the subsequent purchasers or mortgagees have notice of such equity interest when they acquire the interest in land. Moreover, the LRO expressly precludes the registration requirement for any short-term tenancy not exceeding 3 years and without any option to renew for another term.

In essence, the land registration system in Hong Kong offers protection and priority to a bona fide purchaser for valuable consideration against any registrable but unregistered interest in land, therefore a purchaser should always ascertain whether there is any unregistrable interest or short-term tenancy affecting the property which may take priority over his or her interest in the property.

Real estate transaction procedures

For tax and related accounting purposes, property buyers may choose to hold their properties in different investment structures. In Hong Kong, real estate transactions are governed by the CPO, as supplemented by common law. Property transactions in Hong Kong may be divided and classified into three main stages:

> the provisional agreement stage;
>
> the formal sale and purchase agreement stage; and
>
> the assignment and completion stage.

Provisional agreement stage

The sale and purchase of properties in Hong Kong is generally commenced through meetings with, and the engagement of, real estate agencies, who will conduct preliminary searches through the Land Registry for the property particulars and prepare a binding provisional agreement. This contains simple and standard terms for the vendor and the purchaser to sign when they have agreed to the sale and purchase of a particular property.

In practice, common terms of a provisional agreement include:

an initial deposit of about five percent of the purchase price is paid by the purchaser to the vendor on the signing of the provisional agreement; and

liquidated damages in an amount equivalent to the initial deposit to be payable by the party in default to the innocent party in the event of any breach or default of the provisional agreement; or

in provisional agreements without a liquidated damages clause a specific performance clause allowing the innocent party to compel the defaulting party to complete the sale in addition to any claim for damages.

A commission of one percent of the purchase price will normally be charged by the real estate agencies and paid by each party. The defaulting party will normally have to bear the costs of the estate agent's commission on behalf of the innocent party.

Formal sale and purchase agreement

Both the vendor and the purchaser engage their respective lawyers to proceed with the property transaction after the signing of the provisional agreement. The vendor's solicitors will prepare a formal sale and purchase agreement with detailed terms and conditions reflecting the terms in the provisional agreement for the purchaser's solicitors' review and comments.

The vendor and the purchaser will usually, but not necessarily, enter into the formal sale and purchase agreement within 14 days after signing the provisional agreement. A further deposit will be paid by the purchaser, making a cumulative total of ten percent of the purchase price (taking into account the initial deposit). In some cases where the parties agree, the vendor's solicitor may act as stakeholder whereby the solicitor holds the ten percent deposit for the vendor until the conditions of the stakeholdings are fulfilled, usually, upon proof that the balance of the purchase price is sufficient to discharge the mortgage (if any).

Subject to the terms of the provisional agreement to the contrary, the purchaser's solicitors will arrange stamping of the provisional agreement and/or formal sale and purchase agreement with the Stamp Office at the Inland Revenue Department and registration of the same with the Land Registry within 30 days after signing.

Assignment and completion

After the formal sale and purchase agreement stage, the vendor's solicitors will provide the title deeds and documents to the purchaser's solicitors, who will then carry out due diligence on the title. It is common practice in Hong Kong that any questions and requisitions concerning the vendor's title should be raised within seven working days after the date of receipt of the title deeds, save and except that requisitions going to the root of the title can be raised at any time before completion.

The vendor's solicitors must answer the title requisitions honestly and allow sufficient time for the purchaser to consider the answers. Once the purchaser's solicitors consider that the requisitions have been properly answered and the vendor is able to give good title to the subject property, they will prepare the assignment and conduct pre-completion land searches to ascertain the status of the subject property.

On completion, the purchaser will obtain vacant possession of the subject property (if the property is being sold with vacant possession) and the vendor and the purchaser will sign and execute the assignment to effect the transfer of title from the vendor to the purchaser.

Within 30 days after signing of the assignment, for the protection of the purchaser, the purchaser's solicitors will arrange stamping of the assignment with the Stamp Office at the Inland Revenue Department and registration of the assignment with the Land Registry.

Tax

Tax on transactions – stamp duty

Real property transactions in Hong Kong are subject to ad valorem stamp duty ("AVD") (i.e. the duty is paid as a percentage of the value of the property) pursuant to the Stamp Duty Ordinance (Cap. 117). In addition, buyer's stamp duty of 15% of the value of the property is payable if the purchaser or the transferee is a not Hong Kong permanent resident (HKPR).

AVD will be computed at higher rates ("Scale 1"), unless specifically exempted or provided otherwise. The major exception, amongst others, is where the property is a residential property, and the purchaser/transferee is acting on his/her own behalf and does not own any other residential property in Hong Kong at the time of acquisition. In such case, the instrument will be subject to AVD at lower rates ("Scale 2"). AVD at Scale 1 is divided into Part 1 (a flat rate of 15%) and Part 2. Part 1 of Scale 1 applies to instruments of residential property and Part 2 of Scale 1 applies to instruments of non-residential property. The sale and purchase or transfer of residential property, unless specifically exempted or provided otherwise, will be subject to AVD at the rate under Part 1 of Scale 1, i.e. a flat rate of 15% of the consideration or value of the residential property, whichever is the higher.

Unless specifically exempted or otherwise provided in the law, acquisition of more than one residential property under a single instrument will be subject to AVD at the rate under Part 1 of Scale 1 – a flat rate of 15%.

Under Part 2 of Scale 1, the stamp duty payable is on a sliding scale from 1.5% to 8.5% of the consideration or value of the property.

Under Scale 2, the stamp duty payable is only HK$100 for property value not exceeding HK$2,000,000; for property value exceeding HK$2,000,000, the stamp duty payable is on a sliding scale, up to 4.25 per cent of the amount or value of the consideration price.

Tax on transactions – profits tax

The Inland Revenue Department will charge profits tax on any persons, including corporations, partnerships and bodies of persons who derive profits through carrying on a trade, profession or business in Hong Kong.

It is a question of fact as to whether a business is being carried on as a result of any sale and purchase of real property in Hong Kong, in which case some of the relevant factors that will be taken into account are as follows:

> the time or length of ownership of the property;
>
> the use of the property;
>
> the financial situation of the purchaser when the property was purchased;
>
> whether a mortgage was taken out;
>
> whether the property was leased; and
>
> all other circumstantial factors to ascertain whether the intention of the purchase of the property was for long-term investment or for business.

In the event that any sale and purchase of real property by any persons, including corporations, is deemed or regarded by the Inland Revenue Department as carrying on a real estate business in Hong Kong, the profits tax rate presently applicable is 16.5 per cent for corporations and 15 per cent for unincorporated businesses including partnerships and sole proprietors.

Tax on holding real estate

Government rent and rates are chargeable on real estate property at an amount of three per cent and five per cent, respectively, based on the rateable value which is the estimated annual rental value of the subject property at a designated valuation reference date, assuming that the property was then vacant and for lease.

Property owner's tax obligations

Property owners in Hong Kong are obliged to pay property tax at a standard rate of 15% on the net assessable value of the property (as of the finance year 2018/19). The property owner is required to submit a tax return for reporting rental income to the Inland Revenue Department: being (1) tax return – individuals (BIR60) which is directed at individuals and requires the sole owner to report rental income from solely-owned properties and claim deductions and allowances in one return; or (2) property tax return (BIR57 or BIR 58), which is issued to joint owners, co-owners, corporations and bodies of persons.

Vacancy tax scheme

The Rating (Amendment) Bill 2019 was gazetted on 13 September 2019 and introduces special rates chargeable on certain private premises that are unsold after the issue of the occupation permits for the premises, and that are either unleased or leased to a person below market rent.

The policy intent of the special rates, as announced by the Chief Executive in June 2018, was to encourage a timely supply of first-hand private residential units in Hong Kong. Under the Amendment Bill, if a private residential unit remains unsold or not rented for 12 months after an occupation permit ("OP") is issued, the owner will be subject to a special rate of 200% of the rateable value of the unit for the relevant 12-month reporting period.

According to the Amendment Bill, a first-owner is the person who holds the specified tenement on its OP date. He/she must submit a return to the Commissioner of Rates & Valuation, which contains the following information: (1) whether the specified tenement was leased to any person or the related party of the first-owner during the reporting period, (2) whether the specified tenement was provided by the first-owner as an employer to an employee of the first-owner as a place of residence, (3) whether any agreement for sale and purchase of the specified tenement was entered into before or during the reporting period by the first-owner as vendor, (4) whether any assignment of the specified tenement was executed during the reporting period by the first-owner as assignor, and (5) whether the first-owner holds any other specified tenement as first-owner during the reporting period.

A number of premises are excluded from the scope of the special rates, such as (1) premises exclusively for use as a hotel or guesthouse, hospital or maternity home, clinic, private healthcare facility, scheduled nursing home, or residential care home, (2) premises built for the purpose of a school or university, or (3) premises built for the purpose of holding services or saying prayers by congregations loyal to a belief in accordance with the practice of religious principles.

According to the amended Ratings Ordinance, a person commits an offence if he/she evades the special rates with intent and may be liable on conviction to imprisonment for 1 year and to a fine

at level 6 (i.e. HK$100,000 under s. 113B, Criminal Procedure Ordinance). If the offence is committed by a body corporate, its (1) director or shadow director, (2) company secretary, or (3) principal officer or manager would be liable to the offence if it was committed with his/her consent or was attributable to his/her negligence.

Termination of existing tenancy on a lease

A lease creates an interest in land and in the event that there is an existing tenancy in respect of the real property, a purchaser will have to purchase the real property subject to the lease interest. It is advisable for a purchaser to ascertain if the vendor is able to deliver the subject property with vacant possession free from any lease and tenancy.

To terminate the existing tenancy, the purchaser will have to seek recourse to the termination provisions of the lease (such as early termination) and subject to the terms of the lease, the purchaser may be able to effect early termination of the tenancy.

Restrictions on development

Changing the use of land

Government Leases usually contain restrictions as to land use. In the event that a leaseholder wishes to use the land for a specific purpose that does not comply with the lease conditions, an application for a lease modification should be made to the Lands Department in order to vary the conditions under the Government Lease. A lease modification is a variation of the conditions of the Government Lease in respect of the property, including the permitting of a change of use.

The Lands Department may also refer the application to other relevant departments for approval, including the Planning Department, Building Department and Fire Services Department. Each application will be considered on a case-by-case basis together with the relevant circumstances.

If the Lands Department approves of the application for the lease modification, then the modification will be reflected by way of a deed of variation or letter of modification.

In addition, the leaseholder will be required to pay a premium reflecting the enhanced value of the property. It may also be the case that additional conditions relating to the new use of the property are imposed.

Approval for an application for a lease modification normally takes at least six months.

Changing the use of an existing building

In relation to individual flats or units in a multi-storey building, usage is governed by the deed of mutual covenant between the co-owners of the building governing the use of the building and the occupation permit and shall be the same as that stipulated in the conditions of sale, grant or exchange. Any changes to the deed of mutual covenant are subject to the approval of all the owners of a particular building. Given the fact that any variations or modifications in building usage must be:

approved by the Lands Department;

subject to the payment of land premium; and

approved by all owners of the building, a change of usage of a building in Hong Kong is very difficult, if not impossible.

Building on land

In the event that the purchaser intends to build a building on the land, the purchaser must engage surveyors and architects to draw a building plan. That building plan must comply with the plot to volume ratio specified in the Government Lease. The plot to volume ratio specifies the floor area that can be built upon a specified piece of land. This ratio is a method used by the Hong Kong government to regulate the height of the buildings and the usable space of the buildings.

As land becomes more scarce in Hong Kong, developers are more inclined to maximize the usable space by maximizing the use of the plot of land. Therefore, apart from complying with the plot to volume ratio of the land, the Planning Department must also approve the building plan. This is to ensure the building is suitable from a city planning perspective.

The building plan must also be approved by the Lands Department, the Building Department and the Fire Services Department. Upon approval of the building plan, a certificate of approval will be issued.

A multi-story building will be notionally divided into a number of undivided shares representing the units intending to be created from the block of flats. This is usually done by the purchaser's solicitors by creating a deed of mutual covenant, which specifies the number of shares allocated to various units or areas of the building. This deed of mutual covenant must be submitted to the Lands Department and Planning Department for approval.

Foreign investment in real estate

Types of Investment

Types of foreign investment in Hong Kong's real estate market include:

direct purchasing of real estate;

investing in stocks of various property developers; or

investing in real estate investment trusts ("REITs"), which are listed trusts. For details of REITs in Hong Kong please see sub-section (d) below.

Restrictions on acquisition

There are no restrictions on acquisition and any individual adult person, corporation or foreign entity that has a recognized legal status and capacity may purchase property in Hong Kong.

Repatriation of funds

Subject to the anti-money laundering policies and regulations in Hong Kong, there are no restrictions on repatriation of funds from Hong Kong and a seller is free to remit monies from a property transaction in whole or in part overseas.

Real estate investment trusts (REITs)

REITs are collective investment schemes that are listed on the Hong Kong Stock Exchange. REITs work by investing in income-producing real estate assets and using the derived income to provide a return to their unit holders. By purchasing a unit in a REIT, investors share the risks as well as the benefits of owning the real estate assets held by the REIT. REITs in Hong Kong must be authorised by the Hong Kong Securities and Futures Commission (SFC) and must comply with the provisions of the SFC's Code on Real Estate Investment Trusts.

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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. Specifically, we advise companies with the implementation of preventative strategies aiming at protection of their IP rights against infringement and unfair competition, representing them before governmental authorities and custom administrations and coordinating, if necessary, an activity of intelligence within the national territory and abroad.

Moreover, the Firm advises and represents companies and individuals on legal matters regarding properties and estates situated in Italy or affected by domestic law.

Furthermore, we provide legal counselling and representation on any aspect of the areas of labour, Employment & industrial relations regulating relationship with personnel. In this area, the firm enjoys a broad experience in collective and individual labour related claims, social security claims, and arbitration proceedings concerning employees and managers.

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. When the matter requires specialized expertise in different areas of the law, our lawyers use to work together to ensure the highest standard of skills, knowledge and creativity.

Our policy is to provide our clients with the best possible legal services, and to enable them to solve their problems at hand, at a cost effective price.

Regulations and rules

Since 1 January 2004, Italy has enacted new rules for company formation, start up, organization and administration. 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.

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.

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[o]

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. *Società 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 the following:

▸ 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 - 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.

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.

▶ 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.

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

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

Very rarely used, 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.

Partnership

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. 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. 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.

Share capital (Minimum and Minimum paid in amount)

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.

Classes of shares

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.

In order to be enforceable stock transfer restrictions must be mentioned on the stock certificate. Issue of redeemable shares is now permitted. 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. 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.

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). 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 demerge 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 Bylaws 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)

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.

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.

Corporate governance

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). To that extent, a corporation may:

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. Therefore:

- Unanimous consent of all the Directors is required for company's actions
- 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:

- Each Director may exercise her/his office individually
- 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.

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. 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". 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:

- Compliance with legal and accounting rules and regulations
- 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.

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:

> 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

1) 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:
>
> - Shares representing the entire capital
> - The majority of Directors
> - 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.

2) 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.

Second call

1) 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.

A quorum of at least 1/3 of the shares representing the stated capital is required for passing a resolution on the following arguments:

- Change of the corporation's purpose
- Modification of form of business association, anticipated winding up, extension of duration for the company
- Revocation of the winding up procedure
- Transfer of the registered office abroad
- Issue of preferred stock

2) 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

The powers and attributions of stockholders are set forth in Bylaws. 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.

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. Shareholder actions must be approved by the majority of the stock represented at the meeting, save for those actions concerning:

- Substantial 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.

Decision-making bodies

1) 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.

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.

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.

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.

2) 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.

3) 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. 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.

4) 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.

Also, according to the provisions of the Civil Code, 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.

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.

5) 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.

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.

Annual accounts - Financial and operating results: Duties and Liabilities

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.

1) 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, 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.

The following cannot be elected members of the Board of Auditors: 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.

2) 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.

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.

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.

Auditors in Limited Liability 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.

Corporate Income Tax (IRES)

Corporate income tax (IRES) is regulated by the Unified Text on direct Taxes *("Testo Unico Imposte Dirette").* 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.

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%.

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%.

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.

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.

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")* 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.

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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.

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.

If a company is over the 20% limit then:

> The company will be unable to hire new employees on fixed term contracts. (They will be able to once they are within the legal limits)
>
> There will be financial sanctions equivalent 20% of the salary for the 1st fixed time worker breaching the threshold, increasing to 50% of the salary for each additional breach. The sanction applies for each contractual month.

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.

Collective Bargaining Agreements

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 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.

Suspension of the employment contract

A provision of the Civil code 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.

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.

Nevertheless, according to the provisions of Civil Code, the employer may terminate the contract earlier for "just cause". 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. 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:
>
> - 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")
> - 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 chose 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. 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).

Specific provisions of statutory law 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.

Severance pay (TFR)

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%. 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.

Equality

The Italian Constitution 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).

Statutory law also sets aside any agreement or action by the employer, constituting discrimination for reasons of sex, race, language, religion, political opinion. Equality between men and women at work is specifically recognised and guaranteed by the Law.

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.

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. Other kinds of discrimination as such as age discrimination, handicap discrimination and AIDS base discrimination are forbidden.

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.

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, 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.

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 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:

- 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.

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.

1) 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.

2) 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 resi-

dent, 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.

3) 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

In order to avoid double taxation, Italy has concluded tax treaties with the following Countries:

Countries			
Albania	Georgia	Mauritius	Sri Lanka
Algeria	Germany	Mexico	Sweden
Argentina	Greece	Morocco	Switerland
Australia	Hungary	Mozambique	Tanzania
Bangladesh	India	New Zealand	Thailand
Belgium	Indonesia	Norway	The Netherlands
Brazil	Ireand	Oman	Trinidad & Tobago
Bulgaria	Israel	Pakistan	Tunisia
Canada	Ivory Coast	Philippines	Turkey
China	Japan	Poland	Ukraine
Cyprus	Jugoslavia	Portugal	United Arab Emirates
Chezslovakia	Kazakhstan	Romania	United Kingdom
Denmark	Kuwait	Russia	USA
Ecuador	Lithuania	Senegal	Uzbekistan
Egypt	Luxembourg	Singapore	Venezuela
Estonia	Macedonia	South Africa	Vietnam
Finland	Malaysia	South Korea	Zambia
France	Malta	Spain	Soviet Union

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.

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%.

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.

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.

EU Merger Directive

The EU Directive on Interest and Royalty Payments authorize provides for the abolishment of withholding tax on payments of certain interest and royalties between corporations resident in different EU Member States.

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:
>
> - 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
> - To a company which directly holds at least 25 per cent of the Voting Rights in the company which makes the payments
> - 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.

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 form 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.

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:

- Full ownership
- Long lease
- Lease of business
- 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

1) 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 agree-

ment, or in the standard agreement, are null and void.

2) 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.

Financing acquisition

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.

Lithuania

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Strategum Dargis ir partneriai is a professional association of business law advocates based in Lithuania.

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Specialize and work specifically in the field of business law; members of the team of the association constantly improve their qualification in the field of business law.

We ensure fast response
The Clients receive an answer to any question or request at least within one working day; the works are carried out in advance by agreed deadlines and conditions.

We ensure simplicity and efficiency
Each Client communicates with his lawyer directly and immediately, with one contact person on all issues.

We ensure feedback and clarity
Taking into account the specifics of business, the Clients receive responses and oral consultations offhand, and regular Clients are consulted free of charge immediately.

We ensure a satisfactory system of payment for legal services
The Client can choose a convenient payment method for legal services.

Popular types of legal persons

If you have adopted a decision to start a business in Lithuania, firstly you need to decide what kind of company is the most suitable for achieving the goals. Having assessed the risk that you want to take, you can choose between limited or unlimited liability company. The following business-oriented enterprises are the most common in Lithuania:

> Public Limited Liability Company (AB);
>
> Private Limited Liability Company (UAB) (the most popular);
>
> Small Partnerships (MB);
>
> Individual Enterprise (IĮ).
>
> Public Enterprise (VšĮ);

It is possible to set up the Closed Joint-Stock Company (UAB), the Public Enterprise (Public Institution), the Small Partnership (MB) and the Individual Enterprise (IĮ) by submitting the necessary documents to the Lithuanian Registry manager electronically via the electronic customer self-service system of the Centre of Registers. The following table shows the essential differences between the legal forms of the listed legal persons:

Criteria for comparison	**Small Partnerships (MB)**	**Private Limited Liability Company (UAB)**	**Public Limited Liability Company (AB)**	**Individual Enterprise (IĮ)**	**Individual Enterprise (IĮ)**
Number of participants	From 1 to 10 members (natural persons only)	From 1 (number unlimited)	From 1 (number unlimited)	1 owner (natural person)	Number of partners is unlimited. Can be set up by the state, municipalities, natural persons and legal entities
Size of minimum share capital	Not defined. Contribution may be monetary and/or tangible assets	2.500€	25.000€	Not defined	Contributions of partners are not defined
Liability	Limited liability (the company is solely responsible by its assets)	Limited liability (the company is solely responsible by its assets)	Limited liability (the company is solely responsible by its assets)	Unlimited civil liability (the owner is responsible solely by his own assets)	Limited liability (the company is solely responsible by its assets)
Decision-making (voting) principle	Each member has one vote	If all shares of UAB providing voting rights are of the same nominal value, each share grants one vote in the general meeting of shareholders	If all shares of UAB providing voting rights are of the same nominal value, each share grants one vote in the general meeting of shareholders	Decisions are taken by the owner	Partners make decisions by voting. 1 partner has 1 vote.

Public limited liability company (AB)

A public limited liability company is a private legal entity with limited civil liability, which means that the company is liable only by its own assets in case of business failure. The AB may be converted into a private limited liability company, state enterprise, municipal enterprise, agricultural company, co-operative company (cooperative), general partnership, limited partnership, individual enterprise, public establishment, small partnership4. Management bodies of AB are the general meeting of shareholders and manager of the company. A collegial supervisory body - the supervisory board and the collegial management body - the board may be formed.

Advantages:

- Unlimited number of founders;
- Shareholders may receive profit by distributing dividends;
- Better prospects for business development;
- The most important decisions are taken by the shareholders by voting;
- The capital of the company may be increased from the company's funds (retained profit);5
- The biggest advantage of AB is the opportunity to attract investors by selling shares by issuing new shares or debentures (shares can be traded on a stock exchange).

Disadvantages:

- Relatively big minimum share capital;
- Strictly controlled cash flows;
- If the manager of the company is not a shareholder, his decision-making power is limited and directly depends on the decisions of the shareholders;
- More complex bookkeeping and preparation of financial statements;
- More complex procedure for reorganization and liquidation.

Private Limited Liability Company (UAB)

Private Limited Liability Company (UAB) is a private legal entity with limited civil liability. This means that the shareholders are not liable by their assets for their unfulfilled obligations of the company. The authorized capital of UAB must be at least EUR 2 500. UAB may established by both one and more natural and/or legal persons, and the number of shareholders is unlimited. A shareholder may sell or otherwise transfer (for example, donate, exchange, etc.) his own shares of UAB. UAB can be transformed into public limited liability company, state enterprise, municipality enterprise, agricultural company, co-operative company (cooperative), general partnership, limited partnership, individual enterprise, public establishment, small partnership6.

The most important decisions are taken by shareholders by voting. Each share grants one vote; therefore, the person who acquired the majority of shares has the greatest influence during the voting at the general meeting of shareholders. UAB must have a sole management body - a manager, and a collegial management body - the board - may be formed as well.

Advantages:

- In the event of a failure of business, the shareholder risks only by the assets that he has contributed to UAB, thus protecting his personal assets;
- In order to attract additional funds, UAB may issue new shares for which the shareholders pay a fixed amount of money;

Ability to withdraw from business by transferring shares of UAB to other persons or selling business;

Tax relief for UAB: if the average number of employees does not exceed 10 people and the income tax period does not exceed EUR 300 000, a reduced tax rate of 5% is imposed instead of the usual 15% rate7.

Disadvantages:

During establishment of UAB, it is obligatory to contribute at least EUR 2 500 for the authorized capital;

Shareholders can earn the UAB profit only through dividends (if the company is operating profitably), or by receiving remuneration, but in this case, it will be necessary to pay big taxes.

Non-public trading in shares. A shareholder intending to sell shares or UAB having issued new shares must first offer shares to other shareholders of UAB.

Small Partnership (MB)

The small partnership is a private legal entity with limited civil liability. This means that members are not liable by their assets for their unfulfilled obligations of small partnership. A small partnership can be established by up to 10 natural persons (there may be one founder). A small partnership can carry out any activities not prohibited by laws.

Although it is not required to have a minimum authorized capital in small partnership, the members of the small partnership shall pay contributions (their size and payment procedure are determined at the meeting of members), while the profit of the small community is distributed in proportion to the amount of the member's contribution (other types of profit distribution can be provided for as well).

Advantages:

Limited liability of members, i.e. if the business fails, the members risk only by their own contribution, thereby protecting their personal assets (for comparison, the owner is liable by his personal assets for unfulfilled liabilities of the company);

The minimum authorized capital requirement is not applied (for comparison - the minimum authorized capital of the UAB is EUR 2 500);

Possibility of withdrawing voluntarily from the business, i.e. a member of the small partnership may withdraw from the partnership by reclaiming his contribution; he may also sell or otherwise transfer the rights of a member to other persons.

Disadvantages:

Only a natural person may be the founder/member; in total not more than 10 (for comparison, both natural and legal persons may be the shareholder of UAB, and the number of shareholders is not limited);

- Since there is no clear procedure for voting and distribution of profits, there may be disputes between members of the small partnership;
- Bookkeeping of small partnership is only simpler in some cases than UAB (for example, if the small partnership does not have employees, or it is not a VAT payer).

Public Enterprise (VšĮ)

Public enterprise (VšĮ) is a non-profit public limited liability company with the objective of satisfying public interests through the socially useful activities.

Public enterprise may be set up by one or more natural and/or legal persons; the number of founders is unlimited.

Advantages:

- Limited civil liability - the partner risks only by the assets that he contributed to the public enterprise, thereby protecting his personal assets;
- There is no need to contribute to the authorized capital (for comparison, the minimum authorized capital of UAB is EUR 2500);
- Certain tax reliefs;
- The public enterprise may carry out commercial activities;
- The public enterprise can receive support from legal entities and support from the population;
- Possibility to withdraw from the activity by transferring the partner's rights to other persons;
- Possibility to attract additional funds by admitting new partners to the public enterprise.

Disadvantages:

- Profit of public enterprise cannot be paid to the partners; therefore, the partners can receive money from the enterprise only through the payment of remuneration;
- The enterprise cannot be reorganized into UAB. The public enterprise can be converted into a budgetary institution, charity and support fund8.
- The public enterprise may engage only in the activities specified in its articles of association.

Public Enterprise (VšĮ)

An individual enterprise (IĮ) is a private legal entity of unlimited liability. This means that the owner of the individual enterprise (IĮ) is liable for the non-fulfilment of obligations by his own personal assets. Only one natural person who cannot be the owner of another IĮ can be the founder and owner of the individual enterprise (IĮ). Establishment of an individual enterprise (IĮ) is recommended if the business is individual and intended for one person, and the chosen type of activity is not

risky. If the business fails, the owner of the individual enterprise (IĮ) will be liable personally for nonfulfillment of IĮ obligations. As the laws do not require a minimum initial capital, a business can be started having a good idea and small initial funds.

Advantages:

> There is no need to contribute to the authorized capital (for comparison, the minimum authorized capital of UAB is EUR 2 500);
>
> Easy to take profit: The owner of the individual enterprise (IĮ) can take the individual enterprise's money or other assets for his personal needs at any time (it cannot be done by UAB);
>
> The owner can work alone in his enterprise without entering into employment contract, and therefore he shall pay lower taxes. Other people can be recruited, if necessary;
>
> The enterprise can be transformed into UAB.

Disadvantages:

> If a business is loss-making, the individual enterprise (IĮ) may go bankrupt, but the owner is liable for nonfulfillment of obligations by his own assets;
>
> Only one person may be the owner of the individual enterprise (IĮ); he cannot establish an individual enterprise (IĮ) with any partners;
>
> It is not possible to issue new shares, thus attracting funds;
>
> The accounting of private enterprise is, in many cases, simpler compared to UAB.

Centre of Registers

The Centre of Registers is a state-owned enterprise for the administration of various state registers, including the Register of Legal Entities (JAR). The Centre of Registers administers/manages the Real Property Register and Cadastre, the Mortgage Register, the Address Register, the Population Register, the Register of Legal Entities, the register of Contracts, the Register of Power of Attorneys, the Register of Property Seizure Acts, the Register of Marriage Contracts, the Register of Legally Incapable Persons or Persons With Limited Legal Capacity and the Register of Wills.

Each legal entity in Lithuania has a unique number provided by the Centre of Registers, which is given during the registration of a legal entity. JAR collects, stores and processes the data and documents related to legal entities, for example, establishment documents of legal entity, articles of association, shareholders' decisions, etc.

The data of the Register of Legal Entities, the documents accumulated in the Register and any other information submitted to the Register are public and provided in accordance with the procedure established by laws and other legal acts9.

The Register of Legal Entities participates in the activities of and is a member of the interconnection systems of central, commercial and company registers of the Member States of the European Union and the countries of the European Economic Area, established in accordance with Directive 2009/101/EC of the European Parliament and of the Council of 16 September 2009 on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (OJ 2009 L 258, p. 11), as last amended

in paragraph 2 of Article 4a of Directive 2012/17/EU of 13 June 2012 of the European Parliament and of the Council (OJ 2012 L 156, p. 1).

The system of interconnection between the central, commercial and company registries of the Member States of the European Union and the countries of the European Economic Area comprises central, commercial and company registries of the Member States of the European Union and the countries of the European Economic Area, the European Central Bank and the European e-Justice Portal.

Value Added Tax (VAT) payers

Value Added Tax (VAT) is the consumption tax paid by the end user. This is an indirect tax payable at each stage of the distribution of the product or service or production process. It is collected to the state budget depending on the value-added created. VAT payers are Lithuanian and foreign natural and legal persons who carry out any type of economic activity in Lithuania, as well as an entity of collective investment established in the Republic of Lithuania without status of legal entity, the form of activity of which is an investment fund.

A special scheme for small companies is implemented in Lithuania. The taxable person of the Republic of Lithuania must not submit an application for his registration as a VAT payer if the total amount of remuneration paid for products and/or services rendered during the year during the last 12 months did not exceed EUR 45 00011. For a small company (depending on the type of activity) that mainly works with non-VAT payers and/or natural persons, in most cases, it is preferable not to become a VAT payer, since VAT is not calculated when issuing invoices to customers, thus the final price of products and/or services to a customer who is not VAT payer becomes more attractive.

It should be emphasized that if the value of the products purchased by the taxable person of the Republic of Lithuania from other Member States exceeded EUR 14 000 in the previous calendar year, or if this threshold is foreseen in the current calendar year, then the taxable person must submit an application for his registration as a VAT payer, even when the annual remuneration is 45 EUR 000 was not exceeded12. A person can also become a VAT payer voluntarily.

Value Added Tax (VAT) payers

Standard VAT rate is 21 %.

The reduced rate of VAT of 9% is applied to13:

- Books and non-periodical newsletters (including textbooks, exercise books, encyclopaedias, dictionaries, manuals, information brochures, albums of photographs and reproductions, children books with pictures, drawing and colouring books, printed or manuscript sheet music, maps, diagrams and drawings, except for calendars, notebooks and other publications of a similar nature).
- Periodical publications, with the exception of publications publicising eroticism and violence, or the publications noncompliant with professional ethics, and except for the publications in which paid advertising amounts to more than 4/5 of the total publication area);
- Passenger and passenger luggage transport services by regular routes (determined by the Ministry of Transport and Communications (authorized by it) or by the municipality);

- Accommodation at hotels and other special accommodation services supplied according to the procedure laid down in the legal acts regulating tourist activities.

The reduced rate of VAT of 5% is applied to14:

- Pharmaceuticals and medical aid measures, where the costs of acquiring these goods are reimbursed fully or partially in accordance with the procedure established by the Law on Health Insurance of the Republic of Lithuania, as well as non-compensated prescription medicines the taxable value of which exceeds EUR 300.
- Technical support means for the disabled and repairs thereof.
- Newspapers and magazines.

Zero-rate of VAT is applied to:

- Goods and services that are sold and shipped out of the EU.
- Goods or services sold to another EU country.

Exempt from VAT15:

- Goods and Services Related to Health Care.
- Social Services.
- Education and Training Services.
- Cultural and sports services supplied by non-profit making legal persons.
- Insurance services.
- Radio and television.
- Financial (investment) services.
- Postal services and stamps.
- Gambling.
- Sale or lease of property immovable by its nature.

Restructuring of a legal entity

Restructuring of an enterprise is the procedure aimed at maintaining and developing the activities of an enterprise, settling its debts and averting bankruptcy through securing assistance of the creditors of the enterprise and application of economic, technical, organisational and other measures. The duration of the restructuring of an enterprise is defined in the restructuring plan. In many cases, legal entities try to use the restructuring institute to avoid bankruptcy proceedings.

Restructuring may be initiated where16:

an enterprise is in financial difficulties or there is a real possibility that it will be in financial difficulties within the next three months;

an enterprise has not discontinued its activities;

an enterprise is not in bankruptcy or has not gone bankrupt;

> an enterprise was established at least three years before the date of filing of a petition to initiate enterprise restructuring proceedings;
>
> at least five years have passed from the coming into effect of the court decision to close the enterprise restructuring proceedings, or the court ruling to terminate the proceedings (when all the creditors waive their claims and the court confirms their waivers, or the restructuring enterprise has met all the requirements of the creditors earlier than it was set out in the restructuring plan, and the restructuring administrator has provided evidence to the court).

The management body of the enterprise that meets the above criteria and wishes to start restructuring must prepare the guidelines of the plan for the restructuring of enterprise, which is approved by the meeting of the participants of the enterprise, the owner or the institution implementing the rights and duties of the owner, the state or municipal enterprise.

The guidelines of the restructuring plan is a document that describes the principles for the restructuring of the enterprise. The guidelines should clearly describe how the enterprise intends to restore its solvency. The guidelines shall be prepared by the manager of the company, but due to the specifics of the process, he needs a consultation of specialists. The content of the guidelines is strictly regulated by the Law on Restructuring of Enterprises. Additional documents must also be prepared in accordance with certain rules and forms; the legal knowledge is necessary for the collection and preparation of the information. Amendments to the Law on Restructuring of Enterprises have empowered the court to adopt decision on the future destiny of the enterprise, and therefore the preparation of guidelines and submission of documents has become a more legal procedure, which requires specific knowledge and practice.

The guidelines specify17:

> a short description of the current situation of the enterprise (the nature of activities, assets held and number of employees);
>
> reasons behind the financial difficulties of the enterprise;
>
> a list of creditors indicating: where the creditor is a natural person – the name, surname and address of the place of residence of the creditor; where the creditor is a legal person – the name and address of the registered office and/or place of operations; the amounts of claims, the time limits for the settlement thereof and measures of securing thereof;
>
> suretyship, guarantees and other measures of securing the discharge of obligations which the enterprise has granted to third parties (with indication of the third parties and persons to whom credits have been granted by third parties: in case of a natural person – the name, surname and address of the place of residence; in case of a legal person – the name, code and address of the registered office and/or place of operations; the amounts of credits granted to third parties and the amounts of suretyship, guarantees and other measures of securing the discharge of obligations);
>
> information relating to the cases in which financial claims have been entered against the enterprise;
>
> voluntary commitments of the enterprise to pay interest to creditors for the period from the date of coming into effect of the court ruling to initiate restructuring proceedings to the date of coming into effect of the court ruling to approve the enterprise restructuring plan (hereinafter referred to as the "restructuring plan");
>
> a preliminary business plan of the enterprise, providing for the measures specified in paragraph 2 of Article 12 of this Law;

> an estimate of administrative expenses, including the amount of remuneration for the restructuring administrator, for the period from the date of coming into effect of the court ruling to initiate the enterprise restructuring proceedings to the date of coming into effect of the court ruling to approve the restructuring plan.

An application regarding the initiation of restructuring proceedings in respect of the enterprise shall be submitted to the regional court where the registered office of the enterprise is located in accordance with the procedure established by the Code of Civil Procedure of the Republic of Lithuania. An enterprise shall acquire the status of an enterprise under restructuring from the coming into effect of the court ruling to initiate the enterprise restructuring proceedings.

The court shall adopt a ruling to refuse to initiate the enterprise restructuring proceedings where18:

> in the course of examination of the petition, the court makes a reasoned conclusion that the enterprise does not comply with at least one of the conditions specified above (at the beginning of the section);
>
> The guidelines of the enterprise restructuring plan do not comply with the requirements of the law;
>
> The manager of the enterprise failed to implement and/or improperly implemented the obligation to notify of the planned restructuring of the enterprise to the persons specified in the law;
>
> In the course of the examination of the application, the court makes a reasoned conclusion that the enterprise is insolvent. Since both restructuring and bankruptcy are means for resolving the solvency problem of the enterprise, the court, when deciding on the initiation of restructuring proceedings, has to assess not only the financial documents submitted by the enterprise, but also the activities thereof on the market, other data related to the activities carried out (whether the enterprise is capable of continuing its activities).

Termination of Legal Entity

Reorganization

Reorganization is one of the ways of termination of legal entity (LE), but the LE is not being liquidated during the reorganization. The main objective of this procedure is the reorganization of business processes in order to increase the efficiency of the activities of the enterprise. Decisions on reorganization are usually taken where reduction of costs related to the management of one or more enterprises, administration costs, simplification of the management of several companies, etc. is necessary. The LE may be reorganized or participate in the reorganization only when its authorized capital is fully paid (the price of the last issue of shares). Only companies of the same legal form may undergo the reorganization19.

The LE may be reorganized by way of merger and split-off. Possible modes for merger of LE are as follows20:

> Merger by acquisition is the merger of one or more LEs to another already operating LE, to which all rights and obligations of reorganized LE are transferred.
>
> Merger by the formation of a new company is the merger of two or more LEs into the new LE, to which all rights and obligations of the reorganized LEs are transferred.

The possible ways for division of LE are as follows:

> Division by acquisition is the distribution of rights and obligations of the reorganized LE to other already operating LEs;
>
> Division by the formation of a new company is the establishment of one reorganized LE based on two or more new LEs, who are transferred certain parts of the rights and obligations of the reorganized LE.

When the overdue liabilities of an enterprise to third parties (debts) reach half the value of the assets entered in the balance sheet of the enterprise, the manager of the company is obliged to apply to the court relating to initiation of bankruptcy proceedings against the enterprise. The bankruptcy proceedings against the enterprise can also be initiated by the creditor of the enterprise if the enterprise fails to settle with the creditor within 30 days after the respective notification is served. The bankruptcy proceedings may also be initiated by the tax administrator.

Bankruptcy proceedings shall be initiated if at least one of the following conditions exists:

> the enterprise is insolvent or the enterprise is late with payment of remuneration and amounts relating to employment relations to the employee (employees)22;
>
> the enterprise has publicly announced to or notified the creditor (creditors) in any other manner of its inability or lack of intent to discharge its obligations23.

The court shall refuse to initiate bankruptcy proceedings where24:

> prior to adoption by the court of the ruling to initiate bankruptcy proceedings, the enterprise satisfies the claims of the creditor (creditors) who filed with the court a petition for the initiation of bankruptcy proceedings;
>
> restructuring proceedings have been initiated against the enterprise;
>
> during the examination of the petition for the initiation of bankruptcy proceedings the court makes a sufficiently justified assumption that the enterprise has no assets or that its assets are insufficient to cover the legal and administrative expenses.

The court, having adopted the ruling to institute a bankruptcy proceeding against the enterprise, shall appoint a bankruptcy administrator who, together with the meeting of creditors, shall decide on the division of the assets of the bankrupt enterprise and the liquidation thereof.

Bankruptcy proceedings may also be subject to extrajudicial bankruptcy procedures if the bankrupt enterprise is not sued in the courts where the material claims are laid against the enterprise, including claims related to employment relationships, as well as if the company is not subject to recovery based on orders for enforcement issued by courts or other institutions. In the course of the bankruptcy process by extrajudicial proceedings, the issues assigned to the jurisdiction of the court shall be resolved by a meeting of creditors. In fact, in case of extrajudicial bankruptcy proceedings, a bankrupt enterprise "makes peace" with its creditors, which often relieve the enterprise of debt repayment.

The meeting of creditors is a kind of self-governing body of creditors dealing with issues related to the bankruptcy process. The Law on Enterprise Bankruptcy consigns the meeting of creditors to consider the essential issues related to the activities of a bankrupt company. The bankruptcy process seeks to meet the financial requirements and interests of not only individual creditors, but also all of them. As a result, bankruptcy proceedings are not carried out by individual creditors, but by their whole (a meeting of creditors or a committee of creditors, if any is formed). Only the whole of creditors considers such issues related to the activities of the bankrupt enterprise as the control of the administrator's activity, the economic-commercial activity of the bankrupt enterprise, the liquidation of the enterprise, the procedure for the valuation of the assets to be sold, the approval of the sale price of the assets25. The right of creditors as a whole to consider the matters related to a bankrupt enterprise is an expression of the principle of creditors' autonomy. This right is exercised by a majority of votes of creditors when adopting decisions at the meeting of creditors26.

Fraudulent bankruptcy

The fraudulent bankruptcy is deliberate bringing of the enterprise to bankruptcy through deliberate mismanagement of the enterprise (action, inaction) and/or transactions, when it was known or should have been known that such transactions violate the rights and/or legitimate interests of creditors.

The acknowledgement of the bankruptcy of the enterprise as deliberate creates consequences for the persons responsible for bringing the enterprise to bankruptcy. When the enterprise is no longer able to settle with its creditors and is subject to bankruptcy proceedings and the assets of the enterprise are insufficient to satisfy the claims of the creditors approved by the court, and it is established that the assets are not sufficient due to the violation of the obligations (including fiduciary) established by legal acts and documents by the management bodies of the enterprise, in such case the management bodies of the enterprise shall have to compensate the damage caused to the enterprise, which consists of the claims or part thereof of dissatisfied creditors. Damage to creditors is considered a derivative of the damage caused to the enterprise.

Where the bankruptcy of the enterprise is acknowledged as deliberate, the limited liability of a legal person is terminated and the persons having intentionally brought the enterprise to bankruptcy shall be obliged to compensate the creditors of the bankrupt enterprise for damage manifesting by the amount of uncovered financial claims after the completion of the bankruptcy procedures of the enterprise. The persons having deliberately brought the enterprise to bankruptcy are also subject to criminal proceedings.

Liquidation of a Legal Entity

Liquidation of an enterprise is the termination of the activities of a legal entity by removing it from the Register of Legal Entities. The legal entity is being liquidated upon completion of its bankruptcy proceedings. The liquidation of a legal person can also be performed involuntary (voluntarily).

The general meeting of shareholders of the enterprise adopts a decision on the liquidation of the LE by the majority of not less than 2/3 of votes. Such a decision may be revoked by the same majority of votes. A decision on liquidation of LE cannot be revoked if at least one shareholder has received part of the liquidated assets of LE. Liquidated LE may only enter into the transactions that are related to the termination of LE's activities or which are provided for in the decision on the liquidation of LE. The general meeting of shareholders cannot adopt a decision to liquidate the insolvent LE. In this case, the bankruptcy procedure applies. The LE receives the status of the liquidated LE from the date of the adoption of the decision to liquidate the LE by the general meeting of shareholders, and the documents of the liquidated LE, which are used by him in relations with other persons, must indicate its legal status "under liquidation". If any legal disputes arise in relation to the payment of debts, the LE assets cannot be distributed to shareholders until the court resolves these disputes and the settlement with the creditors is done.

For the execution of the procedures related to the liquidation of the enterprise, the general meeting of shareholders shall appoint the liquidator of the company. The liquidator is a natural person (usually a manager of an enterprise) who performs all liquidation procedures until the LE is removed from the Register of Legal Entities. A liquidator may be a manager, shareholder, employee or other person of the liquidated enterprise. He shall be appointed and recalled by the shareholders by a simple majority of votes.

The enterprise under liquidation must settle with all its creditors. First of all, the claims of creditors secured by mortgage of the assets of the liquidated LE are satisfied. Subsequently, the requirements are satisfied in the following order:

> Firstly, the claims of employees (wages, compensations, severance pays) are satisfied; claims for damages due to injury or death due to an accident at work;
>
> Secondly, the requirements related to taxes, social and health insurance premiums are fulfilled;
>
> Thirdly, all remaining claims of creditors are satisfied.

The remaining assets of the liquidated LE are distributed to shareholders in proportion to the nominal value of their shares. These assets are taxed in accordance with the procedures set by laws. If litigation arises due to debts, the assets of LE may not be distributed to the shareholders until the court resolves these disputes and the settlement with creditors is done.

Strategum Dargis & Partners

The fundamentals of the system of tax legislation are enshrined in the Constitution of the Republic of Lithuania, where paragraph 3 of Article 127 thereof establishes that taxes, other payments to the budgets, and levies shall be established by the laws of the Republic of Lithuania. In accordance with Paragraph 15 of Article 67 of the Constitution, the Seimas of the Republic of Lithuania shall establish state taxes and other compulsory payments.

The system of tax legislation shall comprise tax laws and subordinate legal acts adopted on their basis.

The most important part of the system of Lithuanian tax legislation comprises the national legislation, in particular, the laws establishing taxes: for example, the Law on Corporate Income Tax of the Republic of Lithuania (hereinafter referred to as LCIT LR), the Law on Income Tax of Individuals of the Republic of Lithuania (hereinafter referred to as the LITI LR), the Law on Value Added Tax (hereinafter referred to as the LVAT LR), the Law on Real Estate Tax of the Republic of Lithuania (hereinafter referred to as the LRET LR), the Law on Land Tax of the Republic of Lithuania (hereinafter referred to as the LLT LR), etc.

The Law on Tax Administration of the Republic of Lithuania (hereinafter referred to as LTA LR), which establishes the basic concepts and regulations which must be observed in implementing the tax laws of the Republic of Lithuania, the basic principles of legal regulation of taxation, the list of taxes applied in the Republic of Lithuania, the functions, rights and obligations of the tax administrator, the rights and obligations of the taxpayer, the calculation and payment of taxes, the procedure of enforced recovery of taxes and related amounts as well as the procedure for the settlement of tax disputes also falls within the legal system under consideration.

The tax administration procedures provided for in the Law on Tax Administration shall be applied in respect of all specified taxes and the taxpayers thereof, unless this Law or the relevant tax law provide otherwise.

2004 Following the accession of Lithuania to the European Union in 2004, the law in force of the latter *(acquis communautaire)* has become part of our national legal system. Customs (and some issues related to the administration of import duties and VAT) are attributed to the exclusive competence of the European Union (paragraph 1 of Article 2, paragraph 1 of Article 3 of the Treaty on the Functioning of the European Union). These taxes are established and administered directly by the legislation adopted by the legislative bodies of the Union, inter alia Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (hereinafter referred to as the Community Customs Code), Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code. The competence of the Member States (including Lithuania) in this area is usually confined to individual or individual issues related to the administration of the said tax obligations, and national law only applies only to the extent that they do not contravene the Community customs legislation acquis.

The main taxes in Lithuania - value added tax, corporate income tax, personal income tax, excise taxes - are administered by the State Tax Inspectorate (hereinafter referred to as STI). Structurally,

the State Tax Inspectorate consists of: 1) the STI under the Ministry of Finance - the central tax administrator, and 2) the territorial STI - the local tax administrators subordinate and accountable to the central tax administrator.

STI under the Ministry of Finance implements the tax administration policy in Lithuania, ensures payment of taxes to the budget, coordinates, controls and manages the work of territorial branches of STI, adopts legislation implementing tax laws.

Territorial STI implement tax laws, tax administration priorities, procedures, ensure proper payment of taxes to the budget, and enforce recovery of tax arrears.

Tax disputes between the taxpayer and the tax administrator are dealt with by the central tax administrator, the Commission on Tax Disputes under the Government of the Republic of Lithuania and the court.

Hereinafter, this article discusses the main taxes of the Republic of Lithuania, i.e. corporate income, personal income, value added, real estate and land taxes. Also, compulsory health insurance and state social insurance contributions and contributions to the Guarantee Fund.

Corporate income tax

Corporate income tax in Lithuania is paid by entities complying with the status of legal entities - taxable entities, i.e. Lithuanian and foreign entities.

Object of corporate income tax (base)

The tax base of a Lithuanian entity is all income earned in the Republic of Lithuania and foreign countries, which is sourced inside and outside the Republic of Lithuania.

The tax base does not include the income from activities carried out through the permanent establishments of the Lithuanian entity located in the countries of the European Economic Area (EEA) or in the states with which Lithuania has concluded and applies treaties for the avoidance of double taxation (hereinafter referred to as the TADT), if the income from activities carried out through these permanent establishments is taxable by the same corporate income tax (or tax equivalent) in those countries by established procedures.

The tax base of a foreign entity is:

> income from activities carried out by a foreign entity through permanent establishments situated in the territory of the Republic of Lithuania, income from international telecommunications earned through permanent establishments situated in the Republic of Lithuania and 50 per cent of income from transportation which commences on the territory of the Republic of Lithuania and ends abroad or starts abroad and ends in the territory of the Republic of Lithuania, income earned in foreign countries assigned to those permanent establishments in the Republic of Lithuania in the event that such income relates to the activities of a foreign entity through permanent establishments in the Republic of Lithuania;
>
> income sourced in Lithuania and received otherwise than through a permanent establishment situated in the territory of the Republic of Lithuania.

The procedure for determining the basis of corporate income tax

The income tax is calculated not from the total income received by the taxable entity, which forms the subject of this tax, but only from taxable profit, i.e. from the part of the income earned (received) by the taxable entity, which remains after deduction of operating expenses and allowable deductions.

When calculating the taxable profit of Lithuanian entity, the following is deducted from its income: non-taxable income, allowable deductions, deductions of limited amounts.

The taxable profit of permanent establishments of foreign entities is calculated by deducting the same non-taxable income from the earned income and the same allowable deductions of the limited amounts as for Lithuanian entities, as well as such deductions that are related to earning of income by foreign entity through permanent establishments.

The taxable profits earned by a foreign entity otherwise than through a permanent establishment shall include all of its income sourced in the Republic of Lithuania and the obligation to tax it at source (without any deductions).

Corporate tax rates

Main 15% tax rate is imposed:

> on the taxable profits of Lithuanian entities and permanent establishments;
>
> on income from distributed profits;
>
> on sponsorship received which is used for purposes other than specified and that part of sponsorship received in cash from a single provider of sponsorship during the tax period, which exceeds the amount of EUR 9,500 (without any deductions);
>
> fixed income tax base for shipping units (excluding deductions);
>
> on foreign entities - income for the sale, transfer or otherwise transferred to the ownership or leased immovable thing by nature situated in the territory of the Republic of Lithuania, income from performing and sports activities carried out in the Republic of Lithuania, payments for the activities of the members of the supervisory board, income from distributed profits.

10% tax rate is imposed:

> on foreign entities - royalties, income from compensation for violation of copyright or related rights;
>
> on foreign entities not registered or otherwise organized in the EEA state or in the state with which the TADT treaty is concluded and applied, interest other than interest on Government securities, interest accrued and payable on deposits and interest on subordinated loans.

5% tax rate is imposed:

> on taxable profits of entities (except for non-profit entities) whose average number of employees on the list does not exceed 10 and whose income over the tax period does not exceed EUR 300 000;

This rule does not apply to:

> entities (individual/personal entities) whose members and/or family members of such members control, on the last day of the tax period, over 50% of the shares (interests, member shares) in other entities as well as entities in which members of other entities (individual/personal enterprise) and/or family members of such members control, on the last day of the tax period, over 50% of the shares (interests, member shares);

entities in which the same member controls, on the last day of the tax period, over 50% of the shares (interests, member shares);

entities in which the same members jointly control, on the last day of the tax period, over 50% of the shares (interests, member shares).

entities, whose income during the tax period comprises more than 50% of income from agricultural activities, including income from cooperative companies (cooperatives) for the sale/purchase of agricultural products produced by their members.

Mixed taxable income is imposed:

That part of taxable profits of non-profit entities, whose income from economic and commercial activity over the tax period does not exceed EUR 300 000, which amounts to EUR 7,250 shall be taxed at a rate of 0% and the remaining part of taxable profits shall be taxed at a rate of 15%.

Income not attributable to the economic activity of non-profit entities, which is directly attributed to the financing of activities carried out in the public interest.
Income tax is not imposed:

on profit of social enterprises and cooperative companies (cooperatives) if they meet certain requirements established by laws;

in interest of foreign entities that are registered or otherwise organized in the EEA state or in the state with which the TADT treaty has been concluded and applied.

Also, corporate income tax shall not be paid by budget-financed institutions, the Bank of Lithuania, the State and municipalities, state and municipal institutions, agencies, services or organisations, state company "Deposit and Investment Insurance", European Economic Interest Groupings.

Tax period

The corporate income tax period is the fiscal year that coincide with a calendar year. At the request of the taxpayer and taking into account the characteristics of its activity, the local tax administrator may set other tax period subject to condition that the tax period is 12 months.

Corporate income tax reliefs

The following entities have the right to a lower corporate income tax rate:

Enterprises of free economic zone (hereinafter referred to as FEZ), which registered until 2018-01-01. FEZ enterprise (except for credit institution or insurance company) in which capital investments amount to at least EUR 1 million shall not pay corporate income tax for 6 tax periods beginning with the tax period in which such an amount was reached and shall be subject to a 50% reduced corporate income tax rate for the subsequent 10 tax periods.

An enterprise of free economic zone, which registered until 2018-01-01, whose average number of employees in a tax year is not less than 20 and in which capital investments amount to at least EUR 1 million shall not pay corporate income tax for 6 tax periods beginning with the tax period in which such an amount was reached and shall be subject to a 50% reduced corporate income tax rate for the subsequent 10 tax periods.

> After 2017-12-31, a company registered in a free economic zone with a capital investment of at least EUR 1 million shall be exempt from corporation tax for 10 tax periods beginning with the tax period during which the investment amount is reached and for the following 6 tax periods a 50 percent reduced corporate tax rate.
>
> After 2017-12-31, a company registered in a free economic zone with an average number of employees of at least 20 in a tax year and with a capital investment of at least EUR 1 hundred thousand, for 10 tax periods beginning with the tax period during which the investment amount was as a result, it is not subject to corporation tax and is subject to a 50 percent tax reduction for the next 6 tax periods.

The relief may be applied only where not less than 75% of the income of a free economic zone enterprise for the relevant tax period comprises income from certain types of activities specified by the law.

The relief may be applied only in the event that the free economic zone enterprise has an auditor's report confirming the required amount of capital investments.

> Legal persons whose income from own production exceeds 50% of the total income received and which employ persons with limited capacity for work shall reduce the calculated corporate income tax as follows:

Proportion of persons with a limited work capacity within the total of persons employed	Reduction of calculated corporate income tax
More than 50 %	100&
40–50 %	75%
30–40 %	50%
20–30 %	25%

Income tax of individuals

Income tax shall be paid by any individual who has derived and/or earned income. The Law on Income Tax of Individuals of the Republic of Lithuania (hereinafter referred to as LITI LR) establishes the procedure for imposing income tax on the income of individuals.

Payers of income tax of individuals

All income derived and/or earned by residents who pay the income tax of individuals are divided into permanent and non-permanent residents of Lithuania.

A permanent resident of Lithuania is any natural person whose permanent place of residence is in Lithuania, or whose place of personal, social or economic interests is in Lithuania rather than in a foreign country, or any natural person who stays in Lithuania most of time. The concept of a permanent resident of Lithuania is clearly specified in paragraph 1 of Article 4 of the Law on Income Tax of Individuals of the Republic of Lithuania. All other natural persons are considered non-permanent residents of Lithuania.

Object of income tax of individuals

The object of income tax of individuals is the income of a resident - the remuneration received during the tax period for the performed works, services rendered, transferred or granted rights, the income from the individual activities, the income for the sale or otherwise transferred, invested property (funds), or other benefit received by the resident in cash or kind.

Non-permanent residents of Lithuania pay the income tax of individuals from income the source of which is in Lithuania.

Two types of activity of a resident of a different nature are distinguished - work activities carried out based on the employment-based relations or the relations corresponding to their essence, and individual activities.

Although paragraph 1 of Article 5 of LITI LR stipulates that the tax object is the income received by a resident, but the income tax of individuals is calculated and paid not from the total income of the individuals, but only from the taxable income which forms the basis of this tax after deduction of corresponding tax-exempt types of income and/or allowable deductions.

Rates of Income Tax

Amendments to the Law on Personal Income Tax came into effect in 2019, which introduced higher income tax rates.

Rates of income tax changes from 1st January of 2019. Since then, the annual income, which does not exceed 120 average monthly wages (in 2019 it was 136 344 EUR) a year, is taxable at the rate of income tax of 20 % (by 2018 it was 15 %). The annual income, exceeding the amount of 120 average monthly wages a year, is taxable at the rate of income tax of 27 %.

Sickness, maternity benefits, interest, dividends and income from the sale of securities or other assets, property leases, winnings, non-employer's and personal income are subject to a 15 % personal income tax rate.

Value Added Tax (VAT)

The object of VAT is the supply of goods and services effected for consideration within the territory of the country when the goods and services are supplied by the taxable person in the course of his economic activity. The VAT object is also an acquisition of goods for consideration within the territory of the country from another Member State. The object of import VAT is the import of goods when the goods are deemed to have been imported into the territory of the country.

Regulation in Lithuania

VAT has been introduced in Lithuania since 1 May 1994 after the entry into force of the Law on Value Added Tax of the Republic of Lithuania. This law was valid until 30 June 2002. Since 1 July 2002, the new version of the Law on Value Added Tax of the Republic of Lithuania came into force, which implemented all basic legal acts of the European Union regulating VAT taxation, but the requirements were not transposed into the law, the application of which is possible only in the case of Lithuania as a member of the European Union and a part of the common market. On 15 January 2004, the Law amending and supplementing the Law on Value Added Tax No IX-1960 of the Republic of Lithuania, which came into force from 1 May 2004, was adopted. This law has definitively transposed the provisions of European Union legislation regulating the procedure for VAT taxation.

VAT rates

Standard VAT rate is 21 %.

The reduced rate of VAT of 9% is applied to:

- most of the literature, information publications, textbooks, newspapers, magazines and other publications of a similar nature;
- passenger transport services by regular routes as well as transportation of passenger luggage services;
- accommodation at hotels and other special accommodation services;
- household energy consumers supplied with firewood and wood products for firing.

The reduced rate of VAT of 5% is applied to:

- Technical support means for the disabled and repairs thereof;
- Pharmaceuticals and medical aid measures, where the costs of acquiring these goods are reimbursed fully or partially, as well as non-compensated prescription medicines.
- Newspapers, magazines and other periodicals, with the exception of publications of an erotic and / or violent nature or which do not adhere to professional ethics and recognized as such by the regulatory authority, and printed matter, where more than 4/5 of the total publication is advertisement.

VAT payers

VAT payer is a person who has a duty to calculate and pay VAT and who is registered by the tax administrator as a VAT payer, including persons registered for VAT purposes other than that.

Taxable persons who supply goods or services in the territory of the country must register as VAT payers and to calculate VAT and pay it to the budget.

Taxable persons of the Republic of Lithuania may not register as VAT payers and do not calculate the VAT for goods supplied (with the exception of new vehicles supplied to other Member States) and/or services provided and not to pay it into the budget if the total remuneration amount for goods and/or services provided in the course of an economic activity during the year did not exceed EUR 45 000.

It is not obligatory to register as a VAT payer if the value of the products (except for new vehicles or excisable goods) purchased by the taxable person of the Republic of Lithuania from other Member States exceeded EUR 14 000 in the previous calendar year and this threshold is not foreseen in the current calendar year.

There is also a possibility for voluntary registration as VAT payers in cases where the mentioned registration limits are not exceeded.

Tax period

A tax period is a calendar month, but in some cases, a calendar half-year or another period can also be set. If the tax period is a calendar month, the VAT tax return for the tax period must be submitted and the amount of VAT payable is paid no later than by 25th day of the next month.

The Law on Value Added Tax of the Republic of Lithuania also specifies cases, where the supply of goods, provision of services and the purchase of goods from another Member State is not subject to VAT, as well as the cases, where imported goods are exempt from import VAT, special schemes for VAT taxation (compensatory VAT rate for farmers, tourism services, second-hand goods, works of art, collectible and antique items, investment gold and special telecommunications, radio and television broadcasting and/or services provided electronically), etc.

State social insurance contributions

Social insurance contributions are paid into the budget of the Fund and are intended to finance the types of social insurance benefits. The types of social insurance are as follows:

> social insurance of pensions;
>
> social insurance of illness;
>
> social insurance of maternity social;
>
> insurance of unemployment;
>
> social insurance for accidents at work and occupational diseases;
>
> compulsory health insurance.

Payers of social insurance contributions are insurers, policyholders, self-employed persons and persons who are insured with state voluntary social insurance.

Insurers are legal entities, other organizations or their subdivisions (branches, representative offices), as well as natural persons who must pay state social insurance contributions. The legal entities of the Republic of Lithuania, individuals engaged in individual activities, self-employed persons, etc. are recognized as insurers.

Policyholders are natural persons who pay state social insurance contributions themselves and/or the insurers pay contributions for them. Persons insured with social insurance are persons working under employment contracts, civil servants, officials, etc.

The social insurance contributions of the persons employed under employment contracts, civil servants and categories of similar types of insured persons are calculated from the amount of wage computed for each insured person.

Unlike other taxes and compulsory contributions, there are no permanently valid sizes of social insurance contributions (rates).

Compulsory health insurance contributions

Citizens of the Republic of Lithuania and foreigners, who permanently reside in Lithuania, as well as foreigners legally working and temporarily resident in Lithuania, must pay compulsory health insurance contributions. The payers of compulsory health insurance contributions are insured

persons and/or insurers - legal entities and their branches and representation agencies.

The basic amount of the compulsory health insurance contribution is 6.98 %. The insured persons pay 3% of compulsory health insurance contributions from the income calculated from the income computed in accordance with the procedure established by the Law on State Social Insurance from which social insurance contributions are calculated for persons.

This system of personal healthcare and economic measures guarantees the provision of healthcare services to the insured persons and the reimbursement of expenses for the provided services.

Contributions to the Guarantee Fund

The State Social Insurance Fund Board under the Ministry of Social Security and Labour and other administration institutions of State Social Insurance Fund took over the execution of the administration function of the Guarantee Fund from 1 January 2017. Until then, the State Tax Inspectorate was responsible for the administration and regulation of these contributions.

The purpose of the Guarantee Fund (contributions to it) is to pay flat-rate payments to employees of bankrupt and failed enterprises who worked in an enterprise prior to the court ruling to initiate bankruptcy proceedings against the enterprise or to carry out the bankruptcy proceedings by extrajudicial procedures before the meeting of creditors, irrespective of whether the labour relationships continue or are terminated, as well as former employees of enterprises when companies are indebted to them.

Contributions to the Guarantee Fund are paid by all legal entities (enterprises, public institutions, banks, credit unions), except for many state institutions. Contributions must also be paid by units of legal entities of the Member States of the European Union established in the Republic of Lithuania.

These companies pay 0.2% of the amount of wage calculated to employees (from which the state social insurance contributions are calculated).

Other taxes

Real Estate tax

The object of the tax is real estate paid by real estate owners - natural and legal persons.

The tax rate is from 0.3% to 3% of the tax value of the real estate.

The tax value of real estate is the average market value of real estate based on which the tax rate is determined.

Land tax

Land tax is similar to the abovementioned real estate tax.

The object of the tax is private land owned by the natural and legal persons in the Republic of Lithuania, with the exception of forestland and agricultural land. Like the real estate tax, the land tax is paid by natural and legal persons.

The tax base is the taxable value of the land, which is equal to the average market value of the land.

The tax rate may range from 0.01% to 4% of the taxable value of the land.

Labour law regulation in Lithuania

The main legal act regulating labour relations in Lithuania is the Labour Code. It regulates social relations related to individual labour relations (relations prior to the conclusion of an employment contract and its termination, collective labour relations, consideration of disputes arising between participants of labour relations, relations related to observance and supervision of the law, etc.).

Lithuanian labour law and labour relations are also regulated by the Constitution of the Republic of Lithuania, laws of the Republic of Lithuania governing labour relations in a narrower legal field (for example, guarantees to employees after their employer becomes insolvent and law on long-term employee benefits, law on trade unions, law on equal opportunities, law on remuneration of state politicians and state officials, etc.), European Union legislation, international agreements concluded by Lithuania, Government resolutions (for example, Government resolutions on minimum wages, etc.) as well as normative legal acts of other state institutions (decrees of the ministries, municipalities, etc.) and collective agreements concluded by the participants of the employment relationships themselves, various agreements between the employer and labour councils and local legal acts.

The labour law system in Lithuania consists of the general part of labour law, individual and collective labour relations.

> The general part of labour law includes the rules of law regulating labour relations, which establish the general principles of labour law relations, the subject of labour law, sources, subjects of labour relations and other essential peculiarities of legal regulation of labour relations in the Lithuanian labour law system;
>
> Individual labour relationships include the labour relationship between the employer and the employee, the basis for the emergence, termination of their labour relationships, establishes various social guarantees and their implementation during the labour relationship, the means of legal settlement of disputes arising between the employer and the employee, etc.;
>
> Meanwhile, collective labour relations are implemented based on the social partnership principle. The representatives of employees and representatives of employers and their organizations are considered the parties of social partnership or social partners. By the collective partnership, through their representatives, the employees exercise their rights, can negotiate with employers on better working conditions and deal with other collectively solvable issues.

In order to make legal regulation of labour relations the most efficient, rational for both employees and employers and to distribute the rights of the parties of labour relations, obligations and various responsibilities of employers and employees more evenly, one of the most important changes took place in the Lithuanian labour law system in 2017. From 1 July 2017 the new Labour Code of the Republic of Lithuania came into force, which was modified slightly in 2018 and 2019. The article deals with the relevant legal regulation of labour relations in Lithuania, which, before its entry into force, raised quite a number of discussions, received approval from certain social groups, as well as opposition of some of them. The new Labour Code, in comparison with the provisions of the previously effective Labour Code, provides for the reduction of sizes of various benefits and compensations, as well as minimizes various warning terms, encourages the parties to cooperate more closely and negotiate in the context of labour relations. It is likely that such changes in legal acts regulating the labour relations in Lithuania will encourage foreign employers to become more interested in the Lithuanian labour market and take effective advantage of labour law relations by investing in business and labour force in Lithuania.

Types of labour relationships in Lithuania

According to the system of labour relations prevailing in the country in general, in Lithuania labour relations are divided into individual labour relations and collective labour relations.

Individual labour relationships

Parties of individual labour relations are (1) an employee and (2) employer. Individual labour relations occur after the employer and employee have signed a written employment contract.

(1) In this case, only a natural person, who, based on the employment contract, undertakes to perform the work function for the employer, is considered an employee. Under Lithuanian law only natural persons having legal capacity (the capacity to have employment rights and obligations) and ability (acquire full legal capacity in employment relationships by own actions and undertake employment obligations), which they acquire when they reach the age of 16 years, can be an employee.

(2) An employer may be both a natural person and a legal entity in whose favour a natural person undertakes to carry out a work function for a remuneration. An employer may have one or more workplaces, in other words, structural organizational branches, representations or other structural, industrial, commercial or other activities that perform the employer's activities, in which the employer's employees can perform their work functions.

(3) According to the law of Lithuania, a legal entity (a) under the jurisdiction of Lithuania, having legal capacity and ability to work (which he obtains from the moment of establishment of the legal entity, and a natural person obtains the legal capacity and ability to work as an employer from the age of 18), as well as (b) the subdivision of legal entity or other organization (branch, representative office) under the jurisdiction of a foreign state registered in the territory of the Republic of Lithuania, other organization, subdivision of a legal entity or other organization (branch, representative office) or a group of such persons can be an employer.

Types of employment contracts

Individual legal employment relations arise from a legal fact called an employment contract. The contracts concluded between the employer and the employee define the necessary and additional conditions for the employment contract.

The essential terms of the employment contract are as follows: (1) job function, (2) payment conditions and (3) workplace. If these conditions are not agreed in the employment contract, the

employment contract is not properly concluded and is invalid.

Additional terms of the employment contract are all different; the working conditions are determined by agreement between the employer and the employee (this may be a probationary period or determination of a term of employment contract, etc.). They specify the norms of labour law or establish an agreement between the employer and the employee regarding the fulfilment of work or other conditions related to the work, which is not contrary to labour law. Additional terms in the employment contract may not be discussed at all - in order for the employment contract to be properly concluded, it is important to agree on the necessary terms of the employment contract.

In Lithuania, previously it was only possible to conclude an employment contract of a fixed-term or indefinite duration, and after the entry into force of the new Labour Code from 1 July 2017, six more completely new types of employment contracts have appeared.

Type of employment contract	**Peculiarity of employment contract**	**Term of employment contract**
Non-term employment contract	Concluded between the employer and the employee for specific duties (e.g. manager, lawyer, accountant, etc.);	Unlimited term;
Fixed-term employment contract	Term may be set (1) by a certain date, (2) or until the performance of a particular task or (3) until certain circumstances occur, change or terminate; Fixed-term contracts of permanent nature may not exceed 20% of all concluded employment contracts in businnes company;	Up to two years - with one and the same employee, one or more successive contracts are concluded for performing the same functions; Up to five years - several fixed-term employment contracts for different job functions are concluded with the same employee;
Temporary work employment contract	A temporary employee undertakes to perform a job for a certain period of time for the benefit of the user of temporary work specified by the temporary employment agency; The employer of a temporary work employment contract is not a user of temporary work, but a temporary employment agency, and therefore it pays the employee the wage;	Fixed-term – up to three years; Unlimited term;
Apprenticeship employment contract	Concluded when the employee is recruited for the purpose of acquiring skills and qualifications necessary for a certain profession (often used by vocational school students); The employer can negotiate with the employee the reimbursement of training expenses incurred by the employer, which cannot exceed 20% of apprenticeship salary per month; Apprenticeship contracts may not exceed 1/10 of the total number of employment contracts concluded by the employer	Up to six months; For a longer period if the apprenticeship employment contract is concluded together with the training contract regulated by legal acts where longer training duration is defined
Employment contract for project work	Concluded for work functions required to achieve a specific result of the project; The employee is paid the wage of not less than the minimum hourly rate, paying at least once a month; The employee may determine working time regime by himself. Minimum working hours per week shall be discussed in the contract for project work	Up to two years – if the contract is concluded with a newly recruited employee; up to five years - if the contract is concluded by replacing an existing type of employment contract with an existing employee by another type of contract; up to two years - if the employment contract is concluded by leaving other type of employment contract in force due to the project work;

Job-sharing employment contract	Under this contract two employees agree with an employer to share one job position without exceeding the maximum working time rate for one employee; The working time regime may be changed by mutual agreement between the employees, after informing the employer. Agreements of employees on the allocation of working time cannot, in any way, affect the obligation of employees to work - in all cases, employees must replace each other at work in order to fulfil work; If the employment contract with one of the employee is terminated, the employment contract of the other employee is valid for one month until the same contract is concluded with a new employee. If the partner is not found, the employer must offer the employee the employment in its entirety	unlimited or terminated based on the agreement with employees;
Employment contract for several employers	Under this contract, an employee can work for two or more employers by performing the same job function; The contract must specify the first employer who will perform all functions of the employer in connection with the drawing up the work schedule, taxation of the employee's income, payment of social insurance and other contributions for this employee, submission of information about him to institutions, institutions, etc.; The first employer represents all employers in labour disputes with the employee; All employers are liable for obligations to the employee and for obligations related to the taxation of employee's income, the payment of social insurance and other contributions to public institutions	Unlimited or terminated (based on the agreement with the employee and all employers);
Employment contract for seasonal work	Contract is concluded for seasonal work. These are considered the works that, due to natural and climatic conditions, are not done for the whole year, just at certain periods (seasons), which are included in the list of seasonal works established by the Government of Lithuania;	Terminated, up to eight months within one year (12 months);

Remuneration, wage, salary

Remuneration is one of the necessary terms of the employment contract, and therefore must be discussed explicitly in the employment contract between the employee and the employer. Remuneration must be paid in cash (i.e., in the Lithuanian currency - euros/EUR/€) and its size may not be lower than established by the laws applicable to the employment relations, collective agreements, other labour law norms or remuneration system approved in the workplace.

The remuneration of each employee comprises:

> basic (rate-based) remuneration (hourly wage or salary),
>
> additional part of the remuneration, which may be determined by agreement between the employer and the employee or compulsorily paid according to rules of labour law (for example, for doing works of certain level of hazard, in the case of a health hazard factors, or in the case of agreements on non-competition between the employer and employee, etc.) or according to the remuneration system applied at the workplace,

> as well as premiums for additional qualification,
>
> premiums for additional work or additional duties or tasks,
>
> premiums for the work done that can be fixed by agreement between the employer and the employee, or paid in accordance with the rules of labour law or the work remuneration system applicable at the workplace,
>
> and premiums which are only intended to encourage the employee for well done work, activities or performance of his or company, subdivision or group of employees allocated on the initiative of the employer.

If the size of remuneration established by laws is applied, then the contract must include a reference to the rules of labour law that determine it (for example, when agreeing to pay a minimum wage established in Lithuania, there must be a reference to the legislation which provides for the size of minimum wage applicable in Lithuania).

Remuneration can also be determined by the system of remuneration at the workplace, employer's company or organization. Such a system of remuneration can be established by collective agreement, and in the absence of a collective agreement, at the workplaces (where the average number of employees is 20 or more employees), the payment systems must be approved by the employer and made accessible to all employees for familiarization.

When applying the work classification system for determining the wage, or preparing general remuneration system for the employees at the workplace, the same criteria shall be equally applied to both men and women, and the remuneration system at the workplace must be developed in such a way so as to avoid discrimination on the grounds of sex. Men and women must be paid equal remuneration for the same or equivalent work. An equivalent work means that it is, according to objective criteria, of no lower qualification and equally important to the employer in pursuit of the goals than other comparable work. In other words, the same work means carrying out work activities that are identical or similar to other work activities to such an extent that both employer's employees can switch their works without the higher costs of the employer.

Minimum wage

The minimum wage of the employee per month may not be lower than the established minimum wage. The minimum wage is determined by the Government of Lithuania.

The minimum wage in Lithuania (minimum hourly wage or minimum monthly wage) is the minimum allowable remuneration for unskilled work for an employee per hour or the full working time of a calendar month. Unskilled work is considered the work, where no any specific qualification or professional skills are required.

From 2018 January 1st, in Lithuania the Government established a minimum hourly wage rate of EUR 2.45 and a minimum monthly wage of EUR 400. From 2019 January 1st, the Government established a minimum hourly wage rate of EUR 3.39 and a minimum monthly wage of EUR 555. These provisions still apply in the 1st and 2nd half of 2019, however, since the employees are increasingly objecting against the minimum wage size, the Government and the Seimas started considering to increase the minimum wage. On 2019 June 3rd Government established a new minimum hourly wage rate of EUR 3.72 and a minimum monthly wage of EUR 607. This Resolution of Government will come into force in 2020 January 1st.

After the entry into force of the new Labour Code in Lithuania on 1 July 2017, the prohibition on the payment of minimum wage to qualified employees is foreseen. Qualified work is considered the work that requires certain specific qualification or professional skills, such as higher or vocational

education in the relevant field, possession of special certificates, licences issued after appropriate training, etc.

If qualified employees work for the employer, the employer must formally pay at least minimally higher wage than the minimum monthly wage or minimum hourly wage rate established by the Government. What this size will be is the question of negotiations between the employee and the employer, the decision of which must be fixed in the employment contract.

A qualified employee can be paid a minimum wage only if he is fixed a shorter working time or he is employed to a workplace where an unskilled employee can work.

Working hours (average, maximum, overtime)

The rate of working time, the average and maximum working time is determined according to what is included in the specific working time. The working time may include:

> basic working time of employee;
>
> overtime;
>
> and additional working time, which is determined by a written agreement between the employee and the employer on additional work

The rate of basic working time in Lithuania is 40 hours per week, and the maximum working time of the main working time may not exceed 48 hours per 7 days (the main working time is the standard working time of an employee agreed by the employment contract, which does not include overtime or additional time).

However, for employees working on the basis of total working time accounting, the maximum working time, including overtime, but not including additional work in accordance with the agreement, may not exceed 48 hours calculated over the accounting period (the maximum accounting period is 3 months) on average during every 7-day period. If a total working time accounting in a particular workplace is established, the employees work during the time indicated in schedule (shifts). The employer must draw the work (shift) schedules in such a way as to distribute working time of the employees as evenly as possible throughout the accounting period; and it is prohibited to appoint the employee to work two shifts consecutively.

The maximum working time per one working day (one shift) may not be longer than 12 hours, excluding lunch break, and no more than 60 hours per 7 days. The period of 12 hours per day or 60 hours per 7 days must include (1) basic working time and (2) overtime as well as (3) additional work by individual agreements.

The fact is that any overtime work is possible only with the consent of the employee. During a period of 7 consecutive days, employees may not work longer than 8 hours of overtime (8 hours per week), and a verbal agreement between the parties is enough for this. Overtime can be increased up to 12 hours at maximum within the period of 7 days, but in such case, the employee must give his written consent. Duration of maximum overtime over full year may not exceed 180 hours. However, collective contracts between employees and employers can provide for longer overtime duration.

Types and terms of leave (vacation)

The leave according to Lithuanian Rules of Labour Law are divided into (1) annual, (2) special-purpose and (3) extended/additional. The employees are granted a different number of leave days depending on whether they work 5 or 6 working days a week, as well as their age, working capacity (disability), the nature of work (psychological, emotional factors, work tension, occupational risk, etc.).

Employees have to be granted with annual leave not shorter than 20 working days per year if the employee works 5 working days a week, and in the case of 6 working days per week - at least 24 working days per calendar year.

> The right to use annual leave by instalments arises when the employee is granted at least one day of leave. For the first year of employment, all annual leave is normally granted after a period of at least half a year from the date of conclusion of the employment contract. For the second and subsequent years of employment, annual leave is granted at any time of the working season at the request of the employee or according to the place in queue on granting annual leave drawn up at the workplace. Such a queue may be formed in a collective contract or agreement between the employer and the work council.

Meanwhile, the right to use all or part of the annual leave is lost 3 years after the end of the calendar year in which the right to full annual leave has been acquired (unless the employee was actually unable to use them).

> Special-purpose leave is granted in certain life situations. An employee can apply for special-purpose (1) maternity leave, (2) parental leave, (3) childcare, (4) educational, (5) creative and (6) unpaid special-purpose leave.
>
> Extended leave may be granted to employees under 18 years of age and disabled employees. If these employees work 5 working days a week, they are granted a 25-working day extended annual leave. If these employees work 6 working days a week, they must be granted a 30-working day extended leave.

However, if the number of working days of these employees per week is less (less compared to each other) or different (each week differently), the employee must be granted an extended annual leave of up to 5 weeks (calculated by weekdays and not by working days).

Extended annual leave up to 41 calendar days shall be granted to the employees whose work involves greater nervous, emotional and intellectual strain and professional risk, as well as to those employees who work in specific working conditions if they work 5 working days a week. Whereas if employees work 6 working days a week, these employees should be granted annual leave of up to 50 days. However, if the number of working days of these employee is less or different per week, then extended annual leave of up to 8 weeks must be granted (calculated by weekdays and not by working days).

Pay for annual leave

During annual leave, the employer must pay holiday pay (i.e. the average wage of employee for the days of leave granted).

Holiday pay is calculated according to the average wage of employee per day and paid no later

than the last working day before the start of the leave (i.e., one day before the leave). Other part of the holiday pay, if it should be paid, exceeding 20 working days (which is to be paid to employees working 5 working days a week) or 24 working days (which is to be paid to employees working 6 working days a week) or 4 weeks (working different or less working days per week), are paid to the employee during his leave in accordance with the procedure and time limits for the payment of wages laid down in the employment contract.

Compensation for damages in labour relations

In accordance with the legal regulation of labour relations in force in Lithuania, each party to the employment contract must compensate for the material damage as well as non-material damage caused to the other party to the contract due to its fault by violation of its duties.

The employer can agree with employees on full material liability of employees in a collective agreement concluded between the employer and representatives of employees (collective harmonization of such conditions is possible only with representatives of employees - trade unions).

In the absence of an agreement on full material liability in collective agreement, the employees are subject to application of the material liability of the limited amount provided for in the laws (in other words, not complete but limited). According to the provisions of the Lithuanian Labour Code, the amount of damages to be paid to the employer by employee is subject to limits, i.e. the employee may only be required to compensate for damage that falls within the scope of the repayable damage established in the Labour Code. As a standard, the amount to be repaid by employee (1) may amount to no more than 3 average monthly wages of employee. However, (2) if the employee causes material damage to the employer due to gross negligence, in such a case, the amount to be compensated may not exceed 6 average monthly wages of employee.

In all cases, it is relevant for employers to conclude a collective contract, since collective contract can include the agreement not only on the provision relating to full material liability. In the event there is no agreement on provisions of full material liability, it is allowed to negotiate at least increased material liability of the employee - it is possible to increase the amount of damages to be paid by the employee up to 12 of his average monthly wage.

Thus, according to the legal regulation of labour relations in force in Lithuania, the material liability can be applied for the damage caused to the employer during the labour relationship. The material liability of employees, according to the amount of damages to be paid, can be divided into:

Type of material liability of employees	**Size of damage to be compensated**
Limited material liability under the Labour Code	The amount from 3 to 6 average monthly wages shall be covered.
Limited under the collective contract	The amount of up to 12 average monthly wages of employee is covered.
Full in accordance with the law (when the damage is caused deliberately, the activity is performed with signs of crime, being drunk or intoxicated with narcotic, toxic or psychotropic substances, breach of the duty to protect confidential information and non-competing agreement, non-material damage to the employer is caused by the employee's actions)	Damage shall be compensated in full.
Full under the contract (collective)	Damage shall be compensated in full.

Procedure for recovering of damage

The legal acts provide for alternatives for the employer in order to recover the damage caused by the employee: allow deductions from the employee's wage in order to compensate for the damage caused to the employer by the employee or to apply to the labour dispute committee (or court) for the award of the respective damage.

The employer has the right to order a deduction from the employee's wage within 1 month from the day the employer became aware (or could have become aware) of such damage caused by the employee. However, the amount of such deduction is limited. As a rule, the amount of the deduction for damages from the employee whose wage is minimal (minimum wage established by the Government) cannot exceed 20 percent of the payable wage amount. In case the employee's wage is higher than the minimum established by the Government it is possible to deduct 50 percent from the amount exceeding the part of minimum wage. However, such deductions are subject to limitations: the amount of the deduction may not exceed employee's average wage of one month even if bigger damage has been caused.

Where the employer seeks compensation for damage exceeding the amount of one-month wage of the employee, the employer must apply to the institutions dealing with disputes in relation law for damages. In Lithuania, labour disputes in relation to the law are examined by (1) labour disputes committee (Darbo ginčų komisija) and (2) court.

End of labour relations

The labour relationship between the employer and the employee end upon termination of the employment contract. Such a decision may be made by mutual agreement of the parties, as well as on the initiative of one of the parties to the labour relations or due to unforeseen circumstances.

According to the provisions the labour law in force in Lithuania, the employment contract may be terminated:

> by mutual agreement between the employer and the employee;
>
> on the initiative of the employee without important reasons;
>
> or due to important reasons (such as illness, retirement age, etc.)
>
> on the employer's initiative without the employee's fault;
>
> or due to the employee's fault (for example, because the employee violates the same rules of work discipline twice, does not arrive at work without any reason, etc.),
>
> the will of the employer;
>
> or in the absence of the will of the parties to the contract of employment.

Terms of notice of dismissal

The amendments to the Labour Code which came into force in Lithuania from 1 July 2017 have established shorter terms for the notice of dismissal. The employer must notify the employee in writing (1) one month in advance if the employee works for one year and more or (2) two weeks in advance (in other words 14 calendar days in advance) if the employee works less than one year.

However, (3) these terms of notice to employees are doubled for those employees who left less than 5 years before their retirement pension, i.e. the said employees who work for the employer up to one year - are notified in writing 28 calendar days in advance, and if they work for the employer over 1 year, they must be notified in writing 2 months in advance. Also, (4) the above-mentioned basic notice periods of one month/and two weeks must be tripled for employees who raise a child under the age of 14, or who raise a disabled child under the age of 18, or who are disabled, or who less than 2 years left before their retirement pension, i.e. y The terms for warning employees of these employees are tripled, and the employees who work for an employer up to one year are notified 42 calendar days in advance, while if they work for more than one year, they are notified three months in advance.

The provisions of the Labour Code also provide for that the termination of an employment contract is possible without giving reason by informing the employee by the written notice three working days in advance and paying him the severance pay of at least six his average monthly wages.

In the meantime, if an employee wants to terminate the labour relations, he will normally have to notify the employer in writing 20 calendar days or 5 working days in advance, if the employment contract is terminated for important reasons.

The Lithuanian legal system for labour relations also provides for certain restrictions on termination of employment contracts:

> An employment contract with a pregnant employee during her pregnancy and until her child reaches the age of four months may be terminated only by agreement of the parties, on her initiative, on her initiative during the trial period, in the absence of the will of the parties to the contract of employment, as well as when the fixed-term employment contract expires at maturity;
>
> with employees raising a child (adopted child) of up to 3 years of age, an employment contract may not be terminated on the initiative of the employer if there is no fault of employee;
>
> the employment contract with employees on maternity, paternity or parental care leave cannot be terminated by the employer's will;
>
> it is prohibited to dismiss an employee called for compulsory military service or an alternative national defence service on the initiative of the employer in the absence of the employee's fault or by the employer's will.

Severance Pays (compensations)

The amount of severance pay (compensation) payable to employees decreased significantly in Lithuania from 1st July 2017. Such changes make the system of Lithuanian labour law relations more attractive to employers, as they are no longer burdened by such a large amount of severance pays (compensations) to be paid to dismissed employees.

In the past, dismissed employees had to be paid the severance pays from 2 to 6 average monthly wages. Today, the severance pay rates range from half to two average monthly wage sizes (only in exceptional cases a severance pay of 6 average wages, when the employment relationship is terminated promptly by notifying the employee 3 working days in advance is paid). Consequently, shortened notice periods and reduced severance pays make it easier to start and implement changes in the labour relations often needed in business.

Severance pays to employees are paid considering their continuous work experience at the workplace:

> in the case if the employee works for an employer less than one year, he shall be paid a severance pay of his half average monthly (half month) wage;
>
> if the employee works for the employer for one year and more, he is paid a severance pay amounting to his average wage of two months;
>
> irrespective of the length of experience of an employee, and dismissal of an employee without any valid reason (he must be notified in writing three working days in advance) - he is paid a severance pay amounting to his average wage of at least six months;

The employees may also be paid a long-term work allowance based on the continuous work experience of that employee in one workplace (where the relationship between the employee and the employer lasts for at least five years). However, this additional allowance is not paid from the funds of the employer (not paid from private business company budget), but from the Long-Term Work Allowance Fund. An employee, on his own initiative, must apply for such an allowance in writing to this fund requesting to allocate such allowance.

Procedure for payment of severance pay

At the end of the employment relationship, i.e. after the termination of the employment contract, the employer must pay the employee all allowance related to the employment relationship, which means that not only the wage for that day must be paid, but also the compensation for unused leave days, as well as the severance pay (if any) and other employment-related allowances, if any, depending on the type of work, agreements between the employer and the employee, etc. The employer must settle with the employee on the same day when the employment contract is terminated, but not later than the end of the actual employment relationship.

The provisions of the Lithuanian Labour Code allow the employer and the employee to agree in writing on the extension of such settlement term: if the parties agree in writing, it is allowed to extend the settlement term to up to 10 days. However, if the employer fails to settle with the employee on time, the employer shall be subject to sanctions. In such a case, the employee may apply to Lithuanian state institutions dealing with individual labour disputes with a request to award not only unpaid amounts related to labour relations, but also to demand compensation for delay in timely settlement with him. Disputes of this nature are dealt with by the Labour Dispute Committee (Darbo ginčų komisija) of the State Labour Inspectorate of the Republic of Lithuania.

Strategum Dargis & Partners

State profile

The Republic of Lithuania is a member of the European Union and belongs to the Schengen area; therefore, the free movement of goods and persons is ensured for investors from the European Union. Lithuania belongs to the euro area and uses the common currency of the European Union - the euro. One of priorities of Lithuania foreseen in the progress strategy of the state is the attraction of investments from all over the world; therefore, the policy pursued by Lithuania is aimed at promoting the growth of foreign investment. Good conditions have been created in Lithuania for the training of young professionals who are great request in international companies. Almost every young professional in Lithuania fluently speaks English, many of them speak Russian, and the number of those speaking Scandinavian languages is growing steadily. Each year, engineering, production and construction studies are chosen by twice as large as the average in the European Union, while IT professionals are trained and employed mostly in the European Union.

Lithuania also has good infrastructure and favorable conditions for investing in the Republic of Lithuania. Lithuania can offer the fastest communications for investors: one of the fastest internet speeds in the world (penetration of broadband Internet in Lithuania is the largest in the EU) and well-developed logistics that allows fast access to both Eastern and Western Europe. The Lithuanian business sector meets all EU standards. To foreign investors, whose business needs production and transportation, Lithuania can offer 750 million potential customers, who can be reached within 1-5 days. Lithuania has signed the treaties with the 50 largest markets in the world that help avoiding double taxation, including China, Russia and the United States.

There are currently seven special economic zones in Lithuania, where preferential terms apply to business (for example, in the free economic zones, the investor does not pay income tax for the first 10 years, while other 6 years, income tax is only 7.5% (elsewhere in Lithuania 15%), while dividends received by foreign investors in a free economic zone are not taxed (elsewhere in Lithuania 15%). There are also five integrated science, studies and business centers (valleys) in Lithuania, in which exceptionally good conditions are created for investors to invest in research and experimental development. Those who invest in high technology and innovation are provided with various tax reliefs (such as the permit to deduct the costs of enterprises incurred during the research and development projects from income three times).

Investment in Lithuania

In accordance with national and European Union legislation, as well as bilateral agreements concluded by Lithuania on investment promotion and mutual protection, Lithuanian and foreign investors must be guaranteed equal conditions for activities, while the rights and legitimate interests of investors are protected by the laws of the Republic of Lithuania.

Foreign investment in the Republic of Lithuania and investments of the investors of the Republic of Lithuania abroad are also regulated by bilateral and multilateral agreements between the Republic of Lithuania on the promotion and protection of investments and other international treaties. If the international treaty ratified by the Seimas of the Republic of Lithuania establishes different conditions for foreign investments in the Republic of Lithuania than the laws, the rules of the international treaty shall apply.

The Law on Investment of the Republic of Lithuania provides for that investors can invest in Lithuania by employing the following methods:

> establishing an entity, acquiring of all or part of the capital of an entity registered in the Republic of Lithuania;
>
> by acquiring securities of all types;
>
> by creating, acquiring fixed assets or increasing the value thereof;
>
> by lending funds or other assets to entities, in which the investor owns a share of the capital, enabling them to control the entity or to exert a considerable influence thereon;
>
> by executing concession contracts and contracts of lease with option to purchase.

Investment in economic entities

Investment in the Republic of Lithuania is permitted in all lawful commercial-economic activities, subject to the restrictions established by this Law and other legal acts of the Republic of Lithuania.

Restrictions

The Law on Investment of the Republic of Lithuania provides for that investment shall be permitted in all lawful commercial-economic activities; however, the fact that the law provides for the following restrictions to the foreign investors should be taken into account:

> Foreign investments are not allowed in state security and defence (except for the investment by the foreign entities meeting the criteria of European and Transatlantic integration which Lithuania has opted for, provided this is approved of by the State Defence Council).
>
> Investments in the economic sector of strategic importance to national security or facilities of strategic importance to national security, shall be allowed only after the assessment of the compliance of potential participant with the national security interests of the Republic of Lithuania in the cases and in the manner prescribed by the law.

It is also worth mentioning that when investing in an established economic entity, whose activities under the laws governing that area of activity are licensed, the entity must acquire a licence in accordance with the procedure established by laws and other legal acts.

Investment in an entity of the EU and EEA countries

Lithuanian investors and foreign investors from the EU and EEA countries are subject to the same conditions. Foreign investors usually choose to set up private limited liability companies or branches of a foreign company in Lithuania. The procedure and conditions for the establishment of these and other economic entities are specified in detail by the Law on Companies of Republic of Lithuania.

When acquiring a the capital of the company or a part thereof, particular attention should be paid to the established procedure for notifying of such actions and whether the management body of the company has taken a decision on the transfer of capital in accordance with the provisions of the law and the articles of association of that company. Failure to comply with these requirements may result in invalidation of the investment in question and, of course, the losses of the investor.

Attention should be drawn to the fact that investing by lending funds or other assets to economic entities in which the investor owns a part of the capital, enabling him to control or exercise significant influence on the entity is permitted as lent exclusively to the person related to the investor, and therefore this type of investment does not include credit activities. Foreign entities wishing to engage in credit activities must comply with the Law on Banks of the Republic of Lithuania and the Law on Credit Unions of the Republic of Lithuania, which provide for the procedure for the establishment, licensing, operation, termination and reorganization and supervision of credit activities.

Investment in an entity of non-EU and non-EEA countries

Despite the fact that national legislation provides for an equal and level playing field for investors from all countries, there are additional conditions for potential investors from third countries (non-EU countries and non-EEA countries). These additional conditions relate to life and work in the Republic of Lithuania, and these conditions are regulated by the Law on Legal Status of Aliens of the Republic of Lithuania.

The Law on the Legal Status of Aliens of the Republic of Lithuania provides for the grounds for obtaining a residence permit in the Republic of Lithuania. One of the bases for obtaining permit is the arrival on purpose to engage in business. It should be noted that in order to obtain a temporary residence permit in Lithuania on this basis, additional requirements are imposed on both the person and his business.

Arriving to establish/manage a business and live in the Republic of Lithuania

As an owner, participant or manager of the company

Requirements for a person:

- You must be a participant of the company (a manager or a shareholder of UAB or AB holding at least 1/3 of the authorized capital of the company);
- You must have investments in cash or kind worth at least EUR 14,000 (not applicable to company managers);

Requirements for the company:

- A business plan for the activities of at least 6 months;
- The citizens of Lithuania, other EU or EFTA Member States or foreigners permanently residing in the Republic of Lithuania working full-time, whose the monthly wage paid in total represent at least 2 figures of the average gross monthly salary of the last published national employees of the Statistics Department of Lithuania (2578 EUR);
- Equity value amounts (not in the case of Public liability company and Private limited liability companies) to at least EUR 28,000;

Conditions:

- Family members can be brought in (at the same time family members can apply for a temporary residence permit in Lithuania).

As a starter

Requirements:

- A person intending to engage in legal activities related to the introduction of new technologies or other significant innovations in the field of economic and social development of the Republic of Lithuania (a document proving this is required, namely the letter of Public Enterprise "Versli Lietuva", confirming that the legal activity which the foreigner intends to engage with is related to new technologies, etc. and that a person has necessary qualification, financing and business plan to carry out these activities and that the presence in the Republic of Lithuania of the person is necessary).

Conditions:

- A starter is issued a permit for temporary residence for one year and may be replaced for one year only once.

Arriving to work and live in the Republic of Lithuania

As an employee

Requirements:

- A work permit in a company registered in the Republic of Lithuania (issued to an employer through an Employment Services Under the Ministry of Social Security and Labor of the Republic of Lithuania);
- After obtaining the work permit, you can apply to issue a national visa or a permit for temporary residence in Lithuania;
- Have sufficient amount of funds for living (the amount of funds for living is minimum one monthly salary per month).

Conditions of work and life in Lithuania:

- A permit for temporary residence in Lithuania is issued for the period of validity of the work permit, but not exceeding 2 years, therefore, in order to stay and work in Lithuania, it is necessary to apply to the Migration Service for the renewal of this permit;
- Family members can be brought in only after two years of legal life and work in Lithuania;
- During the permit for temporary residence, you can work only with the employer who has undertaken to employ you, applying for the issuance of work permit for you or the decision regarding the compliance of your work with the needs of the Lithuania market.

As the employee of high qualification

Requirements:

- A higher education diploma or at least 5 years of professional experience equivalent to the qualification of higher education;
- The wage in Lithuania will be not less than 1.5 of the average gross monthly salary of the last published national economy of Statistics Department of Lithuania (including data of salaries for individual enterprises).

Conditions of work and life in Lithuania:

- Family members can be brought in (at the same time family members can apply for a permit for temporary residence in Lithuania);
- You can change the employer with the permission of the Migration Department (for the first two years).

As an outsourced employee of a foreign company

Requirements:

- A permanent employee of the company specified in the founding documents carrying out the activities for a period of at least 6 months,;
- An employee is sent to work in a company in the Republic of Lithuania according to a contract concluded between these companies for the provision of services or performance of works as a specialist in accordance with the existing professional qualification;

- To be insured with social insurance in the country of origin for the last three months and to remain insured throughout the period of the mission in Lithuania.

Conditions:

- May be placed on detached services for a maximum of one year;
- Family members cannot be brought in.

In all cases, you must pay state fees when applying for a residence permit in Lithuania (except for the cases where a person is exemptions from the levy).

Investment by acquisition of all types of securities

Securities in free circulation on the market:

Shares and bonds of public limited liability companies being sold through the Stock Exchange in accordance with the procedure of the legislation on the financial markets of the Republic of Lithuania, securities of the Republic of Lithuania and other legal acts.

Securities Stock Exchange in Lithuania

AB "Nasdaq Vilnius" is a securities stock exchange operating in Lithuania. This is a market participant licensed by the Bank of Lithuania, the only operator of the regulated securities market and alternative securities market "First North" in Lithuania. AB "Nasdaq Vilnius" provides services related to trading in securities, listing securities and information services.

Market supervision

The securities market is regulated and supervised by the Bank of Lithuania in accordance with the Law on Markets in Financial Instruments of the Republic of Lithuania.

The Bank of Lithuania, exercising market control, issues licences and permits to the participants of the Market in Financial Instruments, restrains and cancels their validity, monitors and controls that the market participants would operate stably, are reliably managed and able to fulfil their obligations. In addition, the Bank of Lithuania supervises the compliance of regulated market participants with fair trade rules, and the investors would receive the mandatory information that must be disclosed as prescribed by the legislation. The purpose of the control is to ensure that when providing investment services, the investors are treated honestly, fairly and professionally so that they would receive all necessary information to allow them to make rational investment decisions.

In order to create the most favourable conditions for the development of the capital market, the Bank of Lithuania ensures the quality of regulation and legal certainty: submits proposals on the national economic policy, promoting the development of financial instrument markets, disseminates the information about the principles of the functioning of financial instrument markets and takes other measures to implement the Law on Markets in Financial Instruments and other legislation related to the financial instruments market.

Regulated market and over-the-counter trade

The regulated secondary turnover in securities in Lithuania is organized by the securities stock exchange "Nasdaq Vilnius". "Nasdaq Vilnius" is a self-regulating organization that adopts and enforces the rules and regulations governing the listing, trading and other procedures on the "Nasdaq Vilnius" stock exchange. Transactions executed outside the stock exchange are executed through the intermediaries of public turnover in securities, who must report the concluded transactions to the stock exchange "Nasdaq Vilnius".

Protection of foreign investors

Investors have the right to convert the profit (income) owned by them by property right, after paying taxes in accordance with the procedures prescribed by the laws of the Republic of Lithuania (dividends received by foreign investors are taxed at the corporate income tax rate of 15%) into foreign currency and/or transfer it abroad without restrictions.

Trading in securities of restricted turnover:

> Stocks and shares of private limited liability companies sold under the procedure established by the Civil Code of the Republic of Lithuania and the law regulating separate types of companies (Law on Companies of Republic of Lithuania; Law on Small Societies of the Republic of Lithuania).

It is necessary to note that when trading in securities with limited turnover, it is necessary to observe the procedure provided for by laws, otherwise the purchase of securities may be recognized as unlawful. When purchasing shares of a private limited liability company, it is necessary to take into account the proper implementation of the peculiarities of the transfer of shares provided for in the Law on Companies of the Republic of Lithuania and the Civil Code of the Republic of Lithuania:

Pre-emptive right of other shareholders

First, a shareholder must give a written notice to a private limited liability company of his intention to sell all or a part of the shares in a private limited liability company and indicate the number of shares being disposed of according to their classes and selling price. 2. The right of pre-emption to acquire all shares offered for sale in a private limited liability company shall be vested in the shareholders who, on the day of receipt of the shareholder's notice of his intention to sell shares in a private limited liability company.

If, within the time limits laid down in laws (30 days), the manager of a private limited liability company informs the shareholder that other shareholders do not wish to acquire all the shares offered for sale or fails to submit the notice, the shareholder shall be entitled to sell the shares at his own discretion at the price not lower than that indicated in his notice of the intention to sell the shares.

The law provides for that a different procedure for the sale of shares may be established in the articles of association of the private limited company; therefore, it is necessary to ascertain whether the pre-emption right of other shareholders to the securities being sold has been properly implemented (in accordance with the Law on Companies of the Republic of Lithuania and the articles of association of the company).

Competition Council

Secondly, investing in this way, the compliance with the requirements of the Law on Competition and, in certain cases (acquisition of shares of the company dominant on the market or the shares that will allow an investor to gain a dominant position on the market) – to obtain a permit from the Competition Council - must be observed.

Contract form

Thirdly, it should be noted that the Civil Code of the Republic of Lithuania provides for a notarial certification of the contract on sale and purchase of shares of private limited liability companies when selling 25 per cent or more of the shares of a private limited liability company, or the sale price of shares exceeds EUR14,500 (except when the personal securities accounts of shareholders are managed in accordance with the procedure established by legal acts regulating the securities market);

Investment by acquiring or creating short-term assets

The foreigners wishing to invest in this way and acquire the land, should pay particular attention to the constitutional law implementing Paragraph 3 of Article 47 of the Constitution of the Republic of Lithuania. This law provides for the conditions, procedures and restrictions observing which the foreign entities can acquire land, inland waters and forests by right of ownership. Under this law, to acquire the land, internal waters and forests by right of ownership are allowed only the foreign entities that meet the criteria for European and transatlantic integration chosen by Lithuania.

The criteria for the European and transatlantic integration chosen by Lithuania are met by foreign legal entities, as well as other foreign organizations, established:

> in the Member States of the European Union or in the states, which have entered into the European Agreement (Association Agreement) with the European Communities and their member countries;
>
> in the states-members of the Organization for Economic Co-operation and Development, the North Atlantic Treaty Organization and the states party to the Agreement on the European Economic Area.

The criteria for the European and transatlantic integration chosen by Lithuania shall be the citizens of the states specified in paragraph 1 of this article and the permanent residents of these foreign states as well as permanent residents of the Republic of Lithuania, who do not have citizenship of the Republic of Lithuania.

This law provides for a ban on the sale of land, inland waters and forests until the property rights of citizens of the Republic of Lithuania are restored. Therefore, before purchasing, it is necessary to check the history of the object to be purchased (whether a citizen of the Republic of Lithuania has no right to restore ownership).

The procedure for acquiring another immovable property located in Lithuania is carried out in accordance with the rules of the Civil Code of the Republic of Lithuania, which does not highlights any additional requirements for foreign entities. Attention should be drawn to the fact that this type of investment in the free economic zones is defined in the Law on Free Economic Zones of the Republic of Lithuania; therefore, the prohibitions of activities provided for in this law should be taken into account.

Investment by

Concession Contract

The concession contract is concluded between the investor and the institution acting on behalf of the state or municipality. There is an agreement on the possibility to carry out specific, certain types of economic activities in Lithuania related to the design, construction, development, renewal, replacement, repair, management, use and maintenance of infrastructure facilities, the provision of public services, the management and use of state or municipality property (including exploitation of natural resources).

Lithuanian and foreign concessionaires are equal according to the laws and in the course of their activities in accordance with this and other laws of the Republic of Lithuania shall not be discriminated, with the exception of restrictions already discussed that are applied to them.

Leasing agreement

Investment by means of leasing is regulated by the general procedure established by the Civil Code of the Republic of Lithuania. This procedure applies to both Lithuanian and foreign investors, which provides for that any non-utilized movable and immovable property, with the exception of land and natural resources, may be the object of a leasing agreement.

Partnership agreement between public and private entities

The terms, procedure and features of the partnership agreement between public and private entities are provided for in the Law on Investments of the Republic of Lithuania. Under partnership agreement between public and private entities, a public entity provides a private entity with activities related to the design, construction, reconstruction, repair, renewal, management, use and maintenance of infrastructure, as well as related to the management or use of state-owned or municipal assets, new or transferred to it, and the provision of public services in the fields of transport, education, health and social protection, culture, tourism, public order and public protection, and in other areas provided for in the laws regulating the activity and functions of the public authority.

During the implementation of the partnership agreement between a public and private entity, the public authority grants the right to manage and use the state-owned or municipal assets necessary for the pursuit of such activities and undertakes to pay the private entity the remuneration for the activities it carries out, and the private entity undertakes to perform the activities specified in the contract and to ensure the investments necessary for carrying out this activity and to develop the necessary assets or transferred for management and use to improve the state of the assets.

Protection of rights of investors (guarantees)

The protection of investors in Lithuania is ensured by the standards provided for in national and international legal acts on the protection of rights of investors:

> Prohibition of expropriation of investments without paying right compensation;
>
> The obligation to treat investments fairly and honestly and do not violate the legitimate expectations of investors;
>
> Full investment protection, ensuring the physical protection of investment and exercising the right to use the national judicial system effectively.

Protection of Investment in the Event of Expropriation

The Law on Investments of the Republic of Lithuania stipulates that Expropriation of the object of investment shall be allowed only in the cases specified and according to the procedure set forth in the laws of the Republic of Lithuania and only for public needs, paying the investor/investors just compensation in the manner prescribed by the Government (not later than within 3 months). The amount of compensation for the object of investment taken shall be determined in accordance with the procedure established by the Law of the Republic of Lithuania on the Principles of Property and Business Assessment and other legal acts and must correspond to the market value of the said object prior to the expropriation or prior to public declaration thereof, whichever happens earlier.

Upon the request of a foreign investor, compensation shall be paid in any currency for which London Inter Bank Offered Rate (LIBOR) is quoted. The sum of compensation shall be converted according to the official exchange rate of the euro against the foreign currency announced by the Bank of Lithuania on the day of assessment

Damage to investors

In accordance with international and national legislation, state and municipal institutions and officials have no right to hinder investors from managing and using an investment object and disposing of it in accordance with the procedure established by laws. Damage caused to an investor by illegal actions of state or municipal institutions and their officials shall be compensated in accordance with the procedure established by the laws of the Republic of Lithuania.

Dispute resolutions

Disputes concerning violation of investors' rights and legitimate interests are resolved in accordance with the procedure established by the laws of the Republic of Lithuania. Disputes between foreign investors and the Republic of Lithuania regarding violation of their rights and legitimate interests (investment disputes) are examined by courts of the Republic of Lithuania, international arbitration's or other institutions by agreement of the parties.

Investment disputes are also resolved in accordance with the provisions of international treaties. In the event of investment disputes, foreign investors have the right to apply directly to the International Centre for the Settlement of Investment Disputes.

Real estate in Lithuania

The concept of real estate in Lithuania includes the land, parts of land, including air over it and land under it, as well as the buildings. Construction sector, as well as organizations or companies founded by persons to manage their real estate as optimally as possible are closely related to real estate.

Requirements for the transaction

The parties to the contract on sale and purchase of real estate may be any entities of civil law, i.e. natural persons or legal entities of the Republic of Lithuania and foreign countries, except for the exceptions provided for by law regarding the acquisition of land parcels.

In Lithuania, a contract for the purchase-sale of an immovable thing shall be subject to notarial certification, regardless of whether the transaction involves a natural or legal person. The non-compliance with the notarial certification of the contract invalidates the contract. The requirement of a notarial certification for the contract on purchase and sale of real estate makes the contracts on purchase and sale of real estate complicated, and results in additional costs since the services provided by a notary should be paid.

The essential terms and conditions of each contract on purchase and sale of real property are the subject of the contract (the thing to be sold/purchased and its quantity is indicated) and the price of immovable thing. Each contract on sale and purchase of immovable thing must contain the following data describing the immovable thing: the type of immovable thing (land parcel, building, facility, etc.), address, total area, main purpose of use, unique number in the public register. If a land parcel is being bought, the cadastre number of the land parcel should also be indicated. If these conditions are not indicated in the contract on sale and purchase of immovable thing, the contract is deemed not to have been concluded. Although the price of immovable thing is fixed by agreement between the parties, the parties, when fixing the price, must take into account the value of the immovable thing to be purchased on the market since by the contract on sale and purchase, they intend to obtain a monetary equivalent corresponding to the value of the thing, and therefore, the price, clearly not corresponding to the value of the thing contradicts the nature of the transaction to be repaid and the principle of reasonableness. Such a price is the basis for challenging the contract on immovable thing due to the real will of the parties to the contract.

Taxes associated with the purchase and sale of real estate

When selling real estate in Lithuania, a 15% of income tax of individuals is applied. This tax will be calculated as the difference between the incomes from the sale of the real estate and the acquisition price of the property, together with the deduction of compulsory payments made for the purchase of this property and the costs of repairing this property. Such a restriction eliminates the possibility of avoiding the resale of real estate caused by the income tax of individuals. The Law on Personal Income Tax provides for cases when it is not necessary to pay income tax on the sale of real estate:

> if such property was acquired or inherited 10 years before;
>
> if the property is sold at a lower price than the acquisition price (value);
>
> if the housing for 2 years was the place of residence of the individual declared (applied only when selling flats, residential houses);
>
> if the housing for 2 years prior to the sale was the place of residence of the individual declared, but within one year of the sale of this housing he buys and declares his place of residence in the other housing, he does not need to pay taxes on the sale of housing (applies only to the sale of flats, residential houses).

Land tax is levied on private land owned by the natural and legal persons in the Republic of Lithuania, with the exception of forest and agricultural land, where the forest is planted in accordance with the procedure established by laws and other legal acts of the Republic of Lithuania. Land tax is paid annually and is calculated in accordance with the rates established by the government. Land tax rates depend on the location of real estate in the territory of the municipality and range from 0.01% to 4% of the taxable value of the land.

The object of the real estate tax is immovable thing located in the Republic of Lithuania. The real estate tax rate, ranging from 0.3% to 3% of the taxable value of the real estate, is determined by the municipalities taking into account one or more of the following criteria: the purpose, use, legal status of the immovable thing, technical characteristics thereof, the state of maintenance, categories of taxpayers (size or legal form, social status) or the location of the immovable thing. Non-taxable part of the property - property worth EUR 220 000.

Joint community property

A joint community property right is exercised when the parts of the ownership of each owner in the joint community property are defined, and the joint community property ownership is when the parts of ownership are not explicitly defined (for example, all property is presumed to be joint community property of spouses property shall be presumed to be joint community property and the shares belonging to them are not indicated separately).

Joint partial community property may be of two types, respectively. First, parts of co-owners can be expressed in partial terms (e.g. 50 percent, 1/3 and 2/3, equal, etc.) or by determining the parts of the thing belonging to them (for example, in the case of a residential housing property, different rooms belong to different co-owners).

In practice, there are a number of disputes between co-owners in relation to the use of joint community property. If the co-owners disagree about the procedure for the use of their property, it shall be determined by the court at the request of one of the co-owners. It is also possible to partition a share of the joint common property judicially. In this way, the thing is divided and the relationship of co-owners ends.

Priority right of co-owners to buy shares held in co-ownership

The seller of a share commonly owned shall inform the other co-owners in written form about the intention to sell his part to others than the co-owners, indicating the price and other conditions of sale. When a share of an immovable thing commonly owned is sold, such information shall be given through a notary. When the other co-owners renounce their priority right to buy the share or fail to use such right to the immovable thing within one month, and to other thing, within ten days from the day of receipt of such notification, provided the co-owners have not agreed otherwise, the seller shall have the right to sell his share to any person. The social purpose of this legal norm is to create conditions for the ending of the co-ownership, since it is always preferable when the owner of the thing is one person; on the other hand, this requirement restricts the right of a person to choose freely a buyer of immovable property. The problematic application of this requirement arises from the fact that the right of pre-emption is valid only when concluding a sale and purchase contract, and in the cases of transfer of other share of property (exchanges, donations, etc.) does not apply. For example, a person can transfer a share of the property to the company as a shareholder's contribution and then sell the company's shares that have become more expensive. Also, a person can falsely donate/exchange the thing and reclaim the benefits of the transaction by other means. Thus, the pre-preemptive right of co-ownership is avoided. Such a wording of the law in practice raises a number of disputes where the transactions concluded by the co-owner are sought to be declared void motivating that transactions are concluded only "for show".

Real Estate Servitude's

In practice, situations arise where the use of an immovable thing of another is inevitably required in order to use real estate according to its purpose (in most cases, land parcel). In this case, a person may apply to the owner of that thing and enter into a servitude transaction or apply to the court and demand the establishment of the servitude. A servitude is a right in respect of an immovable thing of another that is granted for the use of that thing (the servient thing) or a restriction of the right of the owner of that thing in order to ensure a proper utilization of the thing in favour of which the servitude is established (the dominant thing). This is property in rem, which "follows the thing". If a subject of ownership of a servient or a dominant thing changes, the servitude fixed remains. Servitude provides the servitude holder with specific rights to use particular thing of another or withdraws specific rights to use that thing from the servitude holder, and therefore the determination of the land servitude is to be regarded as the transaction of restriction of the immovable thing. Such examples can be the use of the land parcel of another for access to the public road, resting of one building structure onto another belonging to other owner's immovable thing. Since the servitudes restrict the rights of the owner of the servient thing, such a person may claim a fair remuneration for the restraint of his property rights. Such questions are usually resolved in courts, but can also be determined by transactions. Servitudes are compulsorily registered in the Register of Real Estate; therefore, the servitude fact is public.

Real Estate Servitude's

In Lithuania, claims for tangible rights to real property, regarding use of real property (except for applications regarding distribution of spouses' property in the cases of dissolving marriages, regarding recognising seizure on real property to be void) shall be under the jurisdiction of a court in the same location as the real property or the main part thereof.

Types of Land Use

According to the main target purpose of land use, the Land Fund of the Republic of Lithuania comprises:

> Land for aquaculture purposes is the land used or suitable for the use in the production of agricultural products, including the areas built-up with residential buildings and outhouses owned by the land user, as well as forest areas and water bodies on the land parcel.
>
> Land for forestry purposes is the land occupied by the forested area (stands), as well as cleared areas, perished stands, nurseries, forest roads, sections, technological and fire-prevention strips, timber storage points, other facilities and equipment related to forest, leisure sites, game feeding points, land designated for afforestation purposes, other land use located in between the forest land, including agricultural lands.
>
> Land for conservation purposes is the land of protected territories, which includes reserves, land parcel occupied by cultural heritage objects.
>
> Land for other purposes is the land classified into the types of parcels by their method of the use specified in the territorial planning documents: residential, public areas, common use, industrial and warehousing, commercial facilities, engineering infrastructure areas and for the exploitation of mineral resources, storage of waste, national defense and other purposes.

Construction may only be permitted if the use of land is agricultural (on the basis of a rural development project of a farmer's farmstead) or on other land. Persons in Lithuania are obliged to use land according to the main purpose of its use, and if persons do not comply with this requirement, they may be held liable.

Restrictions on the purchase of the land for agricultural purposes

The land for agricultural purposes is a special object of ownership, the acquisition of which is strictly regulated by the legal acts of the Republic of Lithuania.

In Lithuania until 2014, the restrictions were imposed on foreigners regarding the acquisition of the land of agricultural purposes in Lithuania. Such restrictions have attracted the attention of the European Union institutions, as they are contrary to fundamental principles of the European Union - restrict the investments in the land of agricultural purpose, and thus violate the free movement of capital. In 2014, the amendments to the Law on the Acquisition of Agricultural Land were adopted, laying down somewhat softer restrictions. However, the European Union did not consider such changes to be sufficient, and claims were made against Lithuania for non-compliance with the requirements. At 2017, further amendments to the law were adopted, and restrictions on the acquisition of the land for agricultural purposes by foreigners were removed.

Currently, only up to 10 hectares of the land for agricultural purposes can be acquired in Lithuania without restrictions. If persons or companies acquire a larger area of the land, they must ensure that it is used for agricultural activities for a minimum period of 5 years from the acquisition of this land, whose minimum annual activity per hectare of land is determined by the Minister of Agriculture of the Republic of Lithuania. Person or legal entity, who does not comply with this obligation, can be held liable.

Another restriction on the purchase of agricultural products is related to the amount of acquired land and applies jointly to the citizens of the Lithuania and foreigners. A person or related persons can acquire insomuch land in the territory of Lithuania that the total area of their agricultural land

purchased from the state would not exceed 300 hectares. A person or related persons may acquire such quantity of land on the territory of Lithuania that the total area of agricultural land belonging to them and acquired from the State and other persons does not exceed 500 hectares. Related parties are considered the spouses, parents (adoptive parents) and their minor children (adoptees), as well as legal persons who control 25% of the shares of the other legal entity that acquired the state land, or a natural person who controls 25 % of shares of the legal person who acquired the state land.

Acquisition of the land for agricultural purposes in Lithuania were simplified by the latest amendments, although there are still a lot of paper work to go through. Persons can purchase agricultural land only after obtaining the consent of the National Land Service division according to the location of the land, therefore, in order to implement this right, it is recommended to apply to professional persons for the provision of legal services.

Taking land for public needs

When the land in the Republic of Lithuania is recognized as necessary for meeting the needs of the public, and this land belongs to private persons, the National Land Service under the Ministry of Agriculture adopts a decision on the land parcel to be taken from landowners. On this basis, a lease or land for use contracts of private land shall be terminated before the deadline.

When a private land parcel is taken for public needs, the land owners and/or other user must be fairly remunerated:

> In case a private land parcel is taken for public needs, the land owner and/or another user must receive a fair compensation in cash amounting to the market price, or, upon a written agreement of the owner of the land, he is given a parcel of a state-owned land adjacent to the taken land parcel for public needs;
>
> The value of plants within this land parcel taken for public needs, the volume of timber, the lost harvest and invested funds for growing of agricultural production and afforestation, the amount of losses that were incurred due to taking of the land parcel for public needs as well as structures and facilities constructed or being constructed on that parcel, and the plants growing therein for public needs shall be compensated to the land owner or another user.

Most of the disputes about land taken for public needs arise precisely because of the fair compensation for the property being taken. Faced with the procedure for taking an immovable property for public needs, landowners often disagree with the proposed compensation for property being taken by the public need and are inclined to raise litigious disputes over the established incorrect remuneration for the property taken for public needs. The main evidence in the cases of compensation for land taken for public needs is the property valuation report or an act of examination of property valuation. The value of land taken for public needs is to be determined on the day when a decision is adopted to take the land for public needs. The value of property is usually determined by the price of identical or similar property transfer transactions.

Legal registration of immovable property

Newly formed parcels and newly erected buildings in Lithuania are registered in the Public Register of Real Estate. The changes of the owners of the land parcels and buildings are registered in the Public Register of Real Estate as well. The amendments to the legislation providing for the manda

tory registration of buildings came into force only in 2015. The amendments aimed at encouraging persons to complete the construction started and validate them both by construction completion acts and their registration in the Register of Real Estate.

After completion of construction procedures, the building and property rights to it must be registered in the Register of Real Estate not later than within 3 months from the date of receipt of the act on completion of construction, the date of approval and registration of the declaration of completion of the construction or the date of signing the declaration of completion of construction (when it is not approved and not registered). An unfinished or reconstructed building must also be registered in the Register of Real Estate at the latest within 3 years from the commencement of construction. Such changes limit the ability of real estate owners to avoid paying taxes or conceal the value of their property.

Construction of real estate (real estate development)

All buildings in Lithuania are classified as immovable property. The construction sector is one of the largest and most important branches of Lithuanian economy. The construction sector accounts for about 10 percent of the national gross domestic product. Due to this, from a legal point of view, the construction in Lithuania is a wide area; the legal regulation of construction is exhaustive.

The main legal acts regulating construction in Lithuania are the Technical Regulations for Construction. They specify the detailed requirements for the construction works, i.e. permissible dimensions of the building, distance to other structures, materials that can be used in construction, etc. The biggest problem with technical regulations for construction is the high volume of them (for example, currently 64 technical regulations for construction are in force), which is growing, the technical regulations for construction as well as their names are often modified.

In Lithuania, the problematic aspect of construction has long been the responsibility of persons involved in construction to the purchaser of real estate. There was a lack of guarantees given to purchasers, responsibility for improper quality of construction was not regulated sufficiently and the circle of responsible persons was very narrow. Considering this fact, in 2017, the legal regulation regarding the responsibilities of the persons engaged in the construction and the persons participating in them has changed. For a long time, the general contractor was the main responsible person for construction according to the law, but in practice, the purchasers of real estate used to ask whether they could contact the contractor directly relating to the removal of defects. It was explained that it was necessary to contact the seller, who would require the contractor to rectify the defects. The amendments to law that entered into force in 2017 provide for that the purchaser may directly contact the contractor and demand that the defects should be removed, for he is liable as a person who carried out the construction works and is obliged to provide legal guarantees for the result of his work. In addition, the amendments provide for the liability of the joint liability of the builder (real estate developer) and the contractor for defects revealed during the warranty period. This means that, after having revealed the defect, purchasers of housing can also contact the seller (the real estate developer) within the warranty terms. The terms of the warranty provided by the contractor are five years; ten years, in existence of hidden constructions of the structure (structures of construction works, pipelines, etc.); twenty years, in existence of intentionally concealed defects.

In addition, the amendments introduce new requirements for security of performance of obligations during the warranty period. It has been established that the contractor must provide security of obligations and specify his minimum size (five percent of the price of the construction of the building) and the expiry date (the first three years of the warranty period of the building). The developer of a real estate must provide the purchaser of a building (part thereof) with security of performance of obligations for the failure of contractor to fulfil improperly fulfil his obligations during the warranty period, which corresponds to the requirements for securing the obligations

submitted by the contractor. Such changes have extended the guarantees to the purchaser of real estate and increased the method to demand responsibility from responsible persons for construction defects.

Construction permit

In Lithuania, a construction permit for construction works is a mandatory document. Construction without permission is punishable by a fine provided for in the laws, a suspension of construction and possible demolition of buildings if the construction permit is not obtained after the suspension of illegal construction. In order to obtain a construction permit, a digital version of a ready-made house project must be placed on a common information platform. After placing the project on the website, the representatives of the municipality and other interested institutions verify the project. If the design solutions are appropriate, all institutions approve the project and the municipality issues a document allowing the construction. If any of the institutions have comments on the project, those comments will be submitted to the designer and the latter will have to take decisions on the revision of the project in the light of the content of the comments.

Whether the building permit is needed or not is determined by the number of inhabitants in the settlement. If the land parcel is located in a regional park, protected area, water protection zone or in another publically sensitive area, the harmonization period related to the construction permit is long, and the process itself is complicated. Construction permit is not required for individually built structures up to 80 square meters, including a summerhouse, sauna, etc. (if the land parcel is not located in a protected area or city).

Associations of owners of multi-apartment residential buildings

In Lithuania, it is popular for the residents of the multi-apartment building to rally into the associations of the owners of multi-apartment residential buildings. An association of the owners of multi-apartment residential buildings is a legal entity (a simple organization or company) that has the right to engage in home maintenance activities by the laws. The members of the association of the owners of multi-apartment residential building elect a collegial management body representing the residents who have joined the association. Such an association is created with the purpose of administering the building, administering payments of fees, supervising the technical condition of the building and regulating the provision of utilities. Advantages of association: Systematic assessment and optimization of the fees paid for using a multi-apartment residential building; moreover, the decision-making process is more optimal and professional, as the statutes of the association provide for decision-making procedures, the residents are involved in the decision-making procedures and can express their opinion.

Gardeners' societies

Owners of land parcels belonging to the territory of gardens can rally gardeners' societies. In general, the gardeners' society is very similar to the association of the owners of multi-apartment residential building, which is a legal entity (a simple organization or company), which is entitled to engage in activities related to the maintenance of the land for general purposes, use of buildings and facilities for general purposes (fences, gates, resting areas, beaches, forests, water bodies, etc.) and general engineering facilities. Having established the gardeners' society, the fees to be paid are optimized, the owners of land parcels are involved in the decision-making procedures regarding

the land for general use, engineering buildings, equipment; the decision-making procedure becomes faster and more professional.

Lease of state land parcels

In Lithuania, state-owned agricultural land parcels are leased to natural persons and legal entities of the Republic of Lithuania and foreign countries or other foreign organizations for a maximum period of 25 years. Leasing of state-owned agricultural land parcel is an alternative to foreign nationals or legal entities that do not comply with the requirements specified in the Law on the Acquisition of Agricultural Land (as already mentioned above, the persons or companies that have carried out agricultural activities for at least three years already can acquire the land plot bigger than 10 ha).

Lease of premises

The lease agreement in Lithuania for a term longer than one year must be in writing. A lease of immovable things concluded for a term longer than one year may be used against third persons only if it is registered in the public register in accordance with the procedure established by laws. The lease agreement may be of a fixed or indefinite duration, but in all cases the term of the agreement may not exceed one hundred years. The term of the lease agreement is determined by the agreement of the parties. If the term of the agreement is not specified thereafter, the lease agreement is considered to be term-less. If, after the expiry of the term, the lessee continues to use the property for more than ten days, and the lessor does not object to this, the agreement is considered to be term-less. The lessee, who has performed the duties taken in accordance with the lease in an orderly manner, has the right of priority to renew the agreement after the termination of the agreement comparing with the other persons.

The agreement may be terminated before the deadline on the lessor's initiative and in accordance with the laws of the Republic of Lithuania, and the lessee is evicted only in the following cases:

> the premises are not used for the purpose specified in the agreement;
>
> the lessee deliberately worsens the condition of premises;
>
> the lessee delays the payment of the rent or the cost of the provided utilities under the agreement for more than thirty calendar days.

The lessee shall have the right to bring an action to a court for dissolution of a contract of lease before time, if:

> the lessor does not do the repairs that he must do;
>
> the thing becomes unusable due to the circumstances beyond the control of the lessee;
>
> the lessor does not transfer the thing to the lessee, or hinders the use of the thing according to its purpose and terms of the agreement;
>
> the transferred thing is defective, which the lessor has not discussed and this fact was not known to the lessee, and due to these defects the thing cannot be used according to its purpose and terms of the agreement.

If the lease agreement is for an indefinite period, both parties shall have the right to terminate the agreement at any time by giving notice to each other one month before the termination, and in case of lease of immovable things - three months before the termination. The lease agreement may also specify longer notice periods.

Legislation in Lithuania provides for the lessee to sublease the leased thing only with the written consent of the lessor.

Restoration of ownership rights of the citizens of Lithuania to the existing immovable property

In view of the historical events - the occupation and forced accession of the Republic of Lithuania to the USSR, a unique institute for the regulation of restitution relations and implementation of the restoration of ownership rights has been established in Lithuania. According to the laws of the USSR (LSSR), the real estate of a large number of Lithuanian citizens was nationalized or otherwise illegally expropriated, and therefore, after regaining of Lithuania's independence, the citizens of Lithuania were granted the right to restore property rights to expropriated immovable property.

Acquisitive prescription of real estate

In Lithuania, a physical or juridical person who is not the owner of a thing but has acquired the thing in good faith and has possessed it in good faith, legitimately, openly, continuously as his own immovable thing for at least ten years, when during the entire such period the owner of the thing had the legal possibility to implement his rights to the thing, but has not used them once, shall acquire ownership right to such thing. The fact of acquisition of ownership by acquisitive prescription shall be established by court. Ownership by acquisitive prescription shall not apply to things obtained by force or in a clandestine manner, irrespective of whether the person who has obtained the thing by force or in a clandestine manner way himself or somebody else seeks to acquire ownership right in this manner. Acquisitive prescription shall not apply to ownership right to things that are property of the State of a municipality, or things registered on another person's (not the possessor's) name. A person acquiring property by acquisitive prescription must act not only in good faith, that is, by possessing the thing he must be convinced that nobody else has more rights to the thing he is, but he must also remain a possessor in good faith during the entire period of acquired prescription, and even upon acquiring the thing in ownership he must not know about impediments that hinder his acquiring the said ownership, if such impediments existed.

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.

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 sharehol-

ders 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. Statuteof 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.

Polish tax system distinguishes between12 types of taxes, including:

9 kinds of 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,
- the tax on owning dogs

3 indirect taxes:

- Value-added tax (VAT)
- excise tax,
- gambling tax.

CIT

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	VAT rate
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.

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 inc me 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:
>
> - for a period longer than 3 months - if the worker has been employed at given employer for less than 6 months
> - 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 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).

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:

- Capital company (company with limited liability and joint-stock);
- 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 tem

porary 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 anti-trust 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.

Antitrust

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.

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.

Ownership right

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 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.

Real estate transfer

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.

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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 4 trainee lawyers.

SMFC is a member of E-IURE, which is a network of law firms from around the world, which started out as a liaison between Europe and Latin America and is today a truly global network, with representation around the world.

Established in 2003 and established with the objective of responding to the growing needs of customers all over the world, E-IURE has been developing and having an active participation by its members.

This association allows and facilitates the exchange of professional information on local and global practice, enabling SMFC and its customers to provide services in different jurisdictions. Member companies often work together for the same client.

Practice areas

Business law
Commercial law,
Labour law and commercial contracts
Civil law in general
Particular civil contracts
Law of obligations (contract),
Insurance law,
Family and inheritance law;
Litigation, pre-litigation and debt recovery, notably in areas of mobile telecommunications,
Credit insurance and motor vehicles (financial lease contracts)
Chemical, agri-foodstuffs, pharmaceutical and cosmetics, etc., industries

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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", Decree law no. 262/86, dated September 2 –, as further amendments);
- the Portuguese Securities Code ("Código dos Valores Mobiliários", Decree law no. 486/99 dated November 13, as further amendments);
- several specific laws and regulations.

Corporate structures available

There are four types of corporate entities available 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).*

European Companies *(Societas Europaea)* may be incorporated in Portugal, provided that they have their registered office in Portugal or if they are participated by companies governed by Portuguese companies law.

Notwithstanding, the three most common legal structures that may be considered when envisaging the settlement of a business or activity in Portugal are the following:

- Representation office or branch
- *Sociedade Anónima (SA)*
- *Sociedade por Quotas (Lda.)*

Branch

A branch is merely a permanent representation of a foreign company, organized to conduct the business outside its original country. It differs from a company due to the following characteristics:

> The branch is not legally independent from the head-office, while a subsidiary company operates as a different legal entity;
>
> The branch 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).

The procedure for registering a branch in Portugal is simple and consists mostly on the submission of a resolution from the head-office and other documents evidencing the legal existence of the foreign company.

Companies

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.

When deciding what legal form the subsidiary should assume, the foreign 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 Lda.s may in some cases be less formally managed due to the fact that they comprise a lighter corporate structure, hence being more appropriated for short-term investments. As for SAs, they are usually recommended for enduring investments, especially where a large number of investors is envisaged.

Share capital. The minimum share capital for a SA is € 50,000.00, of which at least 30 percent must be fully paid up until the date of incorporation.

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 quota holders. 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 quota holders to decide to pay the value of each quota on the date of incorporation or at the end of the first economic year.

Under general Portuguese Companies Law, a S.A. must have at least five founding shareholders. Conversely, a Lda. must have at least two shareholders unless it adopts the structure of a single quota holder company (sociedade unipessoal por quotas) in which case the share capital is totally held by a sole quota holder.

Shares and quotas. The share capital of a SA is divided in shares, these can either be nominal or without nominal value (but both cannot coexist in the same SA), furthermore, all shares must have the same nominal value (of no less than € 0,01 per share). Share certificates are issued to represent one or more shares in accordance with the Company's by laws.

Shares are nominative and transferred by endorsement statement signed by the transferor on behalf of the transferee and the correspondent registration with the Company (or the financial institution, if applicable).

Each class of shares must have something that makes it different from the other classes and all the shares within one class must confer the same rights. Common ("ordinárias") shares are the securities that represent ownership in a corporation. Holders of common shares exercise control by electing the management board and voting on corporate policy. Preferred ("preferenciais") shares bestow some sort of rights and privileges upon common stock. The nature of these rights or privileges shall consist of patrimonial advantages (mainly concerning dividends).

The share capital of a Lda. is divided in quotas, which can have different nominal values with a

minimum of € 1,00. Quotas are not materialized in a document and its transfer must be executed by written agreement, followed by the respective deposit with the Commercial Registry Office.

Liability of shareholders. In both SAs and Lda.s, the liability of each shareholder is limited to the nominal value of his interest in the company. However, the quota holders of a Lda. are joint and severally liable for any unpaid capital contributions foreseen in the company's by-laws.

Corporate Governance. SAs management and supervision bodies' composition depends on the organization system adopted, which may be organized either on (i) 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 (ii) under a 1-tier structure consisting of a Board of Directors, which shall comprise an Audit Commission and a Chartered Accountant; and (iii) under a 3-tier structure consisting of an Executive Board of Directors, a General and Supervisory Council and a Chartered Accountant. SAs with a capital not exceeding € 200.000,00 may have only one Director instead of a Board of Directors.

The corporate bodies of a Lda. are the General Meeting of Shareholders and the Management (which may be composed of one or more directors). Although a Supervisory Board is not mandatory, in some situations Lda.s are required to appoint a statutory auditor.

General meeting of shareholders

Although most powers to run the company are vested in the directors, the following resolutions are reserved to the Shareholders:

- 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, transformation or dissolution of the company.
- Transfer and encumbrance of real estate properties (only applicable to Lda.s).
- Issuance of Preferred Shares.
- Issuance of Bonds.
- The division and consent for the transfer of quotas to third parties (only applicable to Lda.s).

SAs		
Call	Quorum	Majority
First call	No quorum or 1/3 for matters comprising the changing of articles of by-laws, merger, spin-off, transformation or dissolution	Majority of votes cast or 2/3 for matters comprising the changing of by-laws, merger, spin-off, transformation or dissolution
Second call	No quorum	Majority of votes cast or, for changing the matters described above, 2/3 of the votes cast or simple majority if at least 50% of the share capital is present or represented

Lda.s		
Call	Quorum	Majority
-	No quorum	Majority of the votes cast or 3/4 of the share capital for matters comprising the changing of by-laws, merger, spin-off, transformation or dissolution

certain resolutions may require unanimous vote or other majority according to the company's Bylaws.

Directors

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).

Lda.s are managed by one or more directors ("gerente/gerência plural"), although there is not a formal management board.

Managing corporate bodies of SAs and Lda.s have very broad authority to bind the company. Although restrictions may be contained in the by-laws, these are not enforceable against third parties provided the actions of the directors are within the limits of the corporate purpose.

In a SA, the shareholders appoint the board of directors, generally for a four-year term (but the by-laws can provide for a shorter term). There are no requirements for independent directors (except for listed companies). 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.

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).

The documents to be approved are: (i) the year-end financial statements (comprising a detailed balance sheet), (ii) the management report, (iii) a report issued by the audit body, and (iv) in case of SAs, a legal certification of the accounts must be issued by a Chartered Accountant.

Once approved by the general meeting, the accounting documents must be submitted, by Internet, under a new 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, commercial registrar, etc.).

In case of permanent representations of foreign companies in Portugal (Branches), the process is even easier, as it is only required a declaration confirming that the head-office received the supporting documents of the branch's accounts.

Incorporation of a company. 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 Commercial Registry Office or a Company Formalities Centre (CFE).

On the other hand, 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"). With this procedure it can be created, immediately and in one place, permanent representations of foreign companies in Portugal, with the simultaneous appointment of their representatives.

In 2008, some measures were approved to simplify the companies' incorporation process as well as other companies' day-to-day procedures, namely:

> **Company's Card** *("Cartão da Empresa"):* as from now on, Companies shall have a sole Identification Card that evidences the three essential numbers: the Company's Tax Identification Number, the Company's number of registration at the Commercial Registry Office and the Company's Social Security number. The Company's Card may be requested online (www.empresaonline.pt) or at the Commercial Registry Office, remaining the respective issuance dependent on the enrolment of Company with the Tax Authorities and with the Social Security.
>
> **SICAE (Portuguese Information and Classification System of Economic Activities):** this system consists on a permanent and actualized database concerning the companies "economical activity code" ("CAE"), allowing a simplified process of modification regarding this matter.

Listed companies. Listed companies have to comply both with the Portuguese Companies Code and with the Portuguese Securities Code. This act establishes cooperation, communication and publicity duties for corporations, as well as the regulation and supervision of the respective activities by the Portuguese Securities Market Commission.

Money laundery combat: Central registry of the effective beneficiary

With the entry into force of Law No.89/2017, of 21st August, which approved the Legal Regime of the Central Registry of the Effective Beneficiary, the commercial companies are now forced to keep an updated internal registry of the stakeholders 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 stakeholders 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.

Apart from the mentioned registry, the commercial companies are obliged to communicate to the Companies Registry (IRN) 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. The declarative obligations arising from the Legal Regime of the Central Registry of the 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").

On August 21st 2018, that is to say, one year after the publication of Law no. 89/2017, of August 21, was published Law no. 233/2018, of August 21, that regulates the regime of the Central Registry of the Effective Beneficiary, that entered into force on October 1st 2018. 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.

Corporate income tax

Taxable Entities

The profits of companies operating in Portugal are taxable under the Corporate Income Tax Code (Código do Imposto sobre as Pessoas Colectivas – "CIRC"). The definition of "taxable profits" includes operating income and capital gains (i.e. there is no autonomous capital gains tax).

CIRC 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 in Portugal for tax purposes and subject to tax on worldwide profits. Despite the absence of statutory criteria laid down in the CIRC, 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 IRC 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 CIRC 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 (Código do Imposto sobre o Rendimento das Pessoas Singulares – CIRS). 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 (DTC), provided certain formalities are complied with.

Non-resident entities with a permanent establishment in Portuga are also subject to corporate tax on the profit attributable to those permanent establishments.

A permanent establishment is defined in the CIRC 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 DTC applies, the Portuguese domestic concept of permanent establishment should be interpreted and applies in light of the concept foreseen in that DTC. 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 IRC in Portugal as follows:

regarding profits allocated to a permanent establishment located in Portugal, IRC will be charged on the (worldwide) taxable profits attributable to it;

regarding profits not allocated to a Portuguese permanent establishment, IRC will be charged only on income that is deemed to be sourced in Portuguese territory (in principle according to the income classification that applies for CIRS purposes).

Taxable Entities

Standard rate of 21%

Municipal surtax ("derrama municipal") up to 1.5% levied on taxable profits (depending on the municipality)

State surtax ("derrama estadual") of 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 and 9% on taxable profits exceeding € 35 million

A reduced IRC rate is available for SME ("Small and Medium-Sized Enterprises"), as defined in the Decree-Law 372/2007 of 6 November. For these companies, taxable profits up to € 15,000 are subject to a reduced rate of 17%. The exceeding taxable profits are subject to the standard IRC rate.

Companies with head office or place of effective management in the Autonomous Region of Azores benefit from a reduced 16,8% IRC rate and 13,6% for taxable profits up to € 15.000 derived by SMEs.

Companies licensed under the Madeira International Business Centre (Madeira Free Trade Zone) may benefit from a reduced IRC rate of 5% until 2020, provided certain requirements are complied with (e.g. minimum number of workers in the payroll and maximum amount of taxable profits benefitting from the special IRC regime).

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 CIRC. Portugal has adopted the International Accounting Standards effective within the European Union and according to the EU regulations on this matter. Resident companies may also carry forward tax losses up to five years. Please see section 1.4 below.

Participation exemption. Distribution of profits may be tax exempt pursuant to the "participation exemption" regime. According to this regime, dividends from qualified participations are not subject to tax at the shareholder company.

Under the participation exemption regime, domestic dividends are fully exempt in the hands of a non-transparent resident corporate shareholder if:

> the taxpayer, directly or indirectly, held at least 10% of the share capital or voting rights of the entity distributing the profits or reserves;
>
> that participation was held uninterruptedly, during the year prior to the distribution, or if it has been held less time, the participation must be maintained during the time necessary for the end of the period of one year;
>
> the taxpayer is not subject to the tax transparency regime;
>
> the entity that distributes the profits or reserves is effectively subject and not exempt to IRC or a tax of the same or similar nature to the IRC and the legal rate applicable to the entity is not lower than 60% IRC rate;
>
> the entity that distributes profits or reserves is not an offshore.

The special regime applicable to holding companies (SGPS) was revoked from 1 January 2014, and replaced by the participation exemption regime.

The participation exemption regime may also apply to dividends paid to non-residents, under some conditions.

Expenses and non-deductible items. Expenses related to the business activity are generally deductible for IRC 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) IRC and surtaxes or (v) certain expenses related with vehicles, (vi) confidential or undocumented expenses, etc

Depreciation and amortization. All fixed assets, except land, can be depreciated or amortized for tax purposes. The acquisition or production cost of certain assets is tax deductible in accordance with their expected useful life. Depreciation can be straight-line or reducing, over a term based on the useful life of the asset. As a general rule, fixed assets are depreciated under the straight-line method, although taxpayers may elect to apply the declining-balance method. Declining-balance method cannot be applied to building properties, passenger vehicles for private use or furniture, amongst others.

The depreciation rates are established by law and deductions above such rate are not recognized for tax purposes. Taxpayers may also opt to apply longer depreciation rate (up to 50% of the general rates).

Provisions. As a general rule, provisions registered by a Portuguese company are not tax deductible, except for specific provisions foreseen in the CIRC, 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 Portuguese CIRC foresees an interest barrier rule which limits the deductibility of net financial expenses to the higher of (i) € 1,000,000; or (ii) 30% of EBITDA (operating profits before interests, 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 IRC 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

Tax losses

Losses are deductible in computing the tax base of IRC taxpayers.

Tax losses generated as of tax year 2020 may be carried forward for a period of 5 years and deducted up to 70% of the future (annual) taxable profits.

The right to carry losses forward is forfeited in case of change of ownership and control, i.e. if at least 50% of the share capital or the majority of the voting rights has been transferred. In case the losses are forfeited, a request may be submitted to the Minister of Finance who may authorize the carry-forward of the taxable losses, even if there is a change of ownership and control, provided there are valid economic reasons for such carry-forward.

Dividends and capital gains

Resident companies are subject to corporate income tax on their worldwide income and capital gains.

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 company distributing the dividends is subject and not exempt to IRC or to a tax comparable to the Portuguese IRC at a rate not lower than 60% of the Portuguese IRC rate (12.5%).

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 IRC at a rate of 25%. Capital gains derived from the disposal of shares or other corporate rights and securities 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/individual 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 alienation of shares or comparable interests, if, at any time during the 365 days preceding the alienation, these shares or comparable interests 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).

Group taxation

Resident companies may elect to be taxed within a tax group of companies. The Portuguese tax group does not work as a pure consolidation or fiscal unity system, but each entity must individually assess their taxable profits / losses.

In order for a group of companies to be qualified as a tax group for Portuguese taxation purposes,

the following requirements should be met: (i) the head of the tax group must be the direct or indirect holder of at least 75% of the subsidiaries' share capital, provided such shareholding represents more than 50% of the voting rights, (ii) the share capital of head of the group cannot be held in 75% or more by another Portuguese entity, (iii) all companies within the tax group must have their head office or place of effective management in Portugal and be taxed at the higher IRC rate and (iv) the participation in the subsidiaries must be held for a minimum period of one year from the moment the tax group is created.

Under certain conditions, tax losses assessed by the individual companies prior to integration may be offset against the taxable profits of the tax group.

As of 1 January 2015, it is possible to apply the group taxation regime if the dominant company has its registered head office or place of effective management in an EU or EEA country (in the latter case, provided there is administrative cooperation on tax matters similar to the one in place with the European Union). In addition, among others, the following requirements must be met:

> The dominant company owns the dominated companies for more than one year with reference to the date at which the regime starts to apply.
>
> The dominant company is not directly or indirectly 75% held by a Portuguese dominant company.
>
> The dominant company is subject and not exempt from a tax as per Article 2 of Council Directive 2011/96.
>
> The dominant company is incorporated as a limited liability company.

Withholding taxes

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: (i) 10% minimum shareholding on the Portuguese company distributing the dividends; (ii) one year holding period (may be satisfied after the income is paid); (iii) 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 Double Taxation Agreement with exchange of information mechanism; and (iv) the company receiving the dividends should be subject and not exempt to a tax comparable to the CIRC at a rate not below 60% of the CIRC 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 IRC in Portugal.

Transfer pricing

The Portuguese transfer pricing regime has come into force in the Portuguese tax legislation in 2002 and follows closely the OECD guidelines. Under this regime, 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 regime 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.

Taxpayers that in the previous fiscal year obtained over € 3.000.000,00 of net sales and other operating profits are required to organize compile and keep contemporaneous transfer pricing documentation for a 10 year period.

Personal income tax

Personal Income is taxed according to the Personal Income Tax Code *(Código de Imposto sobre o Rendimento das Pessoas Singulares – "CIRS").*

Taxable persons

Individuals who are residents for tax purposes are taxed on their worldwide income at progressive rates varying from 0% to 48%, for 2020. The CIRS 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 residence 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 CIRS also foresees the possibility for a partial residence if an individual arrives to, or leaves from, Portuguese territory within the course of a taxable year.

Non-residents of Portugal are taxed on their Portuguese source income, in most cases through a withholding at the source.

The taxpayer that has become tax resident in Portugal for a certain year and that has not been taxed as resident in Portugal for any of the previous five years may apply for the special tax regime for non-habitual tax residents. In general terms, non-habitual residents will be taxed at a flat rate of 20% in respect of employment income (Category A) and self-employment income (Category B) arising from high-value activities of a scientific, artistic or technical nature. In addition, income derived abroad may be fully exempt in Portugal provided certain conditions are complied with. The non-habitual resident has the right to be taxed as such during a ten-year period. The application for the non-habitual resident tax regime has to be submitted no later than 31 March of the year following the year in which the taxpayer became tax resident in Portugal.

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Rates

Rates for individual tax:

Taxable income		Rate (%)	Deductible amount (€)
From €	Up to €		
0	7091	14,5	-
7091	10700	23,0	602.74
10700	20261	28,5	1191.24
20261	25000	35,0	2508,20
25000	36856	37,0	3008,20
36856	80640	45,0	5956.69
80640	-	48,0	8735.89

Progressive tax rate depending up to 48%
Solidarity tax may be applicable at 2.5% or 5%, depending on the taxable income
Additional surcharge may apply up to a maximum rate of 3.25%

Taxable income

Employment income, director's fees (category A) and pensions (category H) – IRS rates applies on the earned income of employed individuals, pensions and directors' fees.

Business and professional income (category B) – IRS 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 14.50% and 48%, in 2020. 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 is subject to a 28% flat tax rate, but the taxpayer may opt to add the rents obtained to the respective taxable income in the tax return. If the taxpayer makes such election, the income shall be taxed at the progressive tax rates, with a credit given for the tax withheld. Rental income obtained by non-residents is taxed at a flat rate of 28%.

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 14.50% to 48%, in 2020.They are considered as income subject to taxation in Portugal the capital gains derived by the alienation of shares or comparable interests, if, at any time during the 365 days preceding the alienation, these shares or comparable interests 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).

Value added tax

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.

Release tax

Municipal property tax (IMI)

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. 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%;
>
> Properties held by entities resident in blacklisted jurisdictions: 7,5%.

Additional IMI (AIMI)

The AIMI is new real estate tax, applicable since 2017.

The AIMI must be paid by individuals or companies, as well as by structures or centers of collective interests without legal personality and undivided inheritances, that are the owner or that hold the right of "usufruct" or "superfície" 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 immovable properties that have been exempted or have not been subject to IMI in the previous year.

In the case of individuals 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 interests 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 buildings, 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 subject to a more favorable tax regime (offshore), the applicable AIMI rate is 7.5%.

Municipal property transfers tax (IMT)

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 property tax value whichever is higher. The Municipal Property Transfers Tax Code has foreseen some exemptions.

Stamp duty tax

Stamp Duties Tax is charged on certain acts, contracts, documents, titles, books, papers and other facts foreseen in the General Stamp Tax 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 Taxes 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 Tax Table at the time the tax is due.

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General

This chapter provides a brief overview of the main aspects of Portuguese labour law, namely employment contracts and social security related matters.

Portuguese labour law is governed by the Labour Code, enacted by Decree-Law n. 7/2009 of February 12. The Labour Code provides the regulation of the main employment-related features, such as type of employment contracts, holidays, absences to work, professional training, gender equality, parental rights and termination of employment contracts, just to name the more relevant. Other matters, such as labour accidents and health and safety at work, are governed by specific regulations.

Employment Contracts

Under Portuguese law, there are 3 main types of employment contracts: permanent, fixed-term and uncertain term.

Additionally, we also highlight the management employment contract, due to the wider flexibility it offers to companies when hiring top employees, because such contracts may be unilaterally terminated by the company without cause, though in such a case, the employee is entitled to compensation (see below).

Common provisions

The following aspects are common to every type of employment contracts:

Retribution. Besides the base salary, employees are entitled to an annual holiday allowance and Christmas allowance, which amount is equivalent to the base salary. The minimum national wage is currently € 600,00 (mainland), € 630,00 (Azores) and € 615,00 (Madeira), although the applicable collective agreements, if existing, usually provide higher minimum amounts per each professional category.

Employees may also be paid other allowances, depending on the terms under which the work is performed, such as sales commissions, nightshift allowance or shift allowance.

Generally, some of these allowances - such as the shift allowance or the meal allowance - are provided in the applicable collective bargaining agreement, as its payment is not mandatory by law. However, if any of these allowances is paid under a common practice within the company, then it becomes mandatory, even if not provided in any collective bargaining agreement.

Working hours. As a general rule, employees may be committed to a maximum working schedule of 8 hours per day and 40 hours per week. The parties may also agree on a part-time working schedule, which consists in any working hours schedule where the number of hours of work are below the full- time schedule applicable to the majority of the employees.

The work performed beyond these limits (and also on non-business days) is deemed as overtime work, which, itself, is limited to a certain number of hours per day (2) and per year (usually, 150). The performance of overtime work entitles the employee to a special allowance per each hour of overtime work rendered.

Depending on the type of functions, the employer and the employee may agree on a working hours exemption schedule, case where said daily and weekly limits shall not apply. Being the case, the employee is entitled to a monthly allowance, which amount is equivalent to, roughly, 15% to 20% of the base salary, save if provided otherwise in the applicable collective agreement.

The Labour Code has introduced new types of scheduling the working hours in order to adapt the working schedules to the production needs, enabling the employer to concentrate a greater number of hours of work per day and per week or to manage the daily and weekly limits of hours of work in accordance with the production flows. Initially, the implementation of some of these schedules has to be previously agreed with the employee's representatives in the applicable collective bargaining agreements.

Holidays and days-off. Employees are entitled to a paid annual holidays period of 22 working days. Companies may grant a higher holiday period. Also, the collective agreement, if existing, may provide for a higher duration of the holidays.

In the year of admission, employees are entitled, after 6 months of execution of the contract, to 2 working days of holidays per each month of duration of the contract.

Employees are also entitled to a mandatory rest day (usually, on Sundays) and to a complementary rest day (usually, on Saturdays). Additionally, there are 9 paid public holidays and 2 non-mandatory public holidays (local holiday and Mardi Gras).

Parental leave. As a general rule, the parental leave is 150 or 180 days after the birth, where 6 weeks are mandatory for the female employee. The spouse (male employee) is always entitled to a leave of 20 working days (consecutive or not) during the six weeks after the birth.

After enjoying the 20 working days license, the father has 5 more working days of license.

If the parental leave is exclusively taken by one of the spouses, its duration may vary from 120 to 150 days.

Parents may also take an extended parental leave, up to 3 months.

During the parental leave, the employees are entitled to a subsidy paid by the social security, as the salary is not due by the employer.

In some cases where parental leaves are extended by decision of the employee, the subsidy paid by the Social Security may be reduced and salary will still not be due by the employer.

There are also other leaves supported by the social security, for purposes of assistance to family.

The employer and the employee may, at any time, agree on an unpaid leave.

Vocational training. According to the latest changes to the Portuguese Labour Code, each employee is entitled with 40 hours for vocational training per year.

Sickness and injury. Absences to work due to 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 social security.

In case of labour accidents, the insurance company shall be responsible for the payment of the salary and other 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 contract for labour accidents, otherwise it shall be liable for every costs and compensation due to the employee. Moreover, the non-compliance with this obligation constitutes a serious infringement, subject to a fine applied by the Labour Authorities.

Termination. As a general rule and save in the cases of termination with cause for disciplinary reasons, the employer is absolutely prevented from unilaterally terminate the employment contract.

However, during the trial period, either party may unilaterally terminate the employment contract with immediate effects and no compensation is due, save if agreed otherwise. Should the employer wants to terminate the contract in the trial period and if the contract has been in force for more than 60 days, the termination has to be communicated 7 days prior notice and if it the contract is being executed for more than 120 days, said prior notice is extended to 15 days.

The employee may terminate the employment contract at any time by means of a prior written communication, which varies according to the type of contract (see below).

The employee may also terminate the employment contract with cause, if the employer has breached any legal or contractual rights, case where it shall be liable for the payment of a compensation, to be settled by the court, ranging from 15 to 45 days of base salary per each of seniority, with a minimum equivalent to 3 months of base salary.

Termination with cause

The termination with cause requires a previous internal written proceeding, where the employee may file a reply and require the hearing of witnesses and other means of proof. This internal proceeding is detailed in the law and should the company fail to comply with certain formalities the dismissal is deemed as wrongful. In the course of this proceeding, the workers' committee (if existing) and the trade union (if the employee is an union representative) have also to be consulted. Additionally, in the case of pregnant and breast feeding employees, the dismissal requires a favourable opinion from a governmental body committed to gender equality and maternity protection.

The law defines cause for termination as a serious and intentional conduct of the employee, which determines the immediate impossibility of maintenance of the employment relation, i.e., the breach of legal and contractual duties.

The employee may judicially dispute the dismissal within the year subsequent to the dismissal. The burden of proof of the existence of cause for termination relies 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 the court, ranging from 15 to 45 days of base salary per each 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 a compensation for any moral or patrimonial damages resultant from the dismissal and also the unpaid salaries due since the date of the dismissal until the date of the court's ruling. In the case of term employment contracts, the amount of this compensation cannot be lesser than the unpaid salaries due since the date of the dismissal until the term of the contract (or until the date of the court's ruling, should it occur before the term of the contract).

Individual redundancy and collective dismissal

Besides termination with cause, the employer may only terminate the employment contract grounded on objective reasons, specifically market, financial or technological reasons. The burden of proof of the existence of these grounds for termination relies on the employer.

If, within a 3 months period, the employer intends to terminate, at least, 2 or 5 employees (whether 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 one.

In order to terminate the employment contract, either by redundancy or in the extent of a collective dismissal, the employer has to enact a procedure, which involves the affected employee(s), the workers committee and the Ministry of Labour.

In short, the procedure comprises 3 stages: (i) initial written communication to the affected employee(s), (ii) information and consultation with the employees and their representatives and (iii) 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 compliance with the several legal requirements foreseen for the initial communication and for the decision is most relevant, otherwise the termination shall be deemed as wrongful.

The termination by redundancy or by collective dismissal entitles the employee to a compensation. The compensation will be calculated in different terms, whether the employment contract has been entered before or after November 1, 2011.

For contracts prior to November 1, 2011, compensation shall be calculated in the following terms: (i) in respect to the period of execution of the contract until October 31, 2012, compensation is equivalent to one month of base salary per each year of seniority; (ii) in respect to the period from November 1, 2012 to September 30, 2013, the compensation is equivalent to 20 days of base salary per each year of seniority and (iii) in respect to the period from October 1, 2013 until the date of termination, the compensation is equivalent to 18 days of base salary per each complete year of seniority (in the first 3 years, when the contract has not reached 3 years on October 1, 2013) and to 12 days of base salary per each complete year of seniority (in the subsequent years until the date of termination). The compensation calculated in accordance has the following with these rules cannot be lesser 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 (€12.000,00) with a maximum amount equivalent to 12 times the monthly base salary (or, if the monthly salary exceeds €12.000,00, the compensation cannot exceed €144.000,00 (240 times Portuguese minimum wage).

For contracts 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.

However, these rules have the following exceptions:

> When the first parcel of the compensation (i.e., from the admission to October 31, 2012 or from the admission to September 30, 2013, as the case may be) is equivalent or exceeds 12 times the monthly salary of the employee or 240 times the Portuguese minimum wage (i.e., € 144.000,00), the remaining parcels of the compensation shall not be calculated, thus, the compensation shall be exclusively calculated until said dates.
>
> If the part of the compensation calculated until the dates referred in (a) above does not exceed 12 times the monthly salary of the employee or 240 times the Portuguese minimum wage (i.e., €144.000,00), the total amount of the compensation cannot exceed these limits.
>
> If the parts of the compensation for contracts prior to November 1, 2011 referred in (i) and (ii) above is equivalent or exceeds 12 times the monthly salary of the employee or 240 times the Portuguese minimum wage (i.e., €144.000,00), the parcel (iii) shall not apply. If the same parts of the compensation referred in (i) and (ii) does not exceed 12 times the monthly salary of the employee or 240 times the Portuguese minimum wage (i.e., €144.000,00), the total amount of the compensation cannot exceed these limits.

For contracts entered into after October 1, 2013 compensation is equivalent to 12 days of base salary per each complete year of seniority.

If the court rules the termination as wrongful, the terms referred above in respect to termination with cause shall apply.

Termination by agreement

The employer and the employee may, at any time, agree in written on the termination of the employment contract. 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).

The employee may revoke the termination agreement within the 7 days subsequent to the date of its signature, save if it is entered into before a public notary, where it shall produce its effects irrevocably as of the date of signature.

Permanent employment contracts

This is the standard type of employment contracts, as term employment contracts may only be entered into under specific conditions (see below).

The contract does not have to be executed in written, although under the law, the employer has to render to the employee information on the basic terms of the agreed employment.

The trial period for these contracts usually varies according to the functions to be performed: (i) 90 days for standard employees, (ii) 180 days for employees holding a trust position or committed to functions requiring high technical skills, for first-time job-seekers and for long-term unemployed, and (iii) 240 days for management and senior employees.

However, the parties may agree on the reduction or exclusion of the trial period. According to the most recent changes to the Portuguese Labour Code, in case of previous internship contract with the same Company and for the same functions, which had a duration less than or equal to the defined for the trial period, this should be reduced or excluded, in the corresponding proportion.

Save in the cases of termination during the trial period, termination with cause, individual redundancy or collective dismissal, the employer is absolutely prevented from unilaterally terminating the employment contract.

The employee may terminate the contract at any time by means of a written communication addressed to the employer with 30 or 60 days of prior notice, whether he/she has up to 2 years or more than 2 years of seniority, respectively.

Term employment contracts

This type of employment contracts may only be entered into to face a temporary need of workforce and for the period of time strictly necessary. Although the law provides an open clause to define said "temporary need of workforce", it also foresees some situations which generally enable the employer to hire term employees, from which we highlight the following: (i) replacement of employees temporarily prevented from rendering their activity, (ii) exceptional increase of the company's activity, (iii) execution of a determined work or project (e.g., a services agreement entered into by the company), (iv) start-up of a new company or activity (only for Companies with a maximum number of 250 employees) and (v) hiring of very long term unemployed persons.

Failure to comply with these requirements determines that the contract shall be deemed as a permanent one.

There are fixed-term employment contracts and uncertain term employment contracts, where the first are the most common.

Fixed term employment contract may be entered for a maximum of 2 years and within such period be subject to 3 renewals. Uncertain term employment contract is limited to a maximum duration of 4 years.

Regarding the duration and renewals of the fixed-term employment contract, according to most recent changes, the total duration of the renewals must not exceed the initial duration of the contract.

The employee may terminate the fixed-term contract at any time, by means of a written communication addressed to the employer with 15 or 30 days prior notice, whether the contract has been entered into for less than 6 months or for 6 or more months, respectively.

The fixed term contract terminates in the end of the agreed term (or of its renewals). To such effect, the employer has to communicate the termination to the employee by means of a written communication with 15 days notice before the said term, otherwise the contract shall be automatically renewed or converted into a permanent employment contract (if it cannot be renewed again or if it has reached its maximum duration).

The employee may also terminate the contract in these terms, by means of a written communication addressed to the employee with 8 days prior notice.

In case of termination of the contract by the employer upon its terms or in case of non-renewable fixed-term contract, the employee is entitled to a compensation, in the following terms:

For contracts entered into before November 1, 2011, compensation shall be calculated in the following terms: (i) in respect to the period of execution of the contract until October 31, 2012, compensation is equivalent to 2 or 3 days of base salary per each month of duration of the contract, whether the contract has been in force for more than 6 months or up to 6 months, respectively one month of base salary per each year of seniority; (ii) in respect to the period from November 1, 2012 until September 30, 2013, compensation in equivalent to 20 days of base salary per each year of seniority and (iii) in respect to the period from October 1, 2013 until the date of termination, compensation is equivalent to is equivalent to 18 days of base salary per each complete year of seniority (in the first 3 years, when the contract has not reached 3 years on October 1, 2013) and to 12 days of base salary per each complete year of seniority (in the subsequent years until the date of termination).

The exceptions and limits to the amount of the compensation provided above for permanent contracts shall also apply.

The termination of a term employment contract by the employee does not entitle him/her to be paid any compensation.

The recent amendments to the provisions on the compensation 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 crea-

ted (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 contract terminates – except in the cases of agreement – the compensation is paid by the employer, but the Fund shall support half of the amount paid, if it is not paid by the employer.

Management employment contracts

These contracts are less common in Portugal but represent more flexibility to the employer as it may terminate it at any time. The Labour Code has extended the cases where this contract is admissible. Therefore, besides the cases of employees committed to managing (or equivalent) functions directly dependent from the board of directors, as well as to the admission of personal secretaries of employees holding such management positions, management employment contracts may now also be entered into for the so called 2nd line directors (directors dependent of the General Manager).

The main aspects of these contracts remain unaltered, as follows:

> 180 days trial period (may be reduced or suppressed by agreement of the parties);
>
> Either party may terminate the contract 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 (the parties may agree on the extension of the notice period);
>
> Termination by the employer entitles the employee to a compensation equivalent to 20 days of base salary per each year of seniority, with a maximum amount equivalent to 12 months of base salary, or, if the monthly salary exceeds €11.600,00, the compensation cannot exceed €144.200,00 (240 times Portuguese minimum wage). In any case, the amount of the base salary for calculation of the compensation cannot exceed the equivalent to 20 times the Portuguese minimum wage (currently, €580,00, thus, the limit is €12.000,00).

Social Security

Contributors

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, where 23,75% is supported by the employer and 11% is supported by the employee under a PAYE system.

In respect to members of the board committed to executive functions, since January 1, 2013 the social security rate is the same, being applied over the real salary, with a minimum equivalent to the Social Benefits Index (currently, €435,76).

Unemployment subsidy

The termination of an employment contract shall entitle the employee to the unemployment subsidy whenever the unemployment has not resulted from a decision of the employee (save in the cases where the employees terminates the contract with cause).

The unemployment subsidy is granted by the social security services. Its amount is calculated in accordance with the salary of the beneficiary in the 14 months preceding 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 period which duration varies 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

The statutory age for retirement is currently 66 years and 5 months, and the applicant to the pension has to have a minimum of 15 years of registered and paid contributions to social security. However, it is expected that the retirement age is increased one month in 2020.

Notwithstanding, if specific conditions are met, employees may retire before the referred age, being subject to a reduction on the amount of the retirement pension.

In other specific case, depending on the contributions record and on the age at the date of unemployment, an anticipated retirement may be requested by long-term unemployed persons, after the termination of the granting period of the unemployment subsidy.

As a general rule, the beneficiary may cumulate the retirement pension with income resultant from the performance of a professional activity.

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Introduction

Foreign investment occurs when an individual, a company or a group of entities from one country 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 tax restrictions, the movement of people and goods, this form of cross-border investment began to live a period of expansion, so that the national economies have started to receive finance from other countries.

Foreign investment can be split into direct and indirect investments. 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 bonds. Generally, this form of foreign investment is less favorable because the investor doesn't have close contact with his investment.

Foreign Investment

The first instrument that regulated the private investment was launched in the 1980's and proposed many bureaucratic and limiting mechanisms, since most projects (such as agriculture, agroindustry, forests, forestry, etc.) imposed a majority of public capital, and because of that all activities were reserved to the State.

In the last years, there have been profound changes due to the recognition of the advantages of an economy based on the promotion and stimulation of the private investment.

As a result of these changes of paradigm, the private investment has grown up and opened their doors to foreign investment and today Portugal is undoubtedly one of the best countries to invest.

Reasons 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 without compromising the quality. Portugal has a skilled and flexible workforce at a more favorable cost than most Western economies. There is a large variety of property to choose from with rental and purchase prices much lower than the rest of the European capitals and with the lowest level of taxes.

A good legal framework for investment: Portugal has been creating a favorable legal framework for foreign investors since the legislation has adapted to the rules of a liberal foreign investment system. 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 in the development and execution of structuring policies and supporting the internationalization of the Portuguese economy.

Furthermore, it is now much easier to do business in Portugal. Not only because it is possible to set up a company in less than one hour (through the mechanism "Empresa na Hora" - On the Spot Firm), but also because the taxation procedures are more simplified and it has been promoting measures to ease some labor regulations and to increase workplace flexibility.

Modern infrastructure: the quality of the highway network and the air transport, which offers frequent direct flights 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 African colonies, especially Angola.

One of the many indicators of Portugal's development in this sector is precisely the fact that the Government has announced its intention to redevelop the military airbase at Montijo so that it can be used as a second airport for Lisbon, in order to cope with the ever-growing number of visitors that use Lisbon's main airport at Portela, which is expected to reach its maximum capacity sometime soon.

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 until Germany, are also important 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.

The high quality of life: lately, Portugal is a good country to invest, but also to live and visit, offering an 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 represent 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 2014. This means that the Portuguese policy in this regard is one of the most open to direct investors of all the 62 countries covered by this Index.

Over the last years, according to AICEP (Portuguese Investment and Promotion Agency), FDI has been growing substantially, which means that the investors have been reacting well to the efforts described above. In 2017, according to a study conducted by Ernst & Young, Portugal was able to capture the biggest value of FDI of the last 20 years.

According to data from the Banco de Portugal and the Directional Principle, the flow of Foreign Direct Investment into Portugal (FDI) registered an amount close to 5.5 billion Euros in 2016 (-12.3% in relation to 2015). The highest value in the last years was registered in 2012, when FDI reached 6.9 billion Euros and in 2015 with 6.3 billion Euros.

Portuguese Foreign Direct Investment (PFDI) was close to 1.4 billion Euros in 2016 (-72.1% in com

parison to the previous year). The highest value during the period 2012-2016 was in 2015 (nearly 5.1 billion Euros).

In terms of stock of Foreign Direct Investment (FDI) into Portugal, at the end of December 2016, 112.1 billion Euros (+4.4% in relation to the value in December 2015) were registered.

However, in relation to stock of Portuguese Foreign Direct Investment (PFDI) this represented close to 53 billion Euros in December 2016 (+1.7% in relation to December 2015).

In global terms the European Union was the principle origin of FDI in Portugal, with a quota of 87.5% at the end of 2016, highlighting, on an intra-Community level, the Netherlands and Spain (with 25.6% and 22.9% of the total, respectively), Luxembourg (18%), United Kingdom and France (7.6% and 4.8% respectively). Within the non-EU countries (12.5% of the total), the following are worth a mention: Brazil (2.5% of the total), the USA (1.7%), Switzerland and China (with quotas of 1.6% each), and Angola (1.2%).

The European Union was also the main destination of PFDI in global terms, with a contribution of 74.3% at the end of 2016, highlighting, on an intra-Community level, the Netherlands and Spain (with quotas of 34.1% and 22.4% of the total, respectively), followed by Luxembourg (4.1%). Within the non-EU countries (25.7% of the total in 2016), the following are worth a mention: Angola, Brazil, USA and Mozambique (with quotas of 7%, 5.2%, 2.1% and 1.7% respectively).

In essence, Portugal has an appealing economy and an open attitude towards FDI, which means that it is quite attractive to invest in Portuguese companies in a vast number of business areas and, moreover, it is highly encouraged by the Portuguese government.

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.

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.

It is possible to buy stocks 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 loads of 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 four: productive investment, research and development (R&D) investment, job creation and non-habitual residents.

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.

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 regards to 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.

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.

At last, the non-habitual tax resident regime 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

It is very easy to create a company in Portugal in few hours. Indeed, throughout the "Empresa na Hora" (On the Spot Firm) it is possible to create a company in just one office (one-stop office) in a single day. The investors will no longer have to obtain in advance a certificate of company admissibility from the National Registry of Companies (RNPC). Nor will it be necessary any longer to sign a public deed.

During the incorporation procedure, the definitive legal person identification card will be handed over, the Social Security number will be given, and the company will immediately receive its memorandum and articles of association and an extract of the entry in the Commercial Register.

In other words, Portugal has become one of the cheapest (costing about 220 or 360 euros if it is throughout the "Empresa na Hora" or in a traditional way with the option of specified the articles of association) countries in Europe to set up a company, apart from being fast and less bureaucratic than many other countries.

Also, the Legislative and Administrative Simplification Program ("Simplex") simplified the procedures and reduced the bureaucracy associated with the creation of a company. The mandatory steps to do so are as follows: i) choose the company's name; ii) choose pre-approved standard articles of

association (customized articles of association will delay the procedure and push up the costs); iii) attend to the competent service; iv) execute the articles of association and commercial registry; v) deposit the share capital; vi) fill out the commencement of activity.

Golden Residence Permit program

The Golden Residence Permit Program entered into force in 2012 and it is another effort to attract investors to Portugal. It applies to non-European Union member-state nationals who need a residence permit and want to invest in Portugal.

This Program allows foreigners of third countries to live in Portugal and travel through the Schengen Space as long as they comply with the investment requirements established by the law.

There are many ways to acquire a golden residence permit: i) by transferring at least 1.000.000,00 Euro to a Portuguese bank; ii) by establishing a company in Portugal and employing at least 10 people; iii) by buying a house in Portugal for at least 500.000,00 Euro; iv) by spending at least 350.000,00 Euro buying and renovating a house in Portugal; v) by applying at least 350.000,00 Euro in investigation activities developed by scientific investigation companies; vi) by applying at least 250.000,00 Euro supporting the artistic production, recuperation or maintenance of property; vii) by acquiring, for at least 350.000,00 Euro, participation units in investment or venture capital funds; viii) by applying at least 350.000 Euro in the constitution of a Portuguese company, combined with the employment of at least 5 people.

After making one of the above mentioned investments your lawyer can help you applying for the residence permit at the Immigration and Borders Service (SEF), for which it is required to present the following documents: passport (with proof of legal entry into national territory), criminal record, evidence of compliance with tax and Social Security obligations and the documents that prove the investment has been made (declaration of investment, declaration of the bank assuring that an international transfer of capitals has been made, etc.). It is also necessary to schedule an appointment on SEF to collect the biometric data (photography, fingerprints and signature).

It is possible to obtain a residence permit for your immediate family members, under the family regrouping option (namely husband or wife, sons underage, sons of age in economic dependency, parents or parents-in-law with more than 65 years or in economic dependency, minor siblings under guardianship, etc.) by submitting their documents, which will be the same as the above, plus a proof of family bond (for example, the certificate of marriage or the certificate of birth) and minus the investment documents.

After obtaining the residence permit it is mandatory to maintain the investment for a minimum period of 5 years. After the first and the third years the residence permit needs to be renewed. For the renewals the procedure is the same as for the submission, the only difference is that it is required a proof of the stay in Portugal for at least 7 days (continuously or intermittently) during the first year and 14 days (continuously or intermittently) during the following two-year periods.

After 5 years since the date of submission, it is possible to apply for a permanent residence permit. On this final stage you will need to present your criminal record, proof of means of subsistence, proof of accommodation and, lastly, you will need to prove a basic knowledge of the Portuguese language. Alternatively, 6 years after the date of submission, it is possible to apply for Portuguese citizenship.

Lastly, the Golden Residence Permit is subject to three administrative fees: the application costs € 532,70 for the investor and € 83,10 for each family member; if the application is accepted, the issuance of the residence permit costs € 5.324,60 for each one (the investor and his family); and, finally, each renewal costs € 2.662,30 for each one (the investor and his family).

Real estate sector

The real estate sector with its luxury properties in the center of the cities, like Lisbon and Oporto, at competitive prices is the main attraction of investors from different parts of the world, such as France, Brazil and China.

Since the entrance in the Eurozone in 1999 foreign investors have been investing in Portugal approximately € 4.2 billion of foreign capital in the acquisition of 150 real estate assets. The majority is from Germany, the United Kingdom, Netherlands and the United States of America.

The end of the exchange rate risk and the positive evolution of the retail and office sectors contributed to attract foreign investment, which sought to take advantage of the expected capital appreciation.

Attractive prices, the potential for good return through subsequent lease, tax benefits and programs such as Residence Permit for Investment Activity (ARI), allied with hospitality and security have led to a growth of investment in this sector.

Furthermore, the Portuguese government has recognized the importance of the real estate sector to attract Foreign Direct Investment and, in this sense, has joined efforts to establish measures to facilitate and attract private investment (like real estate restructuring).

The investment in rural property has also developed due to the increasing of the rural tourism. Portugal is, undoubtedly, a country that offers a unique climate and has an extension of nature that stands out from many countries and in the face of those potentialities the Portuguese government has also sought to establish measures to support this growing form of tourism and investment.

In fact, in the last years the tourism sector has registered an exponential increase, with an enlargement of the number of tourists visiting the country. This growth has impacted Portugal's economy and in special the real estate sector in a very positive way. In particular, new tourist accommodations have been opening at a fast pace and there has been a clear growing interest shown by international hotel chains that are currently seeking new opportunities to invest in the country, with a particular focus on Lisbon, Oporto and Algarve.

Lisbon, in particular, has been the center of investment. Although the Portuguese capital may not be quite as popular as some other major European capitals, like Paris and Rome, the fact that property prices in Lisbon are far more affordable than those found in other major capitals combined with the rising of the tourism makes Lisbon the perfect place to invest.

Other investment opportunities

The electric and electronic sectors have also attracted many investors and provided many opportunities. With more than 7.600 companies in ICT, the Portuguese information and communication technologies market has shown itself capable of rapid adaptation to and effective assimilation of new inventions. Biological industries also bring together several international projects in domains such as pharmacy, biotechnologies (especially with renowned Portuguese universities) and research and development.

Conclusion

In conclusion, there is a large variety of forms of investment to choose in Portugal. All are very compelling and can be highly profitable. As we described above, the potentialities as a country are evident and procedures to invest are quite simple, but this does not exempt the legal advice, which is always recommended in order to make sure everything goes according to plan as well as to obtain protection against any political or legislative uncertainty that characterizes even the most sophisticated country.

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 or personal property (commodities), including all direct advantages resulting there from (as revenues).

Portuguese law foresees other property rights such as the right to use the property *("usufruto"),* the naked property *("nua propriedade"),* the surface property, the timesharing, the horizontal property, and others.

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 true owner.

Land Register

All transactions concerning real estate property must be duly registered with the Real Estate Registry Office (which may be submitted online). In order to impose that obligation, the law establishes that definitive registration constitutes legal presumption of the existence of the right and its ownership by the person who is inscribed in the registry records. This means that the land certificate *("título de registo da propriedade")* confers to the owner of the property the power to exclude any alien pretension over the registered right.

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 are public so as to allow the assessment of information concerning the ownership and/or any existing encumbrances on a real estate property.

Transfer Formalities

According to Portuguese law, the constitution, transfer, acquisition or extinction of property regarding real estate assets may be made through a Public Deed or a Simple Document duly authenticated by a Lawyer. Additionally, other documents may be required, as well as the execution of legal and prior formalities, including the payment of taxes, such as:

> Occupation or construction license issued by the city hall (for urban buildings);
>
> Land registry title, proving the ownership of the transferor;
>
> 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%);
>
> Real Estate Tax Record *("caderneta predial")* issued by the competent tax services.
>
> Energetic Certificate of the Property (which certifies the class of energy efficiency of the property);
>
> 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;

Additionally, all real estate properties are subject to the payment of an annual Municipal Property Tax ("IMI") which ranges between 0,3% and 0,45% of the patrimonial value of the real estate (concerning rural property, the tax is 0,8%; as to property owned by entities with fiscal residence in blacklisted jurisdictions, the tax is 7,5%).

It entered into force a new project of the so-called "Casa Pronta". This regime allows purchases, encumbrances or registrations of real estate properties to be carried out immediately and by a sole entity. Thus, the public deed, the payment of the IMT and the attaining of all necessary documents (habitation license, land registry title and real estate tax record) may be all carried out simultaneously by the same authority, significantly reducing the bureaucratic procedures of the real estate transfers in Portugal.

Mortgages, main rights of mortgages

A 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 Public Deed or a Simple Document duly authenticated by a Lawyer (or will) and must specify the mortgaged property. All kinds of mortgages should be registered, in order to have existence and to produce effects against third parties.

Restrictions on acquisition (e.g. by foreigners)

The Portuguese law has no restrictions to what concerns the possibility of property acquisition by foreigners. On the contrary, there are many incentives for foreign investment in Portuguese property, which are better described at the chapter: Foreign Investment.

Construction and use restrictions (e.g. permits, zoning)

The exercise of rights related to ownership is not absolute, considering that Portuguese Law determines the compliance with restrictions and boundaries imposed by the social and dynamic function of ownership.

Besides the general clause of "proibição do abuso de direito" (prohibition of abuse of right), the public expropriations and temporary requisition, we have to note on 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 law (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.

Lease formalities

The urban lease agreement must be made in writing and its rules vary depending on whether the contract is for housing or non-housing.

Apart from a few exceptions, the landlord can not prevent the automatic renewal of the contract before three years of duration of the contract (housing) or five years (non-housing). Nevertheless, either party (tenant or landlord) may terminate the contract in certain cases of breach or default by the other party.

Serbia

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Karanovic & Partners is a regional legal practice in Southeast Europe with tradition spanning two decades and cooperating offices in Serbia, Croatia, Slovenia, Montenegro, North Macedonia and Bosnia & Herzegovina. With more than 100 attorneys at law cooperating across the region, we take pride in our work, dedication and understanding of our clients' industries and needs.

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Corporate Law in Serbia is generally regulated by the Company Law published on the 27th of May, 2011, in the "Official Gazette of the Republic of Serbia" no. 36/2011 which came into force on the 4th of June, 2011, and by the Law on Registration Procedure with the Business Registers Agency published on the 27th of December, 2011, in the "Official Gazette of the Republic of Serbia" no. 99/2011 which came into force on the 4th of January, 2012. The Company Law was amended on the 27th of December, 2011, the 5th of August, 2014, the 20th of January, 2015, the 9th of June 2018 and the 8th of December 2018 ("Official Gazette of the Republic of Serbia" nos. 99/2011, 83/2014, 5/2015, 44/2018 and 95/2018) and the Law on Registration Procedure with the Business Registers Agency was amended on the 5th of August, 2011 and 29th of April 2019 ("Official Gazette of the Republic of Serbia" no. 83/2014 and 31/2019).

The Company Law regulates the legal status of companies and entrepreneurs, their incorporation, governance, affiliation, changes of legal forms, status changes and the liquidation of companies. The Law on Registration Procedure with the Business Registers Agency regulates the conditions, subject, and the procedure of registration with the Business Registers Agency and the operating procedure of this Agency.

Type of companies

Business in Serbia may be conducted by incorporation of the company in one of the following legal forms:

- general partnership;
- limited partnership;
- limited liability company; and,
- joint stock company.

Alternatively, business may be conducted either by the incorporation of a branch office on the territory of the Republic of Serbia *(in Serbian: ogranak)* or a representative office *(in Serbian: predstavništvo)* of the foreign company. Branch or representative offices are not considered separate legal entities and therefore the foreign company remains liable for all obligations assumed by a branch office or representative office. The Company Law requires a mandatory registration of branch offices within the Business Registers Agency, while already existing breach offices need to be registered in a one-year period.

General and limited partnerships are not that common in Serbia due to the unlimited liability of shareholders for the debts of the company, whereas the minimum share capital of joint stock companies is rather high and it is in the amount of approx. EUR 25,000, which makes this legal form seldom used in practice as well.

The limited liability company *(in Serbian: društvo sa ograničenom odgovornošću - d.o.o.)* is by far the most commonly used legal form in practice. This is due to the rather straightforward incorporation procedure, minimum requirements in relation to the share capital of the company (approximately EUR 1), and the fact that the shareholders are not liable for the debts of the company (except in specific circumstances, e.g., if there are grounds for the piercing of the corporate veil). A shareholder may have only one share in the company, which is expressed as a percentage.

The capital contributions by shareholders may be made in money – Serbian dinars or "in kind", such as equipment, goods, know-how, etc. which do not have to be paid/contributed before registration, but within five years after the execution of the founding act. The value of contributions in kind can be assessed by the shareholders themselves.

The limited liability company can engage in all legally permitted activities, but its predominant business activity (taken from an exhaustive list of business activities provided by Serbian laws) must be defined in the Memorandum of Association and registered with the Business Registers Agency. There are certain activities (e.g. financial services and insurance services), that may only be performed by an entity incorporated in a certain legal form (e.g. joint stock company), and certain activities (e.g. trade in poisonous goods, medicines or weapons) that may be subject to licensing requirements.

Joint stock companies *(in Serbian: akcionarsko društvo – a.d.)* can be founded by one or more natural and/or legal persons, and the company's share capital is divided into shares. Shareholders are not liable for the debts of the company (except in specific circumstances, e.g., if there are grounds for the piercing of the corporate veil). There are two types of joint stock companies, closed and open (public), depending on whether the shares are listed on the stock exchange market or not. Currently, most of the joint stock companies in Serbia are banks and insurance companies, as this is the statutory requirement of the specialised laws. As mentioned, the minimum amount of the initial share capital of the joint stock companies is significantly higher than the one prescribed for limited liability companies, and it amounts to approx. EUR 25,000.

Joint stock companies can issue ordinary and preference shares. Ordinary shares have the same nominal value or have no nominal value at all, in which case their accounting value is used as grounds for determining the amount of dividends or liquidation proceeds belonging to their holders. Preference shares include, in particular, priority rights in the payment of dividends, and priority in payments of the liquidation proceeds. However, holders of preference shares do not have voting rights except in a limited number of cases explicitly stated in the law. The company's Articles of Association can prescribe that the company can approve shares that are not issued. These shares can be issued for the purposes of increasing the share capital of the company by making new contributions.

Corporate bodies in limited liability companies and in joint stock companies

Limited liability companies

Corporate governance in a limited liability company can be organised as a one-tier or two-tier system. In the one-tier system, besides the Shareholders Assembly, a company has one or more directors (not forming any separate corporate body, such as a Board of Directors), all of whom are presumed to act as executives, in charge of the day to day running of the business of the company.

In the two-tier system, besides the Shareholders Assembly, there is (i) a Supervisory Board which acts as a separate supervisory and controlling body; and (ii) one or more directors (executives). The Supervisory Board consists of at least three members, appointed by the Shareholders Assembly, none of whom can serve as (executive) directors. The Supervisory Board in turn appoints and controls the work of director(s) who are in charge of running the daily business of the company and

are considered as executives.

The Shareholders Assembly operates through sessions which can be held in person or via a conference call. In case of a sole shareholder, the functions of the Shareholders Assembly are performed by the shareholder itself.

If not otherwise provided by the Company Law or the company's Memorandum of Association, the Shareholders Assembly:

- adopts amendments to the Memorandum of Association;
- adopts the financial statements, and auditor's statements if the financial statements were audited;
- appoints and dismisses the directors of the company, and other legal representatives of the company;
- adopts reports of the directors and members of the supervisory board of the company;
- supervises the work of directors, determines the compensation of directors i.e. guidelines for the determination of such compensation;
- decides on increases and decreases to the company's share capital and on any emission of securities;
- decides on the distribution of profit and the manner of covering losses, including the determination of the day of acquiring the right to participate in profit and the day of the payment of dividends to the shareholders of the company;
- appoints the auditor and determines the compensation for his engagement;
- decides on the initiation of the liquidation procedure, as well as on the submission of a proposal for the initiation of company bankruptcy proceedings;
- appoints the liquidation administrator and adopts the liquidation balance sheets and the reports of the liquidation administrator;
- decides on the acquisition of treasury shares;
- decides on additional payments to the shareholder of the company and on the return of such payments;
- decides on the shareholder's request for the withdrawal from the company;
- decides on the exclusion of a company shareholder due to a non-payment, i.e. failure to pay-in the subscribed share;
- decides on the initiation of the proceedings for the exclusion of a company shareholder;
- decides on the initiation of company proceedings against a director, a procurator, a member of the supervisory board, or a shareholder, and issues a proxy for representation in such proceedings;
- approves the assessment of a new shareholder, and issues a consent to a share the transfer agreement with a third party;
- decides on withdrawing and cancelling the shares;
- decides on status changes and changes of legal form;
- approves the legal transactions involving personal interest; and,
- approves acquiring, selling, leasing, pledging or otherwise disposing of the assets of significant value.

The annual Shareholders Assembly has to be held within six months from the end of the business year. All the decisions of the Shareholders Assembly are enacted by a simple majority of votes, but only if shareholders that have majority of the total number of votes are present at the session on which these decisions are enacted. However, certain decisions of the Shareholders Assembly require a higher majority, unless the Memorandum of Association provides that these issues will be decided by another majority which may not be less than the majority of the total number of votes.

Amendments to the Company Law introduce a new type of Joint Stock Company – the European Joint Stock Company (Societas Europea), with a minimum share capital requirement of EUR 120,000.00. This concept relates to (i) merger and acquisition, (ii) creation of holding, or (iii) a controlled company, by more companies, one of which must be incorporated in Republic of Serbia, and the other in an EU member state. This legal form shall apply only when Republic of Serbia becomes a member state of the EU.

Joint stock companies

The corporate governance of joint stock companies can also be organised as a one-tier system or a two tier system.

In the one-tier system, besides the Shareholders Assembly, a company has one or more directors who form a Board of Directors in case there are three or more directors. They may be executive directors and non-executive directors. If there are less than three directors, all of them are considered executive directors, in charge of the day to day running of the company business. Non-executive directors oversee the work of executive directors, propose a company business strategy and oversee its implementation.

In the two-tier system, besides the Shareholders Assembly, there is (i) a Supervisory Board which acts as a separate supervisory and controlling body; and (ii) one or more executive directors who form an Executive Board in case there are three or more executive directors. The Supervisory Board may name one of executive directors as the director general in case there is no Executive Board, while in cases where there is an Executive Board, it has to name a director general. The role of a director general is to coordinate activities of the executive directors and to manage the business of the company.

The authorities of the Shareholders Assembly are very similar to the authorities of this body in limited liability companies. The regular session of the Shareholders Assembly has to be held once a year within six months from the end of the business year. Decisions of the Shareholders Assembly are enacted by a simple majority of votes, but only if shareholders that have a majority of the total number of votes in the Shareholders Assembly are present at the session at which these decisions are enacted.

Incorporation of limited liability companies and joint stock companies

Limited liability companies

According to the Law on the Registration Procedure with the Business Registers Agency, the following documents are required in the incorporation procedure:

> a certificate of incorporation of the shareholders or, if the shareholder is a natural person, a copy of his/her identity card (for Serbian citizens) or passport (for foreign citizens);
>
> a decision on the appointment of company representatives, if it was not designated by the Memorandum of Association;
>
> the Memorandum of Association with the founders' signatures notarised; and,
>
> proof of the contributed share capital, if the contribution was made before incorporation.

Joint stock companies

According to the Law on the Registration Procedure with the Business Registers Agency, the following documents are required in the incorporation procedure:

- the Memorandum of Association, with the founders' signatures notarised;
- the Articles of Association;
- a certificate from a credit institution that the shares have been paid-in in cash, or an appraisal by a state licensed appraiser of the value of the in kind contributions, or a certificate issued by the competent authority of the appraisal of the value of the in kind contribution;
- a decision on the appointment of the director, and/or members and chairmen of the Board of Directors, if it was not designated by the Articles of Association;
- a decision on the appointment of the members of the Supervisory Board in case of a company with a two-tier management system, if it was not designated by the Articles of Association;
- a decision on the appointment of the members of the Executive Board, in case of a company with a two-tier corporate governance system;
- a decision on the appointment of the company's authorised representatives, if it was not designated by the Articles of Association.

Competition/Antitrust Issues

The Competition/Antitrust matters in Serbia are regulated by the Competition Law (Law on the Protection of Competition, "Official Gazette of the RS", no. 51/09 and 95/13) which is in effect since the 1st of November, 2009. In short, the Competition Law regulates the merger control regime and lays down the EU-like antitrust rules. The previous law, from 2005, established the Competition Commission assigned with the main competencies needed for the implementation of the law.

Restrictive Agreements

The Competition Law prohibits agreements between undertakings which have as their object or effect the significant prevention, restriction or distortion of competition within the territory of the Republic of Serbia. Restrictive agreements can take the form of written contracts, explicit or implicit agreements, concerted practices, decisions by associations of undertakings, and the law in particular provides examples of such agreements as follows:

- agreements to, directly or indirectly, fix purchase or selling prices or any other trading conditions;
- agreements to limit or control production, market, technical development or investments;
- applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- agreements to share markets or supply sources; and,
- making the agreement subject to acceptance of additional obligations, which by their nature or according to commercial usage, have no connection with the subject of such contracts.

Restrictive agreements are null and void unless exempt through the application of either individual or block exemption in line with the Competition Law.

Abuse of a dominant market position

The Competition Law prescribes that an undertaking can be presumed to be in a dominant position when, due to its market power, it can act in the relevant market to a considerable extent independently of its actual or potential competitors, consumers, buyers or suppliers. Dominance is determined in relation to the relevant economic and others indicators, that include, but are not limited to: the structure of the market, actual or potential competitors, a market share above 40%, barriers to entry, a degree of vertical integration, financial and economic power etc. Similarly to restrictive agreements, examples of abuse of a dominant position provided under the Competition Law include the following: direct or indirect imposing of unjust purchase or sale prices, or of other unfair business conditions, limiting the production, market or technical development, applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage and conditioning the contract with the other party accepting additional obligations.

Merge Control

The Law prescribes mandatory notifications that are based on turnover thresholds – a notification is required for any concentration of undertakings (mergers, acquisitions, full functional joint ventures) where the combined turnovers of the parties exceed the prescribed thresholds. Any merger, acquisition, consolidation, full functional joint venture or acquisition is regarded as a concentration of undertakings which has to be notified if it meets the thresholds. However, concentrations that are implemented through public takeover of joint stock companies must be notified even though the filing thresholds have not been met.

The merger notification has to be filed prior to the implementation of concentration, but not later than 15 calendar days after:

> the conclusion of the agreement or contract;
>
> an announcement of a public bid; or,
>
> the acquisition of control.

Alternatively, a merger can and should be notified at an earlier stage of the deal – upon the signing of a non-binding agreement (which does not trigger the filing deadline) – a letter of intent, a memorandum of understanding, an executive corporate decision which expresses a serious intent and is signed by both parties, etc.

The Competition Law prescribes an obligation to fully suspend the implementation of the concentration prior to the obtaining of the clearance issued by the Competition Commission or prior to the expiration of the statutory waiting period.

Sanctions

Parties to anti-competitive agreements, dominant companies engaging in anti-competitive practices and parties which carry out a merger without obtaining an approval, can be fined in the up to 10% of their annual revenues realised in the previous fiscal year in the Republic of Serbia. If the parties do not file in a timely manner, a fine (a, so called, procedural penalty) ranging between EUR 500 and EUR 5,000 for each day that the filing is delayed, may be imposed by the authority.

Regulatory framework

The tax system in Serbia is established so that each main type of tax is regulated by a separate piece of legislation and a number of bylaws issued based on them, including:

> Law on Corporate Income Tax;
>
> Law on Personal Income Tax;
>
> Law on Value Added Tax; and,
>
> Law on Property Taxes (governing property tax, property transfer tax and tax on gifts and heritage).

These laws primarily deal with substantive matters in their respective tax areas, provided that they also prescribe certain specific procedural rules on tax assessment.

The system of mandatory social contributions is also established by laws enacted by the Parliament. The system is governed in the first place by a Law on Mandatory Social Security Contributions, while specific rules in relation to each of the type of social security are prescribed by the separate laws, as follows:

> Law on Pension and Disability Insurance,
>
> Law on Health Insurance, and
>
> Law on Employment and Insurance in Case of Unemployment.

In addition to the above, there are a number of laws establishing numerous so-called para-fiscal charges, such as court and administrative fees and other fees.

General rules governing the tax procedure, including the assessment and collection of tax, rights and obligations in relation to the tax system are governed by the Law on Tax Procedure and Tax Administration. Procedural rules prescribed by this law are applicable in all tax areas, unless it is

otherwise prescribed by a separate law governing the specific tax area. Rules prescribed by the Law on Tax Procedure and Tax Administration are also applicable in relation to social security contributions, para-fiscal charges and other types of public revenues, unless separate laws governing these public revenues provide otherwise. Finally, since the tax procedures are essentially administrative procedures, they are also governed by the Law on General Administrative Procedure, in the parts which are not covered by the Law on Tax Procedure and Tax Administration and separate tax laws.

International treaties are an important part of the Serbian legal system, including the area of tax and social security contributions. Ratified international treaties (bilateral and multilateral) have supremacy over national legislation.

Serbia has an extensive network of more than 50 treaties on the avoidance of double taxation treaties (DTT), including DTTs with almost every EU country, Russia, all the regional countries and a number of Asian countries. DTTs applicable in Serbia are based on OECD Model Convention. In 2017, Serbia signed a Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). MLI is a result of the OECD/G20 Project to tackle Base Erosion and Profit Shifting (BEPS). The MLI will be applied as a part of the double tax treaties that Serbia signed after reaching the agreement with the other contracting state. Serbia already started to apply the MLI in tax matters with Austria, Finland, France, Lithuania, Malta, Poland, Slovakia, Slovenia and United Kingdom.

Serbia also ratified social security conventions with more than 25 countries, governing the rights and obligations in relation to the social security of the citizens of these countries in Serbia and vice versa.

Finally, an important source of tax law in Serbia are also international treaties governing other issues – primarily the status of international organizations and financial institutions or the development and financing of important infrastructural projects, which provide for specific tax rules in the areas covered by the treaties. These rules are primarily related to various tax exemptions.

The main authority in charge of the enforcement of tax laws in Serbia is the Tax Authority - being the authority within the Ministry of Finance. The Tax Authority is in charge for: the registration of taxpayers, assessment of tax, tax control, collection of tax, investigations of tax criminal offences and so on.

The Compulsory Social Insurance Central Register was established in 2010 in order to maintain the registry of contribution payers, users of insurance and all changes regarding the information on these entities. Contribution payers are obliged to electronically register any relevant change with the Central Register. The Central Register further distributes information to individual social insurance funds, the Tax Authority and other bodies with an interest in the database maintained by the Central Register.

Personal income tax and social security contributions

Rules governing the taxation of personal income are prescribed by the Law on Personal Income Tax (PIT Law) and the accompanying secondary regulations with the PIT Law. As a general note, the Serbian system of personal income tax is based on the so-called cedular system of taxation: different types of income are taxed at different tax rates and different rules for the assessment of the tax base. At the end of the year, resident tax payers whose annual income generated throughout the year from all sources exceeds the threshold prescribed by the PIT Law are required to pay additional annual income tax.

Types of income subject to personal income tax. The main types of income for which the PIT Law prescribes specific rules of taxation include salaries, the income of entrepreneurs, income from immoveable property, income from capital (dividend, interest) capital gains, royalties, and "other income" which is a residual category including any income not included in one of the specified categories (including also income generated by natural persons under service agreements).

Below we have presented the system for the taxation of salaries, as the most common type of personal income.

Taxation of income from labour. Salary tax is levied at a 10% tax rate applicable on the gross amount of salary decreased by the monthly non-taxable amount of RSD 15.000 (approx. EUR 120).

The taxable person is the employee, but the employer is responsible for calculating and paying personal income tax on behalf of his employees. The taxable base is the gross salary, which includes salary tax and social security contributions. Benefits in kind, such as the use of company vehicles or apartments, as well as income from employment share plans are subject to salary tax.

Specified types of income, up to a prescribed amount, are exempt. They include public transportation costs for home to office travel and daily allowances for business trips. Also, insurance premiums for private pension and health insurance paid by the employer for its employees are exempted from the prescribed threshold (approx. EUR 50 per month).

The employer who is employing individuals registered at the National Agency for Employment as unemployed, may ask for a refund of paid taxes and contributions in the range between 65% and 75% depending on the number of employed individuals. The PIT Law also prescribes tax exemption for income under employee share plans.

Social security contributions. Salaries (and other similar types of income generated from work) are subject to an obligation to pay contributions for mandatory social security insurance (including social security contributions due by the employer and those due by the employee). The rates of social security contributions due on salaries are as follows:

	Pension and disability	Health	Unemployment
Employer's portion	12%	5.15%	n/a
Employee's portion	14%	5.15%	0.75%
Total	26%	10.3%	0.75%

The base for social security contributions paid on salaries is subject to limitation as to the maximum monthly base of app. EUR 2,800, while the maximum annual base related to annual income generated from all sources is estimated at app. EUR 34,500 for 2019.

Tax and social security contributions are payable by the employer on the withholding basis if the employer is a resident legal entity. In this case the employer is required to pay salary tax and social security contributions on each salary payment. The tax return for withholding tax has to be filed electronically before the payment of personal income.

Annual income tax. In addition to the tax on specific types of income paid during the year, tax residents and non-residents, whose total annual income exceeds three times the annual average salary in Serbia (for 2018 approx. EUR 18,000) are required to pay an annual income tax.

The tax base for annual income tax is equal to the sum of all income generated during the year (with certain exemptions, such as dividends and capital gains) reduced by a non-taxable amount (three times the average salary) and the standard deductions for taxpayers (40% of the average salary) and for the members of taxpayer's family (15% of the average salary for each family member). Tax rates for annual income tax are progressive:

> 10% for tax base up to six times the average annual salary in Serbia (for 2018 approx. EUR 36,000),
>
> 15% for tax base exceeding six times the average annual salary.

The tax returns should be filed by the 15th of May for income generated during the previous year. The tax returns may be filed electronically or in hard copy.

The position of foreign nationals within the Serbian tax system. The scope of tax liabilities of any natural person depends on whether such a person is a resident of Serbia or not. Residents of Serbia are liable to personal income tax on their worldwide income.

Non-residents are liable to pay tax only on income earned in Serbia. Under the PIT Law, Serbia is regarded as a source of income for non-residents, if the income relates to work on Serbian territory, or if it is generated from rights arisen in Serbia or from property located in Serbia.

The residency of a natural person is established on the basis of criteria prescribed by the PIT Law. Under these rules, an individual is considered a resident of Serbia if one of the following conditions is met:

> He/she resides in Serbia more than 183 days during a period of 12 months which begins or ends in the given fiscal year; or,
>
> He/she has a domicile or centre of his/hers vital interests in the territory of Serbia.

Residents of Serbia are required to pay tax on their world-wide income, irrespectively of the source of their income. Non-residents are required to pay a tax on income generated in Serbia.

In addition to salary tax, foreign staff may be required to pay social security contributions on their salaries, while working in Serbia. This obligation may be eliminated on the basis of a convention on social security insurance.

Corporate income tax

CIT is governed by the Law on Corporate Income Tax (CIT Law). In addition to general rules prescribed by the CIT Law, rules governing the taxation of corporate profit are also prescribed by the secondary regulations prescribed by the Ministry of Finance.

Persons subject to the tax. Companies incorporated in Serbia are Serbian tax residents and are therefore required to pay tax on their worldwide income. Serbian non-residents have to pay CIT only for the part of the income which is attributable to the activity of the permanent establishment constituted in Serbia and on certain types of income deemed to be generated in Serbia (see section Withholding tax below).

Tax rate. Corporate income tax is levied at a 15% flat rate.

Tax base. The tax base is assessed on the basis of the profit (revenues and expenses) declared by the taxpayer in his annual income statement (profit and loss account), prepared in accordance with the International Accounting Standards (IAS), and adjusted in accordance with the rules prescribed by the CIT Law.

Generally, an expense will be recognized for tax purposes if it is documented and incurred for business purposes.

Certain types of expenses specifically listed in the law are non-deductible, while the deductibility of certain expenses is limited, so as that the threshold for deductibility is set as a percentage of the taxpayer's annual revenues (for example, expenses for health, cultural, educational, scientific,

humanitarian, purposes and similar)

The deductibility of certain types of expenses is allowed only subject to the fulfilment of certain conditions. For example, the write-off of receivables will be recognized for tax purposes only if the taxpayer filed a lawsuit against the debtor of such receivable (or if the costs of court procedures exceed the value of the receivable which is written-off), while certain types of expenses are recognized only up to the paid amount (such as public charges which are not dependent on the business operation results).

Expenses on the basis of an impairment of assets are not deductible, but may be deducted in the year in which the asset was transferred, used, or in which such an asset was damaged due to force majeure.

The deductibility of other expenses is limited in accordance with the specific rules on tax depreciation, transfer pricing, rules governing thin capitalization, etc.

Tax depreciation. An asset may be depreciated for tax purposes if it is recognized as a fixed asset under the relevant accounting regulations (IAS) and subject to the condition that its useful life is longer than one year. Goodwill cannot be depreciated.

All assets are categorized in five depreciation groups with different rates and methods of depreciation for tax purposes. Tax depreciation rates range from 2.5% (for immoveable assets) to 30%. Immoveable assets are depreciated using a proportional method, and all other assets under the declining method.

Thin capitalization. The deductibility of interest generated from related party loans is subject to limitation on the ground of thin capitalization. Under the thin capitalization rules, debt to equity ratio for the deductibility of interest on related-party loans for companies is four times the taxpayer's capital (exceptionally, ten for banks and financial institutions). The coefficient of deductible interest is calculated by dividing the amount of four times the average amount of capital by the average daily amount of loans from related parties.

Transfer pricing rules. Transfer-pricing obligations of the Serbian taxpayers include, first, the obligation to disclose the value of expenses and revenues generated in transactions from related parties at agreed (transfer) prices and at arm's length prices, and to include the difference in the taxable profit. Note that transfer pricing obligations apply equally to both transactions between Serbian resident taxpayers and cross-border transactions between Serbian taxpayers and their foreign related parties.

The definition of related parties is set in a very broad manner: for the purposes of transfer pricing rules, a party related to the taxpayer shall be deemed to be any entity (foreign or Serbian) which holds, directly or indirectly, more than a 25% share in capital or voting rights in the taxpayer. Likewise, an entity shall be deemed to be related to a taxpayer if such an entity is controlled, directly or indirectly, by the same entities which exercise control over the taxpayer by means of the minimal 25% (direct or indirect) participation in their capital or voting rights.

The arm's length prices should be established in accordance with one of the transfer pricing methods allowed under the CIT Law. Latest amendments to the CIT Law allow all transfer pricing methods which are allowed under the OECD Transfer Pricing Guidelines, including the following:

- The comparable uncontrolled price method,
- The cost-plus method,
- The resale price method,
- The transactional net margin method, and
- The profit split method.

The profit split method.

There is no hierarchy between the available transfer pricing methods, and the taxpayer is free to choose any method which it finds most appropriate for a given transaction or a group of transactions. Moreover, the taxpayer may use any other method for assessment of arm's length prices if the methods prescribed by the law are not suitable in a particular situation.

For transfer-pricing purposes, the amount of deductible interest from related party loans (deposits) may be established in two principal ways: on the basis of the market interest rates established by the NBS and published by the Serbian Ministry of Finance, or on the basis of some of the transfer-pricing methods allowed under the CIT Law.

The Ministry of Finance publishes the arm's length interest rate in the beginning of the year for the previous year. For 2019 the amount of arm's length interest for long-term loans in EUR was set at 4.98%, while the rate for long-term loans denominated in USD is 5.69%.

Tax-loss carry-forwards. Tax losses may be carried forward and offset against taxable profit in future tax periods, but for no more than 5 years.

Capital gains/losses. For tax purposes, capital gains may be generated from the disposal against a consideration of immoveable assets, shares, IP rights and investment units. Note that capital gains/losses generated in transactions with related parties are also subject to transfer pricing rules, so that the sale price of assets sold to a related party is the arm's length price (if the agreed price is lower than the market price).

Capital gains from transfer of IP rights registered in Serbia are exempted from 80% of the tax and therefore subject to tax at effective rate of 3%.

Capital gains may be offset only against capital losses incurred in the same year. Unused capital losses in the current tax year may be carried forward and offset against capital gains in the following five years.

Non-residents that generate capital gain in Serbia have to file the tax return through appointed tax representative and to pay the tax (if any) on the basis of tax resolution issued by the TA.

Tax incentives. The CIT Law provides tax credit for the investment in new fixed assets and the employment of new employees.

The taxpayer which invests or in whose new fixed assets another entity invests more than RSD 1 billion (app. EUR 8.3 mil.), and which employs at least 100 new employees during the period of investment, has the right to the reduction of tax proportionally to the participation of the new fixed assets in the existing fixed assets, for a period of ten years. The tax credit starts to apply in the year in which the taxpayer starts to generate taxable profit.

Investments into start-ups are also subject to beneficial tax treatment. Taxpayer investing into start-up enjoys tax credit in amount of 30% of investment. Also R&D expenses are deductible in double amount. Similarly as capital gains, royalties are exempted from 80% of the tax.

The administration and payment of CIT. Corporate income tax is paid on the basis of the annual tax balance and tax return in which the taxpayer should declare the amount of his taxable profit (tax balance) and the amount of tax due.

The tax period for which the tax is assessed and paid is a calendar year, provided that in certain cases the tax year may be different than the calendar year.

The deadline for the submission of tax balance and tax returns is 180 days starting from the end of the year for which the tax is assessed, i.e. until the end of June of the current year for the preceding year. Along with the CIT return, the taxpayer is required to file transfer pricing documenta

tion. Newly incorporated companies are also required to file a provisional CIT return within 15 days after the registration.

CIT is paid in advance, in monthly (provisional) instalments, calculated on the basis of the amount of tax declared in the previous year. Monthly instalments have to be paid by the 15th of the current month for the previous month.

The amount of tax paid by the taxpayer throughout the year on the basis of the profit made in the previous year is adjusted at the end of the year in accordance with the actual profit made during that year. At the end of the year the taxpayer is required to pay the difference (or request a refund), depending on whether the total amount of monthly instalments paid during the year is higher or lower than the amount of tax due on the basis of profits in the current year.

Withholding tax. Withholding tax is payable on the following types of income paid by resident taxpayers to non-resident entities abroad:

> Dividend;
>
> Interest;
>
> Royalties;
>
> Income from rent of moveable and immoveable property located in Serbia; and,
>
> Business services fees.

The tax base for withholding tax is a gross income which incorporates withholding tax.

The standard withholding tax rate is flat 20%. The higher 25% tax rate applies to interest, royalties, rental income and service income paid to an entity from the jurisdiction that has the status of a tax haven.

Withholding tax may be eliminated or reduced on the basis of a double tax treaty between Serbia and recipient's country of residence. Most tax treaties prescribe lower tax rates for dividends, interest, royalties, and rental income. Also, most treaties prescribes that the service income is subject to tax only in the service provider's country of residence.

Beneficial tax rates available under the double tax treaties apply subject to the condition that a non-resident recipient of income obtains the certificate of tax residency (confirming that the recipient of the income is a resident of a treaty country) and delivers it to the Serbian payer of income. In addition, a non-resident has to demonstrate that it is a beneficial owner of the income.

Withholding tax has to be paid at the same moment when the income is transferred to a non-resident entity.

Property taxes

Property transfer tax (PTT) is a one-off tax payable on the transfer against the consideration of a property under certain specific types of assets, including immoveable assets, IP rights, and used motor vehicles. The PTT applies only if the sale of assets is not subject to VAT. PTT is levied at the rate of 2.5% on the tax base which is equal to an agreed price or the market price of asset. The PTT is due by the seller of the asset, cannot be refunded and represents a pure cost for the taxpayer.

Gifts and inheritance by direct descendants and spouses are not taxed. Also, gifts below RSD 100,000 (app. EUR 800) in one year are non-taxable. The tax rate of 1.5% is applied for transfers from relatives in the second order of inheritance, while the rate of 2.5% for transfer of property by the relatives in the third order or any other person.

Owners of immoveable assets located in Serbia are required to pay an annual property tax on such

immoveable assets to the municipality on whose territory the immoveable asset is located. The applicable tax rate varies depending on the municipality, provided that it cannot exceed 0.4% for corporate taxpayers. The tax base is the fair value of the immoveable asset for taxpayers that keep books using the "fair value method" or a market value established by the Tax Administration for other taxpayers. Tax due is assessed by the Tax Administration, on the basis of the tax return filed by the taxpayer and is payable quarterly.

Value added tax

The Serbian VAT system is modelled after the EU VAT Directive, and the majority of general VAT principles applicable throughout the EU apply also in Serbia. Serbian VAT is regulated by the Law on Value Added Tax (VAT Law), and a number of VAT regulations which prescribe detailed rules for the implementation of general rules of the VAT Law.

Taxable persons. A taxable person is an entity (legal and natural persons) who independently carries out the supply of goods and services, within its business activities.

Only registered VAT taxpayers are required to pay VAT on their supplies of goods and services, and have the right to deduct input VAT charged to them by their suppliers. Taxable persons whose turnover in a 12-month period exceeds, or will exceed, RSD 8,000,000 (app. EUR 67,000) are required to register for VAT. Entities whose turnover does not exceed this threshold may register for VAT, but are not required to. Foreign entities supplying only natural persons in Serbia are required to register irrespectively to the amount of their supplies.

Taxable transactions. Transactions subject to VAT include the following:

> The supply of goods and services. A supply of goods/services will be subject to VAT only if made on the territory of Serbia (as defined by the place of supply rules, depending on the specific type of supply) and if made for consideration (though, in certain cases, supplies made without consideration will also be subject to VAT).
>
> The import of goods.

The VAT Law prescribes the list of exemptions from VAT, including two main principal groups of exemptions:

> Exemptions with the right to a deduction of input VAT (0% rates supplies), such as the export of goods, supplies made under international loan or donation agreements, international transport and similar.
>
> Exemptions without the right to a deduction of input VAT, including primarily public and financial services, but also a supply of land (agricultural, forest, or construction land).

Tax base and tax rates. The standard VAT rate is 20%. Certain goods and services (such as the supply of groceries, medicines, newspapers, utility services, etc.) are taxed at a reduced VAT rate of 10%. The tax base for the assessment of VAT constitutes everything that the taxpayer received or will receive from the customer in consideration for the supply.

The deduction of input VAT. Registered VAT taxpayers are entitled to deduct their input VAT from the output VAT, subject to the following main conditions:

input supplies are used for the purpose of taxable output turnover; and,

the taxpayer holds an invoice of the supplier drawn in accordance with the formal invoicing requirements prescribed by the VAT Law.

The excess of input VAT in the given VAT period may be used as credit to offset the due in the following tax periods, or the taxpayer may request a refund of such VAT.

Administration and payment of VAT. For taxpayers whose turnover in a 12-months period exceeds RSD 50 million (app. EUR 420,000), the tax period is a calendar month. Taxpayers whose turnover does not exceed this threshold are required to account and pay VAT quarterly.

The deadline for the submission of VAT returns and the payment of VAT is the 15th of the month for the previous month.

Double taxation treaties

In the table below is a list of double tax treaties signed by Serbia:

Country	Dividends	Interest	Royalties
Albania	15/5	10	10
Armenia	8	8	8
Austria	5/15	0/10	5/10
Azerbaijan	10	0/10	10
Belgium	10/15	15	10
Belarus	5/15	8	10
Bosnia and Herzegovina	5/10	0/10	10
Bulgaria	15/5	10	10
Canada	5/15	10	10
China	5	0/10	10
Croatia	5/10	10	10
Cyprus	10	10	10
Czech Republic	10	0/10	5/10
Denmark	5/15	0/10	10
Egypt	5/15	15	15
Estonia	5/10	0/10	5/10
Finland	5/15	0	10
France	5/15	0	0
Georgia	5/15	0/10	10
Ghana*	5/15	10	10
Greece	5/15	10	10
Germany	15	0	10
Hungary	15/5	10	10

India	5/15	0/10	10
Indonesia	15	0/10	15
Iran*	10	0/10	15
Ireland	5/10	0/10	5/10
Italy	10	10	10
Kazakhstan	10/15	0/10	10
Kuwait	10/5	10	10
Latvia	5/10	0/10	5/10
Libya	5/10	0/10	10
Lithuania	5/10	0/10	10
Luxembourg	5/10	0/10	5/10
Macedonia	15/5	10	10
Montenegro	10	0/10	5/10
Morocco*	10	0/10	10
Netherlands	5/15	0	10
Norway	0/5/15	0/10	5/10
North Korea	10	0/10	10
Poland	5/15	10	10
Pakistan	10	0/10	10
Palestine*	10	0/10	10
Qatar	5/10	0/10	10
Romania	10	0/10	10
Russia	5/15	10	10
San Marino	5/10	10	10
Slovak Republic	5/15	10	10
Slovenia	5/10	0/10	5/10
South Korea	5/10	0/10	5/10
Spain	5/10	0/10	5/10
Sri Lanka	12.5	10	10
Sweden	5/15	0	0
Switzerland	5/15	10	10
Tunisia	10	10	10
Turkey	5/15	0/10	10
Ukraine	5/10	0/10	10
United Arab Emirates	0/5/10	0/10	10
United Kingdom	5/15	10	10
Vietnam	10/15	10	10
Zimbabwe*	5/15	10	10

*The treaty has not been ratified by one of the parties.

Excise

Excise duties are levied on the producers and importers of the following goods:

- Oil derivatives;
- Biofuel and bio fluids;
- Tobacco products, including tobacco products that are heated during use but do not burn;
- Alcohol beverages;
- Coffee;
- Fluids for the filling of electronic cigarettes;
- Electricity for final consumption.

Exported excisable goods are considered exempt. Oil derivatives, biofuel and bio fluids supplied by the producer or importer are also exempted excisable goods, if so is provided by an international agreement.

Excise duty is levied as a fixed amount (RSD) per unit quantity.

The Excise Law prescribes special provisions for tobacco. There are two types of excise duty:

Fixed amount per pack. Meanwhile, Serbia introduced the same excises both for cigarettes imported to Serbia and cigarettes produced in Serbia. The fixed amount of the excise will be payable per pack of 20 cigarettes as follows:

- For the period from 1 July until 31 December of 2017: 65.50 RSD/pack;
- For the period from 1 January until 30 June of 2018: 67.00 RSD/pack;
- For the period from 1 July until 31 December of 2018: 68.50 RSD/pack;
- For the period from 1 January until 30 June of 2019: 70.00 RSD/pack;
- For the period from 1 July until 31 December of 2019: 71.50 RSD/pack;
- For the period from 1 January until 30 June of 2020: 73.00 RSD/pack;
- For the period from 1 July until 31 December of 2020: 74.50 RSD/pack.

Proportional Excise Duty. The proportional excise duty will be introduced along with excises above in the amount of 33% of retail price, determined by either the producer or the importer of cigarettes.

Separate excise, calculated as 43% of retail price per kilogram, is payable on tobacco and other tobacco products.

Customs

Regulatory framework. The rules governing the system of foreign trade in goods in Serbia are established by several laws enacted by the Serbian Parliament, including, in particular, the following:

- The Law on Foreign Trade, establishing the fundamental foreign trade principles.
- Customs Law, prescribing the rules for the conduct of the customs procedure.
- The Law on Customs Tariff, establishing the customs tariffs used for the calculation of customs duties.
- The Law on Foreign Exchange Operations, governing the terms and conditions for the execution of payments between residents and non-residents.

The main principles governing foreign trade, established by the Law on Foreign Trade, include the following:

- Freedom of foreign trade,
- Non-discrimination,
- Most favoured nation treatment,
- National treatment,
- The prohibition of quantitative import/export restrictions, save for those established by the law,
- Publicity, and
- Confidentiality.

Serbia has a wide range of free trade agreements which provide for the preferential customs treatment of goods originating from the signatory countries. The most important free trade agreements include the following:

- Interim Trade Agreement with the European Union (ITA),
- Free Trade Agreement with the Russian Federation (FTAR),
- Central Europe Free Trade Agreement (CEFTA), a multilateral treaty, applicable in Albania, Bosnia and Herzegovina, Croatia, Macedonia, Moldova and Montenegro,
- Free Trade Agreement with European Free Trade Association (EFTA),
- Free Trade Agreement with Turkey (FTAT), and
- Free Trade Agreement with Kazakhstan (FTAK).

Serbia does not, however, have free trade agreements with the USA and Japan in place.

The institutional framework. The main authority in charge of the enforcement of customs regulations in Serbia is the Customs Administration, being an authority within the Ministry of Finance. The Customs Administration is in charge of: customs clearance, customs supervision and other activities in relation to the control of foreign trade in goods and services.

Customs procedure. As a general rule, in order to be imported in Serbia, foreign goods have to go through a customs procedure prescribed by the Customs Law.

After the goods cross the Serbian border, the entity which brought the goods on the territory of Serbia is required to present them to the customs authorities and take them to the organizational unit of the Customs Administration or other place designated by the Customs Administration. Together with the delivery of goods, a summary declaration has to be submitted to the Customs Administration.

After the goods have been presented to the Customs Administration, they are kept in temporary storage until they are assigned to a customs approved treatment, or their use is approved. There are several types of customs approved treatment, including:

- the placing of goods under a customs procedure;
- entry into a free trade zone or free storage;
- re-export;
- the destruction of the goods; and
- the handing over of goods in favour of the Republic of Serbia.

The customs authorities have to decide about customs approved treatment or use within 20 days following the submission of the summary declaration.

As specified above, in order to be imported in Serbia, the goods have to be placed under a customs procedure.

The customs procedure is subject to the submission of the customs declaration to the customs authorities by the importer on record. The importer on record may only be a Serbian entity. Foreign entities participating in the customs procedure have to appoint their representatives in Serbia.

The customs declaration has to be prepared on the "JCI" form prescribed by the Serbian regulations. All goods which are placed under the customs procedure have to be included in the customs declaration. The declaration should contain sufficient information (type of goods, quantity, value, etc.) for the calculation of customs duties. Information in the customs declaration has to be supported by appropriate documents, such as agreements, invoices, purchase orders, waybills, etc.

Customs duties. The customs duties are calculated by the application of the appropriate customs rate on the customs value of the goods.

Customs rates are established by the Law on Customs Tariff and the bylaws issued on the basis of this law, and depend on the type and purpose of the goods.

Custom rates established by the national legislation may be lower or eliminated on the basis of free trade agreements concluded between Serbia and the country of origin of the goods which are being imported (the, so called, preferential origin). Terms and conditions for the recognition of preferential origin are prescribed by the respective free trade agreements. The free trade agreements also prescribe documentation which is used as evidence of the preferential treatment, such as "EUR1" form under ITA.

The customs value of goods is consideration paid (or to be paid) by the importer in return for the goods (transaction price), increased for the following costs:

> costs borne by the importer in relation to the goods which have not been included in the transaction price;
>
> goods supplied by the importer in relation to the production of goods without or at lower consideration;
>
> royalties paid in relation to the goods, if they are not included in the transaction price;
>
> amounts obtained from further sale of imported goods which are paid to the exporter, if such amounts can be established; and,
>
> costs of transport, services in relation to the transport, and insurance of goods until they crossed the Serbian border.

In transactions between related parties, the Customs Administration will accept the transaction price as customs value only if the relationship between the importer and exporter did not have an impact on the establishment of the transaction price. Otherwise, the Customs Administration will not accept the transaction price as the customs value and will establish customs value itself, in line with the Customs Law.

The customs duties become due at the moment that the Customs Administration accepts the customs declaration.

Modalities of import. Two main modalities of the import regime in Serbia are the permanent import and temporary import.

Permanently imported goods are granted the status of domestic goods and therefore may be placed in free circulation on the Serbian market. The importer on record is required to pay the full amount of customs duties and import VAT due on the import of goods under the general rules.

Temporary import is allowed for the goods which are brought in Serbia with the intention of being exported in an unchanged condition. Temporarily imported goods do not acquire the status of domestic goods.

The goods may be temporarily imported subject to the approval granted by the customs authorities. The approval will be granted only if the goods are readily identifiable. Otherwise, the goods may only be permanently imported.

The customs authorities decide about the duration of the temporary import, provided that it cannot exceed 24 months. As an exemption, this deadline may be extended if necessary in order to realize the purpose of import. If the goods are not exported within the time limit, the importer has to pay the customs duties and VAT that would have been payable if, when the goods were imported, the goods had not been treated as temporary imports.

The customs duties for temporary import are set at 3% of customs duties which would have been paid on the permanent import, for each month in which the goods were under the temporary import regime. Exceptionally, certain goods explicitly prescribed by the Government are exempt from customs duties in case of temporary import.

The Labour Law ("Official Gazette of the Republic of Serbia", no. 24/2005, no 61/2005, no. 54/2009, no 32/2016, no 75/2017, no 13/2017- decision of the CC, 113/2017 and 95/2018) is the centrepiece of Serbian regulation in the field, and sets out the main rights and obligations of employers and employees. The provisions of the Law apply to the employees working on the territory of the Republic of Serbia for a domestic or foreign legal or natural person, as well to those employees that the employer has sent abroad and the foreigners working on the territory of Serbia, unless otherwise prescribed by the Law.

Labour issues in Serbia are also regulated by several other laws:

- Law on Pension and Disability Insurance
- Law on Health Insurance
- Law on Employment and Unemployment Insurance
- Law on Mandatory Social Contributions
- Law on Financial Aid to Families with Children
- Law on Social Protection
- Law on Labour Safety and Health Protection
- Law on Health Protection
- Law on Employment of Foreigners

Employment contracts

Pursuant to the Labour Law, all employment contracts must be concluded in writing, before the commencement of work. They have a certain minimal content and represent the basis of the individual labour relationship between the employer and the employee. They cannot be entered under terms which are less favourable to the employee than those set out under the applicable Collective Bargaining Agreements and the Labour Law.

Under the Serbian Labour Law there are two types of employment relations, a definite and an indefinite employment relation. Definite term employment may be concluded only in cases specified in the Labour Law, for a maximum duration of 24 months (there are some specific exceptions when duration may be longer, e.g. due to the replacement of an absent employee or work on a project).

The Labour Law provides that the director or other legal representative of the company can be engaged on the basis of an employment agreement or, alternatively, through a non-employment Management Agreement. If a director is engaged through an employment agreement, such an agreement may be concluded either for an indefinite or definite term– for the duration of his/her term of office, in line with the foundation enactments. If a director is engaged through an out-of-employment Management Agreement, limitations of the employment relation do not apply to such agreement. The parties are free to agree on the amount of remuneration and any other mutual rights and obligations that they deem adequate.

The company (employer) may also conclude certain out-of-employment contracts, such as a service agreement and the agreement on temporary and periodic work. Both should be concluded in writing.

An agreement on temporary and periodic work is an agreement concluded for a limited period of time (up to 120 days per calendar year) with a person who will perform the activities that fall within the scope of the activities of the company engaging such person. This contract can be concluded only with certain persons (unemployed persons, part-time employees or retired persons).

A service agreement is an agreement concluded for the performance of independent intellectual or physical work for the company, whereas such activity falls outside the scope of activities that the company performs. There is no time limit as to the length of such an agreement.

The Labour Law prescribes also a possibility for the employer to engage persons through other out-of-employment agreements such as: an agreement on professional training (this agreement can be concluded with trainees or other persons that wish to be further specialised in their profession; the employer may provide pecuniary remuneration for these persons, but this is not considered a salary), an agreement on additional work (an employee working full working hours may enter into an agreement on additional work with another employer, for up to 1/3 of full working hours).

Legal Grounds for Dismissal

The employer and the employee may terminate their employment relations in the manner prescribed by the Labour Law. In general, employment can be terminated in the following cases: upon the expiry of the agreed term; when the employee fulfils pension retirement conditions; by mutual consent of the employer and the employee; by dismissal (only in cases specified in the Law); upon the death of the employee; at the request of the parents or guardians of an under-aged employee and in other cases prescribed by the Labour Law (loss of working ability, official prohibition of further work activities, prison sentence, termination of employer's business activities).

Regarding unilateral dismissals, as one of the most frequently used reasons for the termination of employment, the employer may dismiss an employee only if there is a justified reason related to an employee's work abilities or his/her behaviour, as follows:

> if an employee underperformed or did not have the required knowledge or abilities for the performance of work for his/her work position ("professional inadequacy");
>
> if an employee has been finally sentenced for a criminal offence in relation to work;
>
> if an employee did not return to work within 15 days as of the date of expiry of his/her unpaid leave or employment dormancy period;
>
> if an employee had knowingly breached a work obligation determined by the law, general employment enactment or his/her employment contract;
>
> if an employee disrespected work discipline prescribed by the law or employer's enactment, or if his behaviour is such that it cannot be allowed that he/she continues to work for the employer;
>
> if, due to economical, technological or organisational changes, the need for the performance of certain work is terminated, or if the work load decreases (redundancy); and,
>
> if the employee refuses to enter into an annex of the employment contract (related to a change of his/her salary, work position or place of work).

Procedural Considerations

In order to effect a valid termination of employment, the employer must observe a number of procedural issues that differently apply depending on the circumstances of the particular case:

> Prior warning;
>
> Time-bar for dismissal;
>
> Redundancy related procedural issues;
>
> Trade Union opinion (non-binding); and,
>
> Termination notice requirements.

Notice Period

When dismissed for professional inadequacy, the employee will be entitled to a notice period of between eight and thirty days (depending on the total amount of time for which the employee has been a member of the social security system). The employee and the employer may agree to shorten or cancel such notice period on the condition that the employee is fully compensated for the entire duration of the notice period.

The Labour Law also mandates that the employee, when terminating employment on his/her own, provides a notice period of a minimum of 15 and a maximum of 30 days.

Apart from the situations noted above, no additional notice period is mandated by the Labour Law. However, if internal employment enactments or employment contract set a notice period, such notice period should be considered in a separate case.

Severance Payment

When dismissed due to technological, economical or organisational changes (redundancy) the employee is entitled to a severance payment in the amount determined in the employment agreement or the employer's general act. However, this payment cannot be less than 1/3 of the monthly salary per each year of work with the employer (and its affiliates); having in mind the average total monthly salary paid in the last 3 months (including bonuses and other mandatory payments considered as salary).

Furthermore, the employee is entitled to payment of severance in case of retirement in the amount of two average salaries in the Republic of Serbia according to the last published information by statistic authority.

Apart from severance in the case of redundancy and in case of retirement, no other severance pay is mandated by the Labour Law. However, if internal employment enactments or employment contract set for a severance pay in a particular case, such severance should be considered.

As the Serbian Labour Law is still slightly protective with respect to employees, and the Serbian courts tend to be favourable towards employees, it is of the utmost importance, in order to ensure that no valid employees' claims emerge with regard to the dismissal procedure, to strictly abide by the procedural requirements in each particular case. We would therefore advise that the assistance of legal counsel is required in every particular dismissal case.

Employees' representatives and union representation

Employees of an employer with more than 50 employees may form an employees' council, in accordance with the collective agreement. Freedom to organise in trade unions and trade union activity shall be guaranteed to employees. Trade unions are established to protect the rights and promote the professional and economic interests of their members. A trade union shall be established by the making of a relevant entry into the trade union register kept by the ministry in charge of labour affairs and shall require no approval. Trade unions shall be entered into the register in accordance with the law and other regulations. Trade union representativeness, for the purpose of this Law, shall be determined by:

> entry into the register, in accordance the law and other regulations;
>
> in respect to the number of members verified through membership application forms;
>
> if it is established and operates on the principles of the freedom of union representation;
>
> if it is independent of state authorities and employers; and,
>
> if it is financed predominantly from membership fees and other own resources.

A union having a minimum of 15% of the employees of an employer shall be deemed a representative trade union for concluding a collective agreement. A representative trade union for concluding a collective agreement at the republic level, and/or unit of territorial autonomy or local self-government, shall be considered a trade union having a minimum of 10% of employees in the branch or line of business for which the collective agreement is made, and/or of the total number of employees for concluding a collective agreement covering all the employees on the territory of a given territorial unit.

For the purpose of this Law, an association of employers with membership of a minimum of 10% of the employers in the branch or line of business for which the collective agreement is concluded, and/or of the total number of employers on the territory of a given territorial unit, shall be considered as a representative association of employers. In the case of concluding a General Collective Bargaining Agreement, the representative association of employers is an association encompassing 10% of the total number of employers on the territory of the Republic of Serbia provided its members employ at least 15% of the total number of employees on the territory of the Republic of Serbia.

If the conditions of representation in the terms of Articles 218-220 of this Law are not met by any of the trade unions, and/or by an association of employers specified in Articles 221 and 222 of this Law, the trade unions and/or employers may conclude an agreement on association in order to participate in concluding a collective agreement.

Collective bargaining agreements

The conclusion of collective agreement is voluntary. Collective agreements regulate rights, obligations and responsibilities in the field of labour relations. A collective agreement may be concluded as:

> general - for the territory of the Republic of Serbia (currently there is no such General Collective Bargaining Agreement in place);
>
> special - for the territory under local government or a unit with territorial autonomy, or within a special industry branch; and,
>
> individual - with the employer.

A collective agreement may be concluded between an employer or a representative employers' association and a representative trade union. Parties to the collective agreement are required to bargain. A bargaining board shall be established if several representative trade unions and/or associations of employers, participate in concluding a collective agreement for the territory of the Republic or unit of territorial autonomy or local self-government. Representatives of trade unions and employers' associations participating in bargaining for concluding a collective agreement and who conclude the collective agreement have to be authorised by their respective bodies. Collective agreements shall be directly implemented and shall be binding for all employers who at the time of the conclusion of the collective agreement were members of the employers' association - party to the collective agreement. A collective agreement shall be binding also for employers who subsequently became members of the association of employers - party to the collective agreement, as of the time of joining the association of employers. The Government may, for justified reasons, decide that the collective agreement or some provisions thereof shall also apply to employers who did not participate in the concluding of the collective agreement or have not become party thereof subsequently, in order to implement economic and social policy in the Republic. An individual collective agreement shall also be binding to the employees of an employer who are not members of a trade union - signatory to the collective agreement.

The previous General Collective Bargaining Agreement ceased to be valid as of September 2005, and the new one has not been yet concluded. There are only a few special Collective Bargaining Agreements in place – such as the Collective Bargaining Agreement for Agriculture, Tobacco, Food and Water Industry, the Collective Bargaining Agreement for Road Industry, the Collective Bargaining Agreement for Construction and Construction Material Industry etc. However, these agreements currently apply only to the signatory parties.

The Labour Law grants a clear preference for the regulation of labour relationships by way of a Collective Bargaining Agreement. However, in certain instances, this is not possible: 1) if a trade union is not established at the employer, or no trade union meets the threshold for representation or no agreement of association of unions in conformity with the law is not concluded; 2) if no participant to the Collective Bargaining Agreement initiates the negotiations for entering into the same; 3) if the parties to negotiations fail to agree within a maximum of 60 days from the day that the negotiation began; and 4) if the employer invites the union to negotiations and the latter fails to respond within 15 days. In such situations the labour rulebook can regulate labour relationships. The labour rule book is passed by the board of directors_/_management of the company and is thus a unilateral act. As soon as the individual Collective Bargaining Agreement enters into force, the labour rulebook shall cease to apply.

Wages and other types of compensation

Earnings

An employee shall be entitled to an appropriate salary determined in accordance with the law, or employment contract. An employee shall be entitled to equal salary for the same work or work of equal value performed with an employer. According to the Labour Law, it is not possible to determine a fixed amount of the salary, as the Labour Law provides for a rather complex manda-

tory structure of the salary and numerous mandatory payments. The salary shall include the salary effected for work performed and time spent at work, bonus earnings, compensation of salary and other incomes. Elements for and the manner of determining the earnings shall be defined in a general act or employment contract.

Salary for the work performed

Salary for the work performed and time spent at work consists out of: the basic salary (based on conditions of work set for the job in question), performance part of the salary (based on the quality and quantity of the work performed and employee's relation towards work) and increased salary.

Increased salary

An employee shall be entitled to an increased salary pursuant to a general act or employment contract, in the following cases:

> for overtime work: at least 26% of the basic salary;
>
> work on public holidays: at least 110 % of the basic salary;
>
> night work (if this work was not considered in establishing the basic salary)-at least 26% of the basic salary; and
>
> annual increases for the length of service with the employer and its affiliates (seniority increase): 0.4% of the basic salary for each year of employee's service with the specific employer (including employer's related companies).

A general act or employment contract may determine other cases in which an employee shall be entitled to increased earnings. Those earnings shall be paid out within the periods determined by a general act or employment contract. Salary is paid at least once a month and shall be paid in money exclusively, unless otherwise prescribed by the Law.

Minimum Salary

An employee shall be entitled to a minimum salary for standard performance and full working hours. The minimum earnings are determined by the decision of the Social and Economic Council established for the territory of the Republic of Serbia. If the Social and Economic Council does not adopt a decision within 15 days from the start of negotiations, the Government shall decide on the amount of the minimum labor price within the next 15 days. In determining the minimum salary, the following will be especially considered: costs of living, subsistence and social needs of an employee and his/her family, rate of unemployment, employment trends in the labour market and the general level of economic development in the Republic. The minimum salary shall be determined per working hour and cannot be lower than the determined minimum earnings from the previous year, and are published in the "Official Herald of the Republic of Serbia". Recently, the decision on the new minimum salary for 2020 has been rendered. According to such a decision, the minimum salary in 2020 shall amount to net Eur 1.47 (RSD 172.54) per hour.

Refund of Expenses

An employee shall be entitled to a refund of expenses for traveling to and from work and for a business trip in the country and abroad, in the amount determined by a general act or employment contract.

An employee is also entitled to a refund of expenses for: accommodation, nourishment and on-field operations, if the employer has not provided accommodation and nourishment; nourishment during work and compensation for the use of annual leave.

Salary Compensation

An employee is also entitled to a salary compensation during a justified absence from work for: a holiday which is a non-working day; annual vacation; paid leave; military drill; leave in case of a summons by governmental bodies; in case of sick leave; during interruption of work due to the Employer's fault etc.

Other Income

An employer is liable to pay, in accordance with the general act: a retirement gratuity in the amount of no less than 2 average salaries, a refund of expenses for the funeral of the employee or his/her immediate family member, damages for the workplace injury or professional or profession related disease.

The employer may provide Christmas gifts for employees' children, voluntary pension insurance or disability insurance, jubilee reward, solidarity aid and other payments if determined by the general act or the employment contract.

Social Security

The social security system in the Republic of Serbia is based on the mandatory public pension, health and unemployment insurance. The social security contributions are due by the income payer and income receiver in case of the payment of salaries, compensations to the management board members, persons performing temporary and periodical jobs and in other inapplicable cases. Social security contributions are due only by the income receiver in case of persons receiving agreed compensation (e.g. service providers under a service contract), shareholders of companies and in other inapplicable cases. The social security contributions are, in principle, always payable by the income payer. The only exceptions refer to situations where the income payer is not a legal entity or is a non-resident, not obliged to calculate and withhold social security contributions (international organisations, diplomatic missions etc.). In these cases, the income receiver is obliged to report the income and calculate and pay the social security contributions himself/herself, or pay based on an assessment of the Tax Authorities. On the basis of the employment contract or another contract on conducting activities concluded under the Labour law, the employer is obliged to file an application for mandatory social insurance at the latest prior to the moment the employee, or other persons engaged for work, start working.

Health and safety

The most important rights arising out of state health insurance are: (i) health protection (this right encompasses almost all medical services: general practice, diagnostics, all kinds of therapy, medication, special practice examinations, surgeries, etc. whereby the insured person has to participate in the expense of the service, the amounts of which are usually rather symbolic) and (ii) salary compensation during sick leave longer than 30 days. During sick leave, the employee is entitled to receive compensation in the amount of 65% of its salary in case of work unrelated sickness or injury, whereby such compensation is covered by the employer for the first 30 days of the sick leave

and thereafter by the State Health Fund; i.e. 100% in the case of a work related injury or sickness, whereby such compensation is covered by the employer from the first day of the sick leave and for the entire duration of sick leave.

Occupational hazards and the protection of employees' health and safety are regulated by the Health and Safety at Work Law ("Official Gazette of the Republic of Serbia" no. 101/2005, 91/2015 and 113/2017 – other law). The employer is obliged to secure the conditions of work and the work environment in which all measures related to safety and health at work have been taken.

If the employer has more than 10 employees, it must assign the work related to labour safety and health to one or more of its employees – having passed a relevant professional exam, or to engage a legal entity or an entrepreneur with a special license. The employer has to issue a written deed determining the responsible person for labour safety and health. The Ministry for Labour is in charge of the relevant professional exams and licensing.

The employer must receive a certificate on the fulfilment of all the conditions related to safety and health at the workplace before the commencement of its operations, and the employer has to inform the labour inspection at least 8 days in advance of its commencement of work and of any change in technology which affects the work conditions.

A company must provide industrial safety training to employees during working hours.

Every employer also must provide a Workplace Risk Assessment Act, which should include an explanation of the working processes, along with the assessment of possible risks at the workplace, measures for reduction and elimination of risk, and medical terms for special working conditions. The mode and procedure of risk assessment is to be regulated by a special regulation issued by the Minister.

The employer is obliged to insure its employees for workplace injuries, professional and work-related diseases, in order to ensure the adequate compensation of damages. This type of insurance has not yet been regulated by a special law.

The employer is obliged to provide for the prevention and periodical check-ups of the equipment and the workplace by licensed entities. Work premises where toxic and hazardous substances are used in the industrial process must also be tested for chemical harmfulness (gases, vapours, etc.), physical harmfulness (noise, vibrations, etc.), lightness and biological harmfulness.

The employer is also obliged to provide for the prevention and periodical medical examinations of the employees.

Registries

Data on real properties is maintained in the publicly available Cadastral Registry. The Cadastral Registry contains both "technical" and "legal" data on immovable properties.

Ownership rights over land or buildings are generally obtained upon registering those rights at the relevant registry (the Cadastral Registry). Acquirers are deemed to be aware of all the registered matters. In practice, it is considered acceptable to acquire a title from an unregistered owner, and the registries will register such title, if there is sufficient evidence linking the acquirer with the currently registered owner as the previous transferor.

The ownership transfer documents must be in written form, with signatures authenticated before the notary public. The document must contain explicit consent of the transferor that the acquirer may be registered as the owner (clausula intabulandi).

Apart from real estate in the narrow sense – land and buildings, the Cadastral Registry also contains a cadastre of grids, which is supposed to contain data on waterworks, sewage and drainage, heating, electro-energy, telecom, oil and gas grids, respectively. The cadastre of grids is not yet fully operational, since not all of the relevant data on the existing grids has been registered in it.

The new Law on the Registration Procedure with the Cadastre of Real Estate and Utilities entered into force in June 2018. It introduced significant innovations, primarily concerning the method of filing applications and documents with the Cadastral Registry, and the relation between the Cadastral Registry and other authorities, as well as the deadlines for rendering decisions. Various authorities, such as public notaries, courts, bailiffs can submit their documents to the Cadastral Registry electronically via e-Service, ex officio, within short deadlines. The submission of a request for registration in paper form remains an option until 31 December 2020, and even after that date for submitting hard copies of appeals and other legal remedies, along with related evidence.

Buyer and seller liability

Commonly, the buyer has only one liability/obligation arising from real estate sale-purchase agreements – the payment of the purchase price and the payment of potential interests, if any. The seller is responsible for the material and legal defects of the property.

The seller is liable to the buyer in case there are any claims by third parties which may exclude, diminish or restrict the rights of the buyer acquired from the seller. If such claims arise, the seller is obliged to protect the seller. This means any assistance which would result in the rejection of the claim or right of the third party. If not, the sale agreement is considered automatically terminated by law, and the buyer is entitled to a compensation of damages. The seller's liability may be contractually restricted or excluded, except in cases when the seller was aware of the defect.

The seller is liable for the material defects in case, for example, that the property is not fit for regular use, or the property is not fit for the special purpose of which the seller was aware, or the property does not have the characteristics explicitly or implicitly agreed by the parties.

This seller's liability may result in the automatic termination of the agreement, in case the seller failed to remedy the existing imperfections in the additional term provided by the buyer. The buyer is also authorised to require a compensation for damages.

In addition, according to the Serbian Law on Contracts and Torts, when a certain pool of assets is being transferred, together with the assets, the buyer also becomes jointly and severally liable alongside the seller for all liabilities in relation to that pool of assets, up to the value of the assets transferred.

Rights of foreigners to acquire real estate

A foreign entity can purchase construction land and buildings in the Republic of Serbia necessary for its business operations, subject to reciprocity, or, as the case may be, in accordance with the terms set out in a treaty between Serbia and the country of the foreign entity. In general, foreigners are banned from acquiring ownership of agricultural land. As an exception, citizens of EU Member States under certain conditions can acquire agricultural land.

Agricultural land, as private property, can be acquired by EU citizens under the following conditions:

> The acquirer must be a permanent resident of in the place where the subject land is located, at least for ten years;
>
> The acquirer must cultivate the subject land for, at least, three years;
>
> The acquirer must be the owner of the family agricultural farmstead that had an active status for ten years without discontinuance; and,
>
> The acquirer must have agricultural machines and equipment for performing agricultural production.

The subject of the acquisition can be a maximum 2 ha of agricultural land which is not:

> designated as construction land;
>
> under special protection;
>
> on a border with military zones and facilities;
>
> on a border with a secure zone; and,
>
> agricultural land in a 10-kilometer zone next to the Republic of Serbia's borders.

If a foreign entity establishes a subsidiary in the Republic of Serbia, such a subsidiary is treated equally to any other local entity acquiring land and buildings, regardless of the origin of the founder or its controlling share. This means that foreign persons and entities may indirectly own real estate in the Republic of Serbia through their Serbian subsidiaries without any distinguishing limitations.

It can be expected that the regime of foreign ownership of real estate in Serbia will be further liberalised in the coming period. The Stabilization and Association Agreement between Serbia and the EU (the "SAA"), which entered into force in September 2013, prescribes that, within four years from the entry into force of the SAA, Serbia shall progressively adjust its legislation concerning the acquisition of real estate on its territory by nationals of EU Member States, to ensure the same treatment in comparison to its own nationals.

Construction permits

Urban planning

The issuance of building permits is conditional on the existence of a sufficiently detailed urban plan. Such plans are adopted by the relevant authorities for the state, regional or local level. In order to prevent the situation where the investor cannot obtain a building permit due to inaction of the state body which is supposed to adopt the required urban plan, it is under certain conditions possible to obtain the permit even without such urban plan, in accordance with the Planning Law.

The most notable recent developments in this area are that in 2016, when the City of Belgrade adopted a new General Urban Plan and the Plan of General Regulation. In addition, Belgrade also adopted detailed plans of regulation for certain parts of the city, with more such detailed plans on the way. The City of Belgrade should present the new General Urban Plan 2041 in the summer of 2021 and will include 12 municipalities.

Building permits

To commence construction works, the developer must obtain a construction permit from the relevant authorities.

In 2014, amendments to the Planning Law significantly changed the procedure of issuing building permits, simplifying it considerably. Now, most of the documents that an investor needs to obtain from the relevant authorities are issued in a uniform procedure, with the objective of enabling the investor a one-stop-shop in this process. Another important novelty is the introduction of an electronic system of application for the necessary building permits – even though the system is relatively new, it has come into life and building permits are now being issued electronically.

The introduction of the new system has had very positive effects in practice – in the period between March and December 2015, when the new system started applying, the number of issued construction permits rose by a third, in comparison to the same period in 2014. Further, 2015 saw a rise in the construction industry output of around 20%, which is significantly higher than the increase of Serbia's total GDP for that year (which was around 0.8%).

In August 2019, 2,136 building permits were issued, representing an increase of 9.1% in comparison to August 2018. By types of constructions, 80.6% of the issued permits are related to buildings and 19.4% are related to other constructions in August 2019. The greatest construction activity is planned in the area of Belgrade. This is a sign that the Serbian construction industry is in expansion, and that the state is resolved to further foster this growth by cutting the red tape surrounding the issuance of building permits.

In general, in order to obtain a construction permit, the developer must have a proper title to the land on which he intends to build - the right of lease or the right of ownership. After the 28th of

July, 2016, the right of use is no longer considered the proper title for obtaining a construction permit – holders of such rights must first convert their rights of use to ownership – or enter a long-term lease, in order to obtain the necessary permits.

The competent authority needs to issue a construction permit within five working days from the date of application for such a permit. A construction permit ceases to be valid if, within three years as of its finality, the investor does not commence construction works. As a rule, a construction permit also ceases to be valid in cases where the investor does not complete the construction and does not obtain a usage permit for the new structure within five years from the day of finality of the permit. An additional two year extension may be granted if it has been determined that the building has been completed construction-wise, based on the record of the competent construction inspector. If these deadlines are not observed, the investor is supposed to pay the property tax for the building in the entirety, as if the building was completed in accordance with the issued construction permit, until a new construction permit is issued for that location.

Once the building is completed, the competent technical commission is required to assess whether the building was completed in accordance with the technical designs, permits and consents. The technical commission is engaged by the investor. In case of a positive assessment by this commission, the investor can apply for a usage permit – which is necessary for the use of the constructed building. If the competent body does not decide on the request within five working days of the application, the constructed building can be used even without such a permit, provided that the assessment of the technical commission was positive.

Once the usage permit has been obtained, the authority which issued the permit ex officio registers the right of ownership in the Cadastral Registry.

Mortgages

There is a duality of legal regimes for mortgages in the Republic of Serbia. The law differentiates between court enforceable mortgages and, so called, out of court enforceable mortgages. An out-of-court mortgage was introduced in 2005 by the Mortgage Law, and provides for a more efficient enforcement procedure than is the case with mortgages created in court procedures – based on mortgages enforceable out of court, claimants are authorised, under certain conditions, to independently sell the mortgaged properties, while the enforcement of mortgages created in court procedures involves a number of formalities.

Under the Mortgage Law, it is also possible to establish a mortgage over buildings undergoing construction. Such mortgages can be established and registered after obtaining a construction permit. This kind of mortgage is a security which is regularly used by the banks in financing construction projects. Once the structure is fully constructed and registered in the real estate registry, the registration of the mortgage over such constructed structures is performed simultaneously – unless the secured obligations are settled in the meantime and the mortgage is deleted. Mortgages are registered on the basis of relevant documents (e.g. a mortgage agreement) which, among other things, have to contain a clear statement by the pledger allowing the establishment of a mortgage over a certain property.

Expropriation

A property may be expropriated or ownership restricted if required in the public interest, in accordance with the Law on Expropriation. The public interest for expropriation may be determined by the Law or by a Government decree for specific development projects in the areas of education, health care, social welfare, culture, water distribution, sports, traffic, energy and utility infrastruc

ture, state, provincial and municipal institutions, defence, environment and disaster protection, mineral resources exploitation as well as public housing projects. In case of expropriation, market price compensation is payable to the person whose property is the subject of expropriation.

Restitution

In October 2011, the Republic of Serbia enacted the long-expected Law on the Returning of Seized Property and Indemnification (the "Restitution Law"). The Restitution Law regulates the conditions, manner and procedures for returning of and the compensation for property that was taken from individuals and certain legal entities after the 9th of March, 1945, in the territory of the Republic of Serbia and then transferred to the national, state, social or cooperative property on the basis of agrarian reform, nationalisation, sequestration and other regulations. The Restitution Law provisions apply to land, buildings and movable assets, as well as to companies that were seized in the past.

The in-kind restitution is set as the main principle. Where it is not possible, the state is to provide compensation through the issuance of government bonds. The maximum amount that one may receive as compensation is limited to EUR 500,000. Also, 10% of the compensation is payable in cash, once the decision on the returning of the property becomes final.

Nationalised property, which was in private ownership at the time of entry into force of the Restitution Law, is not subject to restitution in kind – only compensation from the state is available. This includes property acquired in the privatisation process.

The procedure for the return of a seized property and indemnification is conducted before the Restitution Agency, as the first instance body, and the Ministry of Finance, as the second instance body where decisions by the Restitution Agency are challenged. In February 2012, the Restitution Agency announced a public call for the submission of restitution requests. The submission of the restitution requests was possible during a 2-year period – which ended in March 2014. Almost 600,000 requests were submitted in this time frame.

The Restitution Agency received approx. 76,000.00 of requests until the end of 2017, and issued approx. 50,000.00 decisions and conclusions.

Spain

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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

ILP Abogados

Regulations and Rules

The legal framework of Corporate Law in Spain consists of:

- The Code of Commerce (1885) (Articles 116 to 150; 169 to 237)
- The Joint Stock Companies or Public Limited Companies (RD 1/2010 Ley de Sociedades de Capital, LSC)
- The Private Limited Companies (RD 1/2010 Ley de Sociedades de Capital, LSC) The Rules of Mercantile Register (RD 1784/1996)
- Private Equity Act 25/2005
- Bankruptcy Act 23/2003
- The Securities Exchange Act (24/1988)

In European Law, the main sources are:

- Law of Mercantile Adaptation to the European Community Standards (Act 19/1989)

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 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)

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 3,000 euros, 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)

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.

The establishment of a branch – amended by the Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State – requires:

A formal resolution of the foreign head office governing authorizing the establishment of a branch in Spain and appointing a representative.

The resolution must be duly legalized to be valid in Spain, in order to constitute the branch with a Spanish Notary.

Application for CIF (tax identification number) in the Tax Office´s of the registered branch office with the articles of the association and the DNI or NIE of the representative agent in Spain.

Sell off the ITP tax (Impuesto de Transmisiones Patrimoniales y Actos Jurídicos Documentados); it is mandatory to lodge it, but there is an exemption for the incorporation and for the capital increase.

Registration of the public deed in the Mercantile Registry in Spain (of its register office), including a copy of the head office's corporate bylaws duly stamped with an Apostille issued under the Hague Convention and a sworn translation into Spanish.

Share Capital (minimum and minimum paid in amount)

Company	Minimum (S)	Minimum paid in amount (S)
PLC or Joint-Stock Company (SA)	60.000	25%
Company Limited by Shares (Limited Liability Companies) (SRL)	3.000	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	100%
Private Equity Companies	1.200.000	50%
Hedge Funds	3.000.000	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 (160 LSC):

- Approval of financial statements and distribution of profits and Approval/Censure of Management (Art. 160).
- Appointing and Removal of Directors (Art. 209-252), Auditors (Art.264), Liquidators (Art. 376-382).
- Changing the By-Laws: (Art. 285-345)
- Winding-Up or Dissolution (Art. 360-370)
- 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.

Decision-making bodies

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 (Art 214 LSC and Art. 142 Rules of Mercantile Register).

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.

Minimum number of independent Directors

There is no binding rule. Nevertheless, "The Olivencia Report" and "The Aldama Report" - two Codes of Best Practice - provide some recommendations concerning this question.

Term of appointment

For Joint-Stock Companies (SA). The term of appointment shall never be longer than 6 years (Art. 221.2 LSC and 145 Rules of Mercantile Register)

For Companies Limited by Shares (SL). Directors may be appointed for an undetermined period of time (Art. 221.1 LSRL)

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 companies, 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; 25LSC

Annual Accounts-Financial and operating results: Duties and Liabilitie

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 Accounts (Cuentas Anuales) no later than 3 months after the end of the corporate year (December, 31). 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

The Private Equity Act (November 2005) regulates the so-called "Venture Capital Entities" and their Management Entities.

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.

Bankruptcy

The reform of the Spanish Insolvency Act (Ley Concursal) carried out in September 2003 was a very relevant change because it finished off a legal system which had finally become obsolete. The modification of credit categories and its preferences was one of the most important elements of this reform.

Quoted Companies

Regulation:

Ley de Sociedades de Capital (Arts. 495-528)

Ley 24/1988, de 28 de julio, del Mercado de Valores.

"The Olivencia Report" and "The Aldama Report" - two Codes of Best Practice - provide some recommendations concerning Quoted Companies. However, there is a new -January 2006 - specific Best Practice Blueprint for quoted Companies, known as "The Conthe Report" and properly named "Unique Code for Best Practice Corporate Governance of Quoted Companies". This Code includes the European Commission Recommendations (2005/162/EC) and (2004/913/EC).

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)	20/25%
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:

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:
    - Income obtained abroad not imputed by means of the regime of international fiscal transparency (passive income).
    - Dividends resulting from benefits, as well as gains resulting from the transfer of the stake in entities not resident in Spanish territory.

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.

Other special tax regimes

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	Interest	Royalties
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
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

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	Incompatibility
TT versus CT		X
TT vs SD (variable)	X	X
TT vs SD (fix)		X
CT vs SD (variable)	X	
CT vs SD (fix)		

Compatibilities with VAT		
	Compatibility	Incompatibility
Transfer tax		X
Capital Tax		X
SD (Variable)		X
SD (Fix)	X	

Prior warning

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, there are no court costs before the Labor Jurisdiction, so suing the employer is easy in Spain because no legal costs are incurred if the worker is defeated by the Company.

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 three types:

> **For Works:** it is used for a particular work or service, always with an uncertain duration, but always subordinated to the work or service to be performed. Maximum duration limited to 3 years.
>
> **Temporary:** Serves to substitute a worker until his/her reincorporation, e.g. Forced Absence (exercise of Public Positions); must be written.
>
> **Casual:** it is used to attend to market conditions (circumstances and production) resulting from the accumulation of orders and/or an excess of tasks. Cannot exceed 6 months within a period of 24 months (Otherwise the contract must be made permanent). The contract must be in writing if the period is longer than 4 weeks.

The transformation of these contracts (Works, Temporary and Casual) to permanent contracts once that maximum duration has been completed operates automatically. In case the contract stops fulfilling all the requirements for a modality (Works, Temporary and Casual), 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:** once the student has finished his education, he/she participates in a business as an intern, and the employer must provide a certificate of the training received at the end of the period. 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 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.
>
> **Apprenticeship:** This is for workers to obtain diplomas, degrees and equivalents. For professions where no higher education is required. The age of the worker must be necessary between 16 and 21 years old, in case of unemployed it may be rise to 24, and not to be in possession of the qualification required for the post. It may last minimum 6 months and maximum 3 years. It can be part-time, but the program must necessary include at least a 15% of lessons.

Other special contracts

It consists on providing the worker with knowledge and techniques to develop his/her work, there are two types:

> Group work is for a group of workers having a link with the firm and a group leader; not necessarily written.
>
> Working from home, without supervision by the firm, written
>
> Substitution, 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; the training in this case has 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 Apprenticeship, the handicapped person must provide the disability certificate, as well as the education certificates. The apprenticeship period may start up to 6 years from completing 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 of the working woman: The suspension for maternity is 16 weeks, 18 weeks in the case of multiple births. The woman can opt to take 6 weeks before childbirth. The father can use the last 4 weeks, if both of them are employed. 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 5.

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 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: i.e. temporary contracts (training, relief...) or for a determined duration (a particular works or services) in which the cause is not justified or accredited.

Law 35/2010, on September 17th about the improvement of growth and employment, provided a new wording for article 15.5 of the Workers' Statute, with the following literal reading:

Without affecting the provisions set down in sections 1.a), 2 and 3 of this article, employees who have been contracted for a period over twenty-four months in a period of thirty months, with or without a continuity solution for the same or different work position with the same company, through two or more temporary contracts, whether directly or by being made available through temporary employment companies, with the same or different contracting modes, shall acquire the condition of fixed contracts.

This prevention will be also applied to those cases of fusion or combination of societies.

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, relief or substitution 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 of the work or service contracted. Temporal contracts, except for temporary and training contracts, grant the employee the right to receive an indemnification of eight days of salary for every year worked. Since September 2010 this regime is being gradually changed:

- Contracts celebrated before December 2011: 8 days of salary per year of service
- Contracts celebrated after January 2012: 9 days of salary per year of service
- Contracts celebrated after January 2013: 10 days of salary per year of service
- Contracts celebrated after January 2014: 11 days of salary per year of service
- Contracts celebrated after January 2015: 12 days of salary per year of service

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) Absenteeism, during a 20% of labor days in two continued months, or 25% of labor days in four discontinuous months, not taking into account periods of: strike, maternity, risk during the pregnancy, holidays, or illness or accident. 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 all of these cases, the dismissal must be notified in written, within previous 15 days expressing the cause and paying the legal indemnification.

Disciplinary Dismissal: Must be based on a grave and guilty breach of the workers' obligations, such as: Repeated and unjustified braches of attendance or punctuality; lack of discipline or disobedience; verbal or physical offences against the employer, fellow workers or relatives that live with them; breach of contractual faith or abuse of confidence in the course of the job, continued and voluntary decrease in the normal or agreed work yield, habitual and serious drunkenness or drug-addiction with negative repercussions at work.

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:

- Fair, in which case, there is no indemnification.
- 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 of extinction	Unemployment Compensation	Maximum legal	
Cause of termination	Compensation	Maximum	Right to Collect Unemployment
1. Mutual consent	If included		No
2. Temporary work or service	From 8 to 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 with judicial resolution	45 days/year	42 months	Yes
6. Unfair cause	33 days/year	24 months	Yes
7. Worker resignation	No		No
8. Incapacity	No		Yes/No
9. Died	15 days		No
10. Retirement	No		No
11. Died, incapacity or retirement of the employer	1 month		Yes
12. Termination with extinction of the corporation	20 days/year	12 months	Yes
13. Objective/Fair causes	20 days/year	12 months	Yes
14. Unfair causes	33 days/year	24 months	Yes
15. Promoting for permanent contracts:			
a) Unfair	33 days/year	24 months	Yes
a) 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 30 euros/day or 900 euros/month, depending on whether the wage is set by days or by months. 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 certain 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, Spaiń 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 5 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

The authorities have recently modified the Retirement Policy. Taking into consideration the important repercussion of its effects, it will be implanted progressively. So that from 2013 to 2027 the age of retirement will increase proportionally month by month, and in the end the age of retirement will be 67 years old, and the compensation will be calculated over the incomings of the last 25 years.

ILP Abogados

Introduction

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.

Prior declarations of investments are made by the investor on the preprinted applications DP- 1 (Previous declaration of foreign investment coming from tax havens in non listed companies, branches and other type of investment) or DP-2 (Previous declaration of foreign investment coming from tax havens in real assets). No documents are annexed to these applications.

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.

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 approved 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.

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 Själland (Copenhagen) in Denmark. The region, with its 3.9 million inhabitants, is a transnational region within the EU.

Moll Wendén offers first-rate competence in company law, mergers and acquisitions, financing, real property transactions, litigation, IT and telecom, intellectual property, labour law, competition law and public procurement. The lawyers at Moll Wendén have sector-specific expertise in areas such as the food industry, real property and construction, 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 ten to twenty 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.

Sweden

Corporate Law

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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 in Sweden also possible 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 the 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 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 the companies in Sweden are private companies. The company name of private companies may not include the word "public" and the names of public companies 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 private as well as public companies. In addition to the Act, companies which are quoted on the Stockholm Stock Exchange must follow certain set of rules which apply to quoted 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 50,000 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 quoted companies are registered electronically through a system known as Euroclear Sweden. Companies that are not quoted 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 always is 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 50,000 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 if the articles of association or a shareholders' meeting hasn't decided otherwise. At least half of the directors and the alternate directors must be resident within the EEA (it is possible to apply for an exemption). If no board member, no managing director and no 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, from a labour law perspective, to his employment contract). The managing director must have its residence in the EEA (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 violation by the director 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 quoted 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' meeting 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 decisions can be adopted by the shareholders' meeting by simple majority. However, some decisions, 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 a business activity are under an obligation 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 auditoŕ s mandate period is normally one year. However, in the article of association it may be stipulated that the auditoŕ 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 send it to the Swedish Tax Agency. On registration, the employer will automatically be sent documents and information re

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 has to 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 authorize 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 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 authorized 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 supply 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.

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.

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General

Limited companies and certain other legal persons must pay a corporate tax of 22 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 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 the 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 pays 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".

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The employment contract

General

In Sweden, binding employment contracts can be made orally or in writing. However, under the provisions of the Swedish Employment Protection Act (1982:80), employers must provide each employee with a written statement of the terms and conditions of employment within one month after the commencement of the employment. The statement shall include the following details:

> name and address of the employer and the employee;
>
> the place of work and the commencement date;
>
> the employee's position or work duties;
>
> the form of employment, i.e. if the employment is permanent, on trial or a fixed-term employment, including information on notice period and trial period for permanent employment, and conditions triggering termination of a fixed-term employment, such as the expiration date;
>
> wages and other benefits, including payment intervals;
>
> information on normal working hours and paid holidays;
>
> the applicable collective bargaining agreement (if any);
>
> 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.

Such statements are not necessary for employments lasting less than three weeks.

Forms of employment

The main rule is that employment contracts are concluded for an indefinite term (permanent employment), unless otherwise agreed. Agreement can also be made on probationary employment with a trial period of up to six months. A probationary employment transforms into a permanent employment unless terminated according to certain procedures prior to the expiration of the trial

period. Regulations regarding fixed-term employment is restrictive and complicated. The general rule, states that any fixed term contract will automatically be converted into a permanent employment if the employment through fixed-term contract cumulatively lasts 24 months in a given five-year period.

The given period (five years) may be extended if the fixed-term contracts are used in combination with substitute employments, paid internships or seasonal work. It is important to note that gaps up to six months between different types of employments does not affect the view of the employment period as "unified" and thus will lead to conversion into a permanent employment.

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 overtime hours is extensively regulated in most collective agreements.

Trade unions and collective bargaining agreements

General

Trade unions play a very important role in Sweden. The legal relationship between employer and employee is to a large extent regulated in collective bargaining agreements. The Swedish Co-Determination at Work Act (1976:580) contains the general provisions governing the relations between the employer and the unions. The Act sets forth the rights of employers and employees to associate in and act through organisations without interference by the other party. Moreover, the Act 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 contracts. 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 it is a common understanding that the employer generally must also provide non-members the same wages and other terms and conditions as the collective bargaining agreement provides. 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.

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 (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

Dismissal on part of the employer must have just cause in order to be valid. Reasons for dismissal can be divided into two main categories, one being redundancy, the other being the employee's personal conduct. Certain employees, primarily those holding a managerial position, are not protected by the mandatory minimum requirements on employment protection in case of for example dismissal. If an employee who has been dismissed without just cause brings action against the employer, the Labour Court may declare the dismissal invalid and order the employer to pay damages, which may be considerable.

Dismissal for 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, an employee having concluded an employment agreement subsequent to 31 December 1996 has a mandatory notice period of between 1 and 6 months depending on his total period of employment with the employer. For employees having entered into an employment contract prior to 1 January 1997, the notice period is instead determined on the basis of the employee's age.

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 relieved from his duty to work. 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 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 subject to any collective bargaining agreement are obliged to negotiate with all trade unions having at least one member employed by such employer, if an intended decision may result in redundancies.

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 contracts 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 include an obligation for both parties to present motivated proposals for a solution of the subject matter of the negotiation. The Labour Court may award damages 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 primarily obliged to find alternative work for the employees within the company. This means that the employer must offer any vacant positions to employees threatened to be made redundant, provided that they have the basic qualifications to resume 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.

Dismissal for personal reasons

According to the Employment Protection Act, an employee may be dismissed for personal reasons in either of two ways. Firstly, dismissal can be made with notice where the same notice periods and other requirements apply as outlined above in relation to dismissal for 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. As the meaning of "just cause" is not defined in the Act, 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 dismissal for 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.

Dismissal with notice can validly be made for a number of reasons, including repeated late arrivals, disobedience, harassment, competing activities or other acts of disloyalty, negligence in performance, and acts subject to criminal liability. However, dismissal with notice is the last resort for the employer, and cannot validly be made unless the employer has given the employee a reasonable chance to improve and also exhausted the possibilities to transfer the employee to another position. Dismissal without notice is reserved for severe 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 contract.

Holidays

According to the Swedish Holidays Act (1977:480), the minimum general holiday entitlement is twenty-five days' holiday 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.

Working time

In Sweden, working time is mainly governed by the Swedish Working Time Act (1982:673). The ordinary working time is limited at forty hours per week. The requirements under the Act are mandatory, but may be overruled by a central 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 specific employees, mainly managing executives and uncontrolled employees, the Act applies to all work except work performed at sea (seamen) and in the employer's household, which is subject to separate legislation.

Sick pay

Under the Sick Pay Act (1991:1047), the employer has to pay eighty per cent of the employee's salary and benefits during the first 14 days of a sick leave. However, the employer may deduct approxima

tely one day's salary from the sick pay in accordance with the provisions in the Sick Pay Act. If the sickness period exceeds 14 days, sickness allowance is payable to the employee under the National Social Insurance System. The employer is in such cases obligated to pay a fee to the National Social Insurance System corresponding to fifteen per cent of the employee's benefit. Under many collective bargaining agreements employees are entitled to more favourable terms and conditions in relation to sick pay and to supplemental sickness allowance.

Parental leave

Under the Parental Leave Act (1995:684) parents with children below the age of one and a half year are entitled to full parental leave. The employee also has the right to reduce the working time by twenty-five per cent until the child is eight years old. In addition, parents are entitled to parental leave during such time they receive parental benefits from the National Social Insurance System. Such benefits are paid to the parents during 480 days. For children born after the 1 of January 2014 such benefits may be payed until the age of twelve. Regarding children born before that date, such benefits are payed until the child reaches the age of eight. 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.

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.

Confidentiality

In Sweden, trade secrets have primarily been protected by the provisions of the former Swedish Trade Secrets Protection Act (1990:409). On July 1st, 2018, a new Trade Secret Protection Act (the "Act") entered into force in Sweden. The new Act is a result of the implementation of an EU directive on the protection of trade secrets. Through the new Act the protection of trade secrets has been further strengthened. This has been accomplished by letting more infringements of trade secrets being considered as unauthorised, by letting more infringements result in liability to pay damages, and by strengthening the protection of confidentiality of trade secrets in trial. Further, the new 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. The employee shall be free to use any obtained knowledge in the course of a new employment. In other words, the provisions protecting trade secrets from being disclosed by employees are in principle limited to the duration of the employment. Subsequent to the termination of the employment, only very severe breaches of the Act may result in a liability to pay damages for the employee. However, 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.

Non-discrimination rules

The Anti-discrimination law (2008:567) intends to promote equal rights for women and men regarding employment, conditions of employment and other conditions of work and also to provide opportunities for personal development in employment. The rights of ethnic minorities are also governed by the law. Furthermore, the law prohibits discrimination in the labour market of the disabled persons as well as discrimination based on sexual orientation, gender, ethnicity, religion and age. Generally, the non-discrimination legislation applies to employees, but also to the entire recruitment procedure, implying that refused applicants may seek relief even if the recruitment procedure does not result in a decision to hire.

Health and safety

The Working Environment Act (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 co-operate on work environmental matters. The working environment in principal comprises all conditions at workplaces. The Act applies to the physical safety of employees but also to mental and psychological work conditions at workplaces generally. 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.

Future outlook

A governmental committee has been appointed to put forward suggestions on how to, in some aspects, modernise Swedish labour law. The committee will put forward their suggestions for new legislation by 31th of May 2020. The outcome of this committee will most probably lead to changes in Swedish labour law.

Sweden

Foreign Investment

Moll Wendén

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 Permits

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 no requirements for foreign investors to register or obtain authorization for making investments in Sweden. 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. 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 member reside 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.

Foreign Personnel (permits etc)

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

Sweden may, in the foreseeable future, start to implement rules regarding foreign investments. The new 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. The regulation aims to enhance cooperation and knowledge within in the Union regarding foreign investments in the EU. This, together with a domestic debate, has led to the appointment of a governmental committee that will make suggestions on how to regulate foreign investments in areas relating to security and public safety. The committee will submit their suggestions on a Swedish system for screening of foreign investments by 2 November 2021.

Moll Wendén

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 estate 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 has to 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)* gives the owner a possibility to own their own apartment in an apartment building. Ownership apartments mean greater autonomy because you own the apartment and you can register it under the same rules as for other types of property. In addition, no tenant-owner association must approve purchases or subleasing. The owner of the apartment may freely pledge, encumber or dispose of their 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 seven regional branches in Sweden.

All registered property units have specific names and codes, normally consisting of the name of the municipality or city where the property is situated, an area name and numbers for local identification. 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. Gravationsbevis).* 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.

Land Registry

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 normally 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 *(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. As regards 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 registered in the Land Registry, the Land Registration Authority issues a certificate of title 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 normally 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 registe-

red 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 has to 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. As regards 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.

Now a day, however, its more common to use electronical mortgage certificates. These corresponds to the physical possession of a mortgage letter. The Land Registry shows that 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 expired at the end of April 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.

Act on Acquisitions of Apartment Property etc was in force until 2010 *(Sw: Lagen om förvärv av hyresfastighet).* According to the law 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.

According to the Agricultural Land Acquisition Act *(Sw. Jordförvärvslagen)* transfers of land taxed as agricultural property 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 entity 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 entity 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, ("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 on or changes of buildings and property that require building permits are regulated in the PBA in detail. As regards 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 *(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 in co-operation with the Swedish Federation of Trade and the Swedish Hotels- and Restaurants Association. 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 has to be a fixed sum, but for commercial properties the parties may freely agree on the amount of this sum. It is very common that commercial tenants pay added charges for heating, cooling, water and property tax. Commercial premises are sometimes let on a turnover basis, and the rent is determined as a percentage of the income generated by the tenant. Normally the tenant has to pay 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 are 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 respon-

sibility and the duty to pay for maintenance of the premises. As regards 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 hiss loss *(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 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 entity, 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 2 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.

Turkey

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Bağ & Günen Law Firm is a corporate & commercial law focused law firm based in Istanbul.

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M&A,
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Real Estate
Insurance
Maritime & Marine
Consumer and E-Commerce

Corporate Law

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Turkey is a civil law country and the Turkish Commercial Code no. 6102 was enacted in 2012 for repealing the previous code to align with the related developments in the international legal scene including EU acquis communautaire. Within this scope, many important amendments were introduced particularly in the corporate governance area to increase transparency and ensure accountability, fairness and responsibility in corporations.

Pursuant to the Turkish Commercial Code ("TCC"), the corporations consist of collective company, commandite company, ordinary partnership, cooperative company1, joint stock company and limited liability company under Turkish law. Within the scope of the TCC, collective and commandite company are deemed as partnerships whereas joint stock, limited liability and commandite company limited by the shares are deemed as corporations in which the liability is limited to the value of the share capital.

In practice, limited liability and joint stock companies are generally preferred by medium and large-sized companies and by foreign investors. Also, some sectors such as banking, energy require incorporation of a joint stock or limited liability company for obtaining the relevant licenses, permits, etc. On the other hand, many small business owners operate via partnership models.

The two tables below illustrate the most common entity types, and list the most relevant characteristics of each type. Table 1 describes types of corporations and Table 2 describes partnerships. Each type of entity is further described below the tables together with branch and liaison office.

Table 1	JSC (Joint Stock Company)	LLC (Limited Liability Company)	Comm LLC (Commandite Company Limited by the Shares)
Use	Middle-sized and large companies (may be listed on the stock exchange, though this is not mandatory)	Small and middle-sized companies	Small and middle-sized companies (at least five incorporators and one of the incorporators should be a real person as an unlimited partner) The difference between the general commandite company is that the Comm. LLC's capital is divided by shares which can be transferred freely similar to a joint stock company.
Minimum capital requirement	TL 50,000 (only 25 % of the total capital should be deposited initially) TL 100,000 for non-public joint stock companies which accepted the registered capital system.	TL 100,000	No minimum requirement
Liability	hareholder's liability is limited to the value of the share capital.	Shareholder's liability is limited to the value of the share capital.	The unlimited partners have an unlimited, joint and several (secondary) liability. The liability is limited to the value of the share capital for limited partners.
Management	A Board of Directors with one or more members which are appointed by the articles of association or the general meeting.	A General Manager which is appointed by the articles of association. At least one shareholder should be appointed as manager.	Management is regulated by the unlimited partner.
Change in articles of association	Depends on what is agreed in the articles of association. If nothing is agreed: in general majority of the submitted votes and at least 1/2 of the share capital represented on the general meeting is necessary. Some extensive changes require a higher share of votes.	Depends on what is agreed in the articles of association. If nothing is agreed: simple majority of the submitted votes and 2/3 of the share capital represented on the general meeting. Some extensive changes require a higher share of votes.	Depends on what is agreed in the articles of association. If nothing is agreed: in general majority of the submitted votes and at least 1/2 of the share capital represented on the general meeting. Some extensive changes require a higher share of votes.

Share classes	Different classes (A-, B-, C-etc.) can be created via articles of association or amendment of articles of association. In terms of privileged shares, one class can be given a higher voting right up to 15 votes for each share which cannot be used for certain resolutions.	Different classes (A-, B-, C-etc.) can be created via articles of association or amendment of articles of association. Privileged shares can be created with voting rights such as one vote for each share capital apart from its par value.	Different classes (A-, B-, C-etc.) can be created via articles of association or amendment of articles of association. In terms of privileged shares, one class can be given a higher voting right up to 15 votes for each share which cannot be used for certain resolutions.
Shareholders agreement	Valid inter partes but cannot override mandatory corporate law. Not valid against third parties.	Valid inter partes but cannot override mandatory corporate law. Not valid against third parties.	Different classes (A-, B-, C-etc.) can be created via articles of association or amendment of articles of association. Valid inter partes but cannot override mandatory corporate law. Not valid against third parties.
Accounting	Financial tables of the company and annual activity report of the Board is required to be audited as per the Turkish auditing standards which is compatible with the international standards. Commercial books should be kept as per the relevant articles of the TCC.	Financial tables of the company and annual activity report of the manager(s) is required to be audited as per the Turkish auditing standards which is compatible with the international standards. Commercial books should be kept as per the relevant articles of the TCC.	Financial tables of the company and annual activity report is required to be audited as per the Turkish auditing standards which is compatible with the international standards. Commercial books should be kept as per the relevant articles of the TCC.
Company tax	Corporate tax 22 %	Corporate tax 22 %	Corporate tax 22 %
Tax on capital gains	Capital gains derived by a company generally are taxable as ordinary income (15%). However, 75% of capital gains derived from the sale of domestic participations are exempt from corporation tax subject to certain conditions which include sale of properties and transfer of shares.	Capital gains derived by a company generally are taxable as ordinary income (15%). However, 75% of capital gains derived from the sale of domestic participations are exempt from corporation tax subject to certain conditions which include sale of properties and transfer of shares.	Capital gains derived by a company generally are taxable as ordinary income (15%). However, 75% of capital gains derived from the sale of domestic participations are exempt from corporation tax subject to certain conditions which include sale of properties and transfer of shares.

Registration	Must be registered with the relevant trade registry.	Must be registered with the relevant trade registry.	Must be registered with the relevant trade registry.
Company tax	TCC	TCC	TCC

Table 2	**Coll (Collective Company)**	**Comm (Commandite Company)**	**Ordinary Partnership**
Use	Small companies (at least two owners who are private persons)	Small and medium companies (at least two owners, one limited partner and one unlimited partner which can be a private or legal person)	Used generally for purposes such as joint venture projects, consortiums. (at least two owners who are legal and/or real persons)
Minimum capital requirement	No minimum requirement	No minimum requirement. (The limited partner may only invest capital as cash or goods or rights that can be converted to cash)	No minimum requirement (Unless agreed otherwise via articles of association share capital of owners should be equal)
Liability	The partners have an unlimited, joint and several (secondary) liability.	Liability is limited to the value of the share capital for the limited partner. Unlimited, joint and several liability for the unlimited partner.	The partnership has no legal personality. Therefore the owners have an unlimited, joint and several liability.
Management	Unless agreed otherwise in the articles of association or by a decision of the partners (absolute majority) each partner can legally enter into binding obligations on behalf of the collective company.	Management is regulated by the unlimited partner(s). The limited partners cannot object to the actions of the limited partners which are intra vires.	Each of the owners have management rights unless it is agreed otherwise in the articles of association or via a decision. The management rights may be assigned to one of the owners or a third party.
Change in articles of association	Changes should be approved unanimously by the partners.	Changes should be approved unanimously by the partners.	Changes to the partnership agreement should be approved unanimously by the partners.
Share classes	Each partner has one voting right which cannot be amended via articles of association.	Each partner has one voting right which cannot be amended via articles of association.	No share classes.

Shareholders agreement	Valid inter partes but cannot override mandatory provisions of law of obligations. Not valid against third parties.	Valid inter partes but cannot override provisions of law of obligations. Not valid against third parties. The relationship between the limited and unlimited partners are required to be regulated by the articles of association.	No shareholders agreement.
Accounting	Commercial books should be kept as per the relevant articles of the TCC. The financial statements shall be finalized upon majority approval by the board of partners.	Commercial books should be kept as per the relevant articles of the TCC. The financial statements shall be finalized upon majority approval by the board of partners.	Commercial books should be kept as per the relevant tax legislation.
Company tax	Collective company has no legal personality in terms of corporate income tax except for taxes such as VAT, Special Consumption Tax, withholding, etc. All other business income is taxed as personal income. Personal income tax rate differs between 15 %-35%.	Commandite company has no legal personality in terms of corporate income tax except for taxes such as VAT, Special Consumption Tax, withholding, etc. All other business income is taxed as personal income for both limited and unlimited partners. Personal income tax rate differs between 15 %-35%.	Ordinary partnership has no legal personality in terms of corporate tax except for taxes such as VAT, Special Consumption Tax, withholding, etc. All other business income is taxed as income for owners depending on their legal personality.
Tax on capital gains	Personal income tax 15%	Personal income tax 15%	Personal income tax 15%
Registration	Must be registered with the relevant trade registry. The articles of association are also required to be submitted.	Must be registered with the relevant trade registry. The articles of association are also required to be submitted.	No requirem
Company tax	Corporate tax 22 %	Corporate tax 22 %	Corporate tax 22 %

Choice of legal entity

Before starting a business, the preferred type of legal entity must be considered. The choice can depend on many different factors but the most common factors are one or more of the following:

- Liability
- Taxation of the company and the owners
- Sufficiency of establishing a branch (foreign companies only)
- Start-up capital and running costs (share capital, registration costs etc.)
- Overall reputation in the market
- Company's area of operation (whether incorporating a certain type of entity is required or not)

Types of companies

As earlier mentioned there are several different types of legal entities. The types most commonly chosen for medium-sized and large companies are either a joint stock company (JSC) or a limited liability company (LLC). These two types of company are regulated by similar provisions and their shareholders' liability is both limited to the subscribed share capital but they differ in some aspects, as described below.

JSC (Joint Stock Company)

Most large companies in Turkey (and all stock-exchange listed companies) are established as a JSC, which is a well-reputed entity type. The total required share capital is minimum TL 50,000, at least 25 % of the total share capital shall be paid before the registration and the remaining amount is required to be paid within 24 months from the registration. A JSC may be incorporated with a single shareholder and there is no limit for maximum number of shareholders.

In terms of foreign shareholding, there are no restrictions apart from certain regulated sectors. On the other hand, a permit and/or license should be obtained from the relevant Ministry for starting commercial activities regardless of the shareholder's nationality if the company will operate in some sectors such as banking, insurance, financial leasing.

A JSC must have a Board of Directors with one or more members which should be appointed by the articles of association or a resolution of the shareholders. A legal person may also be appointed as a member. The articles of association may include certain provisions for providing the right of representation in the Board for certain shareholder groups and the minority shareholders.

The Board may establish committees and commissions which may include a Board member for purposes such as monitoring the business, reporting and internal auditing. The management may be assigned partially or fully to one or more members or a third person by the Board of Directors via a provision in the articles of association.

The ordinary general meeting shall convene within three months as of the end of each activity period. Unless it is agreed otherwise within the articles of association or required by the TCC, the general meeting shall convene with shareholders representing at least ¼ of the share capital and simple majority voting will be enough. For amendments of articles of association different voting and quorum requirements will apply.

If there is a related provision within the articles of association, a shareholder may attend and vote

in a general meeting via electronic mediums.

A JSC pays 22 % in corporate income tax based on the company's yearly profit. The shareholders' return on shares are exempt from corporate income tax if the shareholder is a legal person, it will be subject to a 15 % personal income tax for real person shareholders.

The company will be subject to independent auditing if certain criteria are met such as total number of employees, annual net sales revenue.

LLC (Limited Liability Company)

Many small and middle-sized companies choose to run their business as a LLC, which requires a share capital of TL 10,000, at least 25 % of the total share capital shall be paid before the registration and the remaining amount is required to be paid within 24 months from the registration. The shareholders' liability is limited to their investment in shares. An LLC can be established by a single shareholder, the maximum number of shareholders for LLC is determined as 50.

An LLC must have one or more managers and they shall be appointed by the articles of association. At least one of the shareholders is required to be appointed as a manager. If there is more than one manager, a Board of Managers shall be convened.

The ordinary general meeting shall convene within three months as of the end of each activity period. Unless it is agreed otherwise within the articles of association all resolutions shall pass by a simple majority of the represented share capital. Some matters such as increasing the share capital require at least 2/3 of the represented votes and the simple majority of the share capital with voting right to be present.

An LLC pays 22 % in corporate income tax based on the company's yearly profit. The shareholders' return on shares are exempt from corporate income tax if the shareholder is a legal person, it will be subject to a 15 % personal income tax for real person shareholders.

The company will be subject to independent auditing if certain criteria are met such as total number of employees, annual net sales revenue.

The lower amount of required share capital makes this entity type very attractive to founders who either cannot or will not tie up more capital than necessary, but still wish to limit their liability risks.

JSC (Joint Stock Company) vs. LLC (Limited Liability Company)

Many small and middle-sized companies choose to run their business as a LLC, which requires a share capital of TL 10,000, at least 25 % of the total share capital shall be paid before the registration and the remaining amount is required to be paid

Minimum share capital

- JSC: TL 50,000 (only 25 % has to be deposited)
- LLC: TL 10,000 (only 25 % has to be deposited)

Shares for public subscription (e.g. on a stock exchange)

- JSC: Yes
- LLC: No

Management

- JSC: Board of Directors + Managers
- LLC: General Manager

Liability for Public Debts

- JSC: No
- LLC: Yes

Share Transfer

- JSC: Easily made
- LLC: Must be approved by a general meeting

Comm. LLC (Commandite Company Limited by the Shares)

A Comm. LLC is a hybrid between a Joint Stock Company and a Commandite Company. There is no minimum capital requirement for incorporation. As at least five incorporators are required and the unlimited partner (shareholder) has an unlimited, joint and several (secondary) liability it is not generally preferred.

The provisions of the TCC for regulating commandite companies are applied in terms of relationship between the limited partners, unlimited partners and third parties, the unlimited partners' management and representation rights. The liability of the limited partners is limited to the value of their share capital.

The unlimited partners are responsible for management and representation of the company.

A Comm. LLC pays 22 % in corporate income tax based on the company's yearly profit. The shareholders' return on shares are exempt from corporate income tax if the shareholder is a legal person, it will be subject to a 15 % personal income tax for real person shareholders.

The company will be subject to independent auditing if certain criteria are met such as total number of employees, annual net sales revenue.

Collective Company

Collective companies are preferred by real persons that know and trust each other since the partners have an unlimited, joint and several (secondary) liability. The liability of the partners shall arise in case debt enforcement proceedings are unsuccessful against the company or the company ceased to exist for any reason.

At least two real persons are required for incorporating a collective company.

Each partner shall have a right to manage the company however the management may be assigned to one or more or all the partners by a simple majority decision.

Each partner has a single right to vote which cannot be amended by articles of association or another contract.

The collective company has no corporate tax liability and therefore the company's yearly profit shall be subject to personal income tax after division among the partners as per their share rates. The personal income tax differs between 15%-35%.

Commandite Company

Commandite companies are generally incorporated by legal entities intending to partner with a real person for a certain business or a project whilst still benefitting from limited shareholder liability.

There are two types of partners in a commandite company, the unlimited (komandite) and limited partner (komandit) and for incorporation at least one limited and one unlimited partner is required. The unlimited partner may only be a legal person and the limited partner may only be a real person.

The articles of association are reviewed primarily for determining whether the company satisfies the conditions for being a commandite company or not. If not the company will be deemed as a collective company.

Each partner has a single right to vote which cannot be amended by a contract. The commandite company is managed by the unlimited partner. The limited partners can vote for certain matters such as extraordinary proceedings and business, amendment of the articles of association, for structural changes like changing the type of entity and transfer of shares, etc.

The liability of the limited partner is limited with the share capital deposited or undertaken by itself except for certain exceptions determined by the TCC.

If the company's assets will not be sufficient for its debt, the unlimited partners shall have an unlimited, joint and several (secondary) liability.

The commandite company has no corporate tax liability and therefore the company's yearly profit shall be subject to personal income tax after division among the partners as per their share rates. The personal income tax differs between 15%-35% for unlimited partners and will be 15% for limited partners.

Collective Company vs. Commandite Company

A collective company and a commandite company are subject to similar or same provisions but differs mainly concerning the following conditions:

Management

- Coll: Each partner
- Comm: Unlimited partner

Liability

- Coll: Partners have an unlimited, joint and several liability
- Comm: Unlimited partner's liability is limited

Owner

- Coll: Two real person
- Comm: One real and one legal perso

Ordinary Partnership

In general, ordinary partnership is generally used for projects, investments in order create joint ventures, consortiums. Unlike the corporations, ordinary partnerships are regulated by the Turkish Code of Obligations numbered 6098.

An ordinary partnership is created via a partnership agreement by two or more real and/or legal persons. Each partner must provide a contribution which may be cash, goods, know-how, skills, etc., and the contribution of each partner shall be equal unless it is stated otherwise within the contract. Similarly each partner has equal shares in the profit of the partnership.

The decisions of the partnership shall be taken unanimously unless it is determined otherwise within the partnership agreement.

Each partner has a right to manage the partnership, on the other hand the management may be assigned to one or more partner or a third party via the partnership contract or a decision.

Under Turkish corporate law the partnership has no legal personality. Therefore, the owners have an unlimited, joint and several liability.

The ordinary partnership has no corporate tax liability and therefore all revenues shall be taxed as per the legal personality of the owners. Under certain conditions the ordinary partnership may be accepted as a joint venture as per the relevant provisions of the Corporate Tax Law and thereby will be taxable in terms of corporate tax legislation.

Branch

A foreign company can establish a branch in Turkey by registering to the relevant trade registry by submitting the necessary documentation. In addition to registration, a fully authorized commercial representative should be appointed.

If it is a branch of a foreign company, the commercial name should indicate the registered office of the company and the place(s) of branch and that it is a branch. Branch profits are subject to Turkish corporate income tax at the rate of 22%. The branch profit transferred to headquarters is subject to dividend withholding tax at a rate of 15%, which might be reduced if there is a bilateral tax treaty between Turkey and the country of which the principal is a resident for income tax purposes.

Liaison Office

Liaison offices are generally preferred by foreign companies wishing to enter the market to gather information, undertake research and establish connections since liaison offices are prohibited from undertaking commercial activities.

Liaison offices are regulated by the Foreign Direct Investment Law no. 4875. As per the Regulation on the Implementation of the Law, a liaison office may be incorporated by foreign companies in Turkey via obtaining an establishment permit from the Ministry of Economy provided that the necessary documents are submitted duly.

The initial establishment permit may be up to three years which may be extended upon expiration up to three years.

A liaison office may conduct the following activities in general, representation and hosting; control, ınspection and provision of local suppliers; technical support; communication and transfer of ınformation; regional management headquarter.

The Ministry evaluates the liaison office establishment permit applications of newly established foreign companies within the context of some elements such as the field of activity, the capital and the number of personnel employed and may stipulate the condition for the company to have been operational for at least one year in order to grant the permit.

Liaison offices, are required to send a copy of the tax office registration and the rental contract to the relevant General Directorate within one month upon obtaining the establishment permit.

Since the liaison office is prohibited from entering commercial activities, it shall have no tax liability. Within this scope, any and all office expenses have to be covered by the foreign exchange imported from abroad.

The Trade Registry and Incorporation Procedures

The Trade Registries are responsible for registration of companies and keeping the related records. They are set up in various cities of Turkey and registration application is made to the relevant registry as per the intended address of the company.

All companies are required to make a registration application to the Trade Registry as per the related provisions of the TCC.

The records of the registry are public and thereby they can be reviewed upon application or via the

related registry's website.

All necessary documents including the articles of association are required to be submitted for incorporation application. Apart from the articles of association, incorporation documentation that will be issued and executed outside Turkey must be notarized and apostilled or alternatively ratified by the Turkish consulate where they are issued. The original executed, notarized, and apostilled documents must be officially translated and notarized by a Turkish notary.

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Turkey has one of the most competitive corporate tax rates in the OECD region and the Turkish tax regime may be classified under three headings as follows:

Income tax

The Turkish tax legislation includes two main income taxes, namely individual income tax and corporate income tax. Individual income tax is governed by the Personal Income Tax Law (PIT Law) no. 193 and the corporate income tax is governed by the Corporate Income Tax Law (CIT Law) no.5520.

Individual income tax

Pursuant to the PIT Law, the real persons' income is subject to individual income tax. Income is defined as the net amount of all earnings and revenues derived by an individual within a single calendar year. Partnerships are not deemed to be separate entities and each partner is taxed individually on his/her share of profit.

For determining tax liability for residency criterion is applied which is subject to certain exceptions. Within this scope, an individual whose domicile is in Turkey is liable to pay tax for his/her worldwide income (unlimited liability). In addition, any person who resides in Turkey more than six months in one calendar year is also deemed as a resident of Turkey.

In terms of foreigners, any foreigner who stays in Turkey for six months or more for a specific job or business or particular business which are specified in the Law on Income Tax are not treated as residents. Therefore, liability for worldwide income shall not be applied to them. Non-residents are only liable to pay tax on their income derived from their incomes in Turkey.

Within the scope explained above, the income may consist of the elements listed below:

- Business profits
- Agricultural profits
- Salaries and wages
- Income from independent personal services
- Income from immovable property and rights (rental income)
- Income from movable property (income from capital investment)
- Other income and earnings

Individual income tax rate varies from 15% to 35% which is applied as follows for 2019:

Income Scales (TRY) (Employment Income)	Rate (%)	Income Scales (TRY) (Non-Employment Income)	Rate (%)
Up to 18,000	15	Up to 18,000	15
18,001-40,000 (For 18.000 of 40.000 2.700 TL)	20	18,001-40,000 (For 18.000 of 40.000 2.700 TL)	20
40,001-148,000 (For 40.000 of 148.000 7.100 TL)	27	40,001-98,000 (For 40.000 of 98.800 7.100 TL)	27
148,001 and over (For 148.000 36.260 TL)	35	98,001 and over (For 98.000 22.760 TL)	35

Corporate Income Tax

The corporate tax is levied on the income and earnings derived by corporations and corporate bodies. The income elements of CIT Law are the same as those covered in the PIT Law. Therefore, many rules and provisions of PIT Law is also applied to CIT Law. The following are specified as tax payers under the CIT regime:

> Capital companies and similar foreign companies,
>
> Cooperatives,
>
> Public enterprises,
>
> Enterprises owned by foundations societies and associations,
>
> Joint ventures.

According to the CIT Law, the legal entities covered by the law are the ones with a registered head office in Turkey, or the centre of all business transactions being in Turkey. These entities will be taxed on their world-wide income (unlimited liability). The terms registered office is used as to include head office of the taxable corporations as determined within their laws and rules on their incorporation or their articles of association.

In general, the net corporate income is defined as the difference between the net worth of assets owned at the beginning and at the end of the fiscal year. Expenses such as general expenses made for earning and maintaining business profit, insurance and pension premiums, expenses for vehicles which are part of the enterprise and used in the business, depreciations set aside according to the provisions of the Tax Procedure Law, etc., can be deducted from the revenues.

The corporate income tax rate levied on business profits was increased to 22% in 2018 and still this rate is applied.

A 15% withholding tax is applied when dividends are paid to shareholders of resident corporations. However, no withholding tax is applied in case of a payment of a dividend by a resident corporation to another resident corporation. For non-resident corporations, a 15% withholding tax will be applied to remittance of profits to headquarters.

Capital gains derived by a company generally are taxable as ordinary income. However, 75% of capital gains derived from the sale of domestic participations are exempt from corporation tax subject to certain conditions which include sale of property and transfer of shares.

The annual corporate tax return is used for reporting of net corporate profits realized in the course of one accounting period. Corporate tax declarations are made on an annual basis through a corporate tax return. This return can be filed until April 25 following the close of the fiscal year. The corporate income tax must be paid by the end of the month that the tax return is submitted. Non-resident foreign corporations use special tax return for reporting certain profit and earnings. Special tax return must be given within 15 days from the obtainment of earnings and profit.

Taxes on Expenditure

Apart from the income tax on personal and corporate income, there are various taxes on expenditure under the Turkish tax regime which may be classified in general as follows:

Value Added Tax (VAT). The general VAT rate is set at 1%, 8%, and 18%. Commercial, industrial, agricultural, and independent professional goods and services, goods and services imported into the country, and deliveries of goods and services as a result of other activities are all subject to VAT.

Exemptions on VAT include exports of goods and services, petroleum exploration activities, transit transportation, services rendered at harbors and airports for vessels and aircrafts, etc.

Special Consumption Tax (SCT). There are four main groups of goods which are subject to SCT on different rates:

> Petroleum products, natural gas, lubricating oil, solvents, and derivatives of solvents
>
> Automobiles and other vehicles, motorcycles, planes, helicopters, yachts
>
> Tobacco and tobacco products, alcoholic beverages
>
> Luxury products

Stamp duty. Stamp duty is applied to documents, including contracts, notes payable, capital contributions, letters of credit, letters of guarantee, financial statements, and payrolls. It is levied as a percentage of the value of the document which range from 0.189% to 0.948% and is collected as a fixed price (a pre-determined price) for some documents.

Banking and Insurance Transaction Tax. Banking and insurance company transactions are exempted from VAT but are subject to a Banking and Insurance Transaction Tax. This tax applies to income earned by banks, such as loan interest. The general rate is 5%, however some transactions, such as interest on deposit transactions between banks, are taxed at 1%.

Double Taxation Relief

Foreign shareholders of companies incorporated in Turkey can benefit from double taxation agreements. Turkey signed double taxation agreements with over 80 countries which include EU members and other countries such as USA, Norway, Qatar, Denmark, Malta.

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There are three main legislation governing labour law in Turkey, which are Turkish Labour Law (Labour Law) no. 4857, the Law on Trade Unions and Collective Bargaining Agreements (Union Law) no. 6356 and the Law on Civil Service Trade Unions and Collective Bargaining Agreements no. 4688.

Under the Labour Law the following are the main categories of employment:

> Continual/transitory contracts: transitory contracts are made up to thirty days due to nature of the work, whereas continual work requires a longer period.
>
> Definite (fixed) term/indefinite contracts: ıf a contract of employment is not made for a fixed term it will be accepted as an indefinite contract under the Labour Law. In addition to a fixed term, the contract may be definite term if it is made for completing a specific task or occurrence of a certain event.
>
> Full time/part-time contracts: the contract will be part-time if the working hours are determined shorter than the regular working hours under the Labour Law which is 45 hours.
>
> Temporary employment contracts: Temporary employment may be established via employment agencies or assignment of an employee in a different work place within the same holding company or group of companies.

Under Turkish labour law regime real persons employed via a contract of employment are employees. The contract will be accepted as a contact of employment if it requires one party to perform work in subordination as an employee and one party to pay salary in return. A written agreement is mandatory if the term of the contract is one year or more.

The person will be self-employed under the labour law and social security regime if services are provided without a contract of employment which is usually under a consultancy agreement or an agreement which does not include the conditions of a contract of employment.

Principals of labour law

The Turkish Constitution applies the principle of a social legal state and social and economic rights with regards to employment such as freedom to work, right to rest, right to establish, right of collective bargaining agreements, right to strike are regulated and protected.

The Labour Law regulates the working conditions and work-related rights and obligations of employers and employees working under an employment contract. The equal treatment principal applies to the relationship of employment which prohibits discrimination based on language, race, sex, political opinion, philosophical belief, religion and sect or similar reasons.

If the employer violates the equal treatment principle in the execution or termination of the employment relationship, the employee may demand a compensation up to his/her four months' salary.

Wages and minimum working hours

Under the Labor Law, the maximum regular working hours are 45 hours per week which should be divided equally among the working days in principle. Total overtime work shall not be more than two hundred seventy hours in a year.

Hours exceeding the limit of 45 hours per week will be constituted as overtime and salary for each hour of overtime will be one and a half times the normal hourly rate.

Minimum wage is determined by the Ministry of Social Security and Labour and the current amount is TRY 2.558,40 (gross).

Holiday

The annual leave is determined as follows within the Labour Law:

> for service of employment between one to five years: minimum 14 days,
>
> for service of employment between five to ten years: minimum 20 days,
>
> for service of employment for more than fifteen years: minimum 26 days.

The issue of whether or not work will be done on the national day and public holidays will be decided by a collective labour agreement or by contracts of employment. The employee's consent is required for work during holidays if there is no provision in the collective agreement or in employment contracts.

Collective labour agreements

According to the official statistics released by the Ministry of Social Security and Labour, the unionization rate is 12% for Turkey currently.

The Union Law regulates the collective labour agreements and they can be concluded between trade unions and employer unions. The collective labour agreements contain provisions related to conclusion, content and expiration of a contract of employment. It shall be concluded for a period of not less than one year and not more than three years. A contract of employment cannot be contrary to a collective labour agreement.

Workers who are not a member of the trade union that is a party to the collective labour agreement at the date of signature, or those who are subsequently recruited but do not join the union, or those who are expelled or resigned from the union after the said date may avail themselves of the agreement by paying the solidarity subscription to the trade union.

Executive officers

There is no specific provision with regards to executive officers within the Labour Law. Nevertheless, the employer's representative is defined as the person acting on behalf of the employer and charged with the direction of work, the establishment and enterprise. The employer is directly liable towards the employees for the conduct and responsibilities of his representative acting in this capacity. Therefore an executive officer of a company may be classified as an employer's representative provided that the aforementioned conditions are satisfied.

Any obligations and responsibilities for which the employer is liable under the Labour Law shall also be borne by the employer's representative. An employer's representative will still benefit from the rights and obligations provided to employees under the Labour Law. However, certain provisions of the Labour Law regarding job security under certain conditions will not be applicable to employer's representatives.

Termination, Job Security and Severance Pay

A contract of employment can be terminated by the parties by serving a notice to the party or with immediate effect by relying on a just cause as defined within the Labour Law.

For a contract of employment signed for an indefinite period the notice periods that should be complied with are as follows:

> Up to 6 months employment: two weeks' notice,
>
> 6 to 18 months employment: four weeks' notice,
>
> 18 months to 3 years employment: six weeks' notice,
>
> Employment longer than 3 years: eight weeks' notice.

Alternatively the employer or the employee may choose to opt out from notice periods by payment in lieu of notice period.

The Labour Law provides protection for employees under certain conditions. Accordingly, if an employee with an indefinite contract of employment has been working for at least six months at a workplace which has 30 or more employees, the employer can only terminate the employment contract by relying on a valid reason. Otherwise the employee may file a reinstatement lawsuit and will be entitled to a compensation of 4 to 8 months' salary if the employer loses the lawsuit and does not initiate reinstatement.

The severance pay is also regulated by the Labour Law. Within this scope, an employee who terminates his/her contract of employment as per the conditions indicated in the Labour Law or whose contract of employment contract is terminated by the employer must be compensated with a severance pay. The severance pay will be calculated based on the employees' seniority at the work place and in general to qualify for a severance pay, the employee should be working at the workplace for at least one year.

Maternity, paternity and parental leave

In principle female employees must not be engaged in work for a total period of sixteen weeks, eight weeks before confinement and eight weeks after confinement. In case of multiple pregnan-

cy, an extra two week period shall be added to the eight weeks before confinement during which female employees must not work. These time periods may be increased before and after confinement if deemed necessary in view of the female employee's health and the nature of her work.

If the female employee so wishes, she shall be granted an unpaid leave of up to six months after the expiry of the sixteen weeks, or in the case multiple pregnancy, after the expiry of the eighteen weeks indicated above. Female employees shall be allowed a total of one and a half hour nursing leave in order to enable them to feed their children below the age of one. The employee shall decide herself at what times and in how many instalments she will use this leave.

Paternity leave of 5 days are granted to male employees in case their spouses have given birth.

Absence from work during maternity leave does not constitute a valid reason for termination and in such case the employee may file a lawsuit and claim compensation and/or reinstatement.

Collective redundancy

Under the Labour Law, when the employer contemplates collective redundancy for reasons of an economic, technological, structural or similar nature necessitated by the requirements of the enterprise, the establishment or activity, a written notification must be made to the union representative at the workplace, the relevant Regional Directorate of Labour and the Public Employment at least 30 days prior to the intended lay-off.

A collective dismissal occurs when:

> a) in establishments employing between 20 and 100 employees, a minimum of 10 employees; and
>
> b) in establishments employing between 101 and 300 employees, a minimum of 10 percent of employees; and
>
> c) in establishments employing 301 and more workers, a minimum of 30 employees, are to be terminated on the same date or at different dates within one month.

Consultations with union representative shall take place after the said notification for discussing measures to be taken to avert or to reduce the terminations as well as measures to mitigate or minimize their adverse effects on the workers concerned. A document showing that the said consultations should be drawn up at the end of the meeting.

Notices of termination shall take effect 30 days after the notification of the regional directorate of labour concerning the intended lay-offs.

If an employer does not comply with the notification and consultation requirements, an administrative fine will be payable for each employee subject to the collective redundancy.

Requirement to employ disabled persons, ex-convicts and terror victims

In establishments employing fifty or more employees, employers are required to employ disabled persons, ex-convicts, and victims of terror as per the related legislation and assign them to jobs consistent with their occupational skills and physical and mental capacities. The ratios are determined by the Council of Ministers each year.

Transfers of undertakings

Under the Labour Law, when, due to a legal transaction, the establishment or one of its sections is transferred to another person, contracts of employment existing in the establishment or in the section transferred on the date of the transfer shall pass on to the transferee with all the rights and obligations involved.

The transferor and transferee will be jointly liable for the obligations which have materialised before the transfer and which must be defrayed on the date of the transfer. The liability of the transferor will continue up to two years following the date of the transfer.

The transferor or transferee is not authorised to terminate the contract of employment solely because of the transfer of the establishment or a section and the transfer does not entitle the employee to terminate the contract for just cause. The right of the transferor or the transferee to terminate for reasons necessitated by economic, technological or organisational changes and the employer's and the employee's right to break the contract for just cause are reserved.

Labour Courts

Labour Courts are the specialist courts for hearing disputes between the employer and the employee such as claims on reinstatement, overtime, severance compensation, notice payment and moral damages.

The Labour Law was amended recently by setting mandatory mediation as a dispute resolution method before going to the Labour Courts for claims on salary and reinstatement.

Foreign Investment

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Turkey is an attractive location for foreign investors for various reasons such as its young and dynamic population, being a transit country to major markets, like the CIS, the Middle East, and North Africa and being a civil law country which has been aligning its legislation to the EU acquis. As of end-2018, the number of companies with foreign capital in Turkey hit 65,533, up from 5,600 in 2002.

Turkey took the necessary legal steps in the past 15 years to encourage and promote foreign direct investment and enacted various legislations. Within this scope, the Foreign Direct Investment Law (FDI Law) no. 4875 which was enacted in 2003 was a milestone.

As per the FDI Law, foreign investors can freely transfer abroad: net profits, dividends, proceeds from the sale or liquidation of all or any part of an investment, compensation payments, amounts arising from license, management and similar agreements, and reimbursements and interest payments arising from foreign loans through banks or special financial institutions.

As per the FDI Law, the following are accepted as a foreign direct investment:

> Establishing a new company or branch of a foreign company by foreign investor,
>
> Share acquisitions of a company established in Turkey (any percentage of shares acquired outside the stock exchange or 10 percent or more of the shares or voting power of a company acquired through the stock exchange) by means of, but not limited to the following economic assets:
>
> 1. Assets acquired from abroad by the foreign investor:
>   - Capital in cash in the form of convertible currency bought and sold by the Central Bank of the Republic of Turkey,
>   - Stocks and bonds of foreign companies (excluding government bonds),
>   - Machinery and equipment,
>   - Industrial and intellectual property rights;
> 2. Assets acquired from Turkey by foreign investor:
>   - Reinvested earnings, revenues, financial claims, or any other investment-related rights of financial value,
>   - Commercial rights for the exploration and extraction of natural resources.

There are also various bilateral agreements signed with different countries for promotion and protection of investments and double taxation prevention treaties.

Registration of investment

The FDI Law is based on the principle of equal treatment, allowing international investors to have the same rights and liabilities as local investors.

As per Article 3 of the FDI Law, unless stipulated by international agreements and other special laws, foreign investors are free to make foreign direct investments in Turkey and foreign investors shall be subject to equal treatment with domestic investors. Foreign direct investments shall not be expropriated or nationalised, except for public interest and upon compensation in accordance with due process of law.

Apart from establishing a liaison office, no permit is required from foreign investors for establishing a company.

Foreign investors may establish any form of company set out in the Turkish Commercial Code (TCC), which offers a corporate governance approach that meets international standards, fosters private equity and public offering activities, creates transparency in managing operations. In addition, they can establish unincorporated partnerships which include partnerships established through agreements under names such as ordinary partnerships, consortiums, business partnerships, joint ventures that do not conform to the explicit features of the company types designated in the Turkish Commercial Code.

Companies and branches established by foreign investors are required to provide information on their capitals and operations, on the payments made to their equity accounts, on share transfers made between current domestic or foreign shareholders or to any domestic or foreign investor outside the company for statistical purposes.

Setting up a business

Turkey's ease of doing business score was determined as 74.33 by the World Bank Doing Business Index which puts it ahead of its competitors within the Europe & Central Asia region. On average it takes 7 days to establish a company in Turkey.

The conditions for setting up a business and share transfer are the same as those applied to local investors. (please see the chapter regarding Corporate for further information).

Bilateral Treaties

Turkey signed various bilateral investment treaties with different countries to protect and promote foreign direct investment, establish a free trade area and there are also various treaties in place to prevent double taxation.

Investment Incentives

Under Turkish law, there are several investment incentive schemes in place and the investors benefit from VAT exemption, customs duty exemption, tax reduction, income tax withholding allowance, social security premium support (employer's share), social security premium support (employee's share), interest rate support, land allocation, VAT refund in general.

Investments to sectors such as energy, infrastructure, tourism, technology are promoted substantially and incentives differ in accordance with the regions where the investment is made.

Foreign employees

Pursuant to the FDI Law, the procedures and principles of foreign personnel which will be employed within companies operating within the scope of the FDI Law are regulated by the Regulation on Employment of Foreign Personnel in Foreign Direct Investments.

Within the scope above, this Regulation shall be applied to the employment of foreign key personnel in special foreign direct investments and liaison offices.

The special foreign direct investment is a company or a branch within the scope of the FDI Law which fulfil at least one of the conditions below:

> the company's or branch's last annual turnover amounting to at least 141,9 Million Turkish Lira, under the condition that the total capital share of the foreign shareholders amounts to at least 1.888.190 Turkish Lira,
>
> the company's or branch's last annual exports amounting to at least 1 million US Dollars, under the condition that the total capital share of the foreign shareholders amounts to at least 1.888.190 Turkish Lira,
>
> employment of at least 250 registered personnel with the company or branch within the last year, under the condition that the total capital share of the foreign shareholders amounts to at least 1.888.190 Turkish Lira,
>
> if the company or branch is making an investment, the minimum fixed investment amount foreseen shall being at least 47,1 Million Turkish Lira,
>
> the principal company featuring any direct foreign investment in at least one more country apart from the country where its head offices are situated.

For liaison offices, work permits are issued to a maximum of one person limited with the period of letter of authority provided that a letter of authorization is obtained from the Ministry of Economy.

The personnel of any company being incorporated in Turkey and that is a corporate body, featuring at least one of the following conditions shall be considered as "Key Personnel":

> Working in the company's senior management or executive position,
>
> Managing the entire or a part of the company,
>
> Supervising or checking the works of the company's auditors, administrative or technical personnel,
>
> Taking new personnel to the company or terminating the employment of those existing or making suggestions in this subjects;

any person in charge of at least one of the above fields or authorized in these matters; acting in the position of the company's shareholder, chairman of the board of directors, member of the board of directors, general manager, deputy general manager, company manager, deputy company manager and similar positions.

B) Any person featuring the knowledge considered essential for the company's services, research devices, technics or methods,

C) Maximum one person in the liaison offices, who has been issued a letter of authorizaton by the principal company abroad.

Therefore, work permits are issued by the Ministry of Labour and Social Security for key personnel

that will be employed in foreign direct investments.

On the other hand, the Law on the International Labour Force ("LILF") no. 6735 shall be applied to foreign personnel employment apart from the key personnel of the special foreign direct investments and foreign direct investments which do not meet the criteria defined above.

In 2016, the LILF was enacted to determine Turkey's international labour policy and its application. The Law determines the procedures and principles that will be applied to work permits of foreigners and work permit exemptions.

Within the scope of the LILF, work permits may be issued as definite, indefinite, and independent permits. For the first applications, the work permit may be issued for a maximum period of one year. For foreigners holding long-term residency permit or at least eight years legal work permit, application can be made for an indefinite work permit.

Pursuant to the LILF, a manager of a limited company and a board member of a joint stock company which are also a shareholder may work via obtaining a work permit. On the other hand, board members of joint stock companies who do not reside in Turkey or shareholders of other types of companies who do not have management authority may qualify for work permit exemptions. Therefore these persons may work via obtaining a work permit exemption.

The real estate & construction sectors made a significant contribution to the economic growth in Turkey within the past 10-15 years. The amendments to the relevant laws and regulations for facilitating acquisition of real estate by foreigners and foreign companies, urban renewal and mass housing projects that are either guaranteed or undertaken by the state together with high yield ratios have all increased the participation of foreign investors to Turkish real estate market.

In general, the Turkish Civil Code no. 4721, the Condominium Law no. 634 and the Land Registry Law no. 2644 regulates the acquisition and transfer of real estate, registration procedures and requirements and rights and obligations of the owners of real estate.

Pursuant to the Turkish Civil Code, the owner of a property is entitled to use, benefit and dispose of such property in any way he/she wishes within the boundaries of the order of laws.

General information with regards to real estate will be provided below specifically in terms of foreigners and companies with foreign capital:

Types of real estate

The Article 704 of the Turkish Civil Code lists the following as subjects of real estate ownership:

> Land,
>
> Independent and permanent rights registered in a separate page in the Land Registry Records, and,
>
> Independent units registered in the Condominium Registry Records.

The title deed will show the purpose of use of land, building or independent units as in commercial, residential, agricultural. With regard to building units change of use from commercial to residential or vice versa is possible by making the necessary applications to the related municipalities and obtaining confirmation from the board of condominium owners as per the related legislation.

Acquisition of real estate

In case of ownership of land, ownership shall cover the space and layers both above and under the ground of the subject land, to the extent of benefits of such use. Therefore, existing buildings on the land will also be included in the subject of ownership on the real estate.

Ownership of real estate is acquired upon registration in the Land Registry.

In case of a contract for transfer of ownership, a sales commitment agreement should be signed before the Turkish notaries. However, the legal ownership of the property shall only pass via official deed and registry signed at the Land Registry Directorates.

The Condominium Law

The Condominium Law regulates the condominium ownership rights that can be established on separate or particular parts of the property (such as a flat, or apartment, office bureau, shop or store) which are available for use or will later be put in use by the real estate owner or his associated owners.

This law is significant since ownership on real estate are generally converted to condominium ownership which requires conversion of the whole main estate. Conversion to condominium ownership is also executed at the Land Registry Directorates via registration by the owner(s) or stakeholder(s) of the whole main estate.

Foreign ownership

With the amendment to the Article 35 of the Land Registry Law no. 2644 in 2012, the condition of reciprocity for foreigners who intend to buy a property in Turkey was abolished. Pursuant to Article 35 of the Land Registry Law, real and legal persons with foreign nationality can buy any kind of property (house, business place, land, field) subject to the related legal conditions as explained below.

Acquisition by foreign real person

Persons with foreign nationality can buy maximum 30 hectares of property in Turkey in total and can acquire limited in rem right.

Foreigners cannot acquire or rent property within military forbidden zones and security zones.

Persons with foreign nationality can acquire property or limited in rem right in a district/town up to 10 % of the total area of the said district/town.

Legal restrictions do not apply in setting mortgage for real persons and commercial companies having legal personality which are established in foreign countries.

The properties are subject to winding up provisions in following cases:

- if the properties are acquired in violation of laws;
- if the relevant Ministries and administrations identify that the properties are used in violation of purpose of purchase;

- if the foreigner does not apply to the relevant Ministry within time in case the property is acquired with a project commitment;
- the projects are not materialized within time.

Acquisition by foreign companies

Foreign companies which are established according to the relevant laws of their countries of origin can acquire property and limited in rem rights within the provisions of special laws. These special laws are:

- Petroleum Law No. 6326
- Law on Encouragement of Tourism No. 2634
- Law on Industrial Zones No. 4737

No restriction is implemented in favor of the said commercial companies in establishing mortgage.

Other foreign corporations (i.e. foundation, association.) are not allowed to buy property and acquire limited in rem right.

Acquisition by companies with foreign capital

The companies with foreign capital can buy property in Turkey in accordance with Article 36 of Land Registry Law and the "Decree on Acquisition of Property and Limited in Rem Rights by Companies and Corporations".

Accordingly, the companies with foreign capital which are incorporated in Turkey which means the foreign real persons or foreign corporations which are established according to the relevant laws of their countries of origin and which hold individually or collectively 50% or more shares, or, have a right to assign or remove the managers of the said companies could buy property and acquire limited in rem rights in Turkey for performing the activities defined under their articles of incorporation. The same condition will also apply to direct or indirect shareholding of a company incorporated in Turkey by the companies defined above under the following circumstances:

the shareholding ratio of the companies defined above reaches 50% or more directly or indirectly, or

50% or more shares of the Turkish company owning the property is acquired directly or indirectly, or

the shareholding ratio of foreign investors reach to 50% or more via transfer of shares within Turkish companies with foreign capital which owns the property.

In general permits from the related military authorities or governorships are required for acquisition of a property within military forbidden zones, military security zones and other zones determined pursuant to the respective legislation.

Title Deed and Procedure for Acquisition

As stated above the legal ownership of the property shall only pass via official deed and registry signed at the Land Registry Directorates. Information including the name, surname, father's name of the seller and the buyer, purpose of acquisition and date (full title in case of a legal person), in case of joint ownership each owner's share proportion and servitudes and liens attached to the property may be reviewed from the title deed.

For acquisition of property, initially an application should be made with the relevant documentation should be made to the Land Registry Directorate. Upon reviewing the documentation and approval of the transfer, actual title transfer will occur. Both seller and the buyer is required to be present at the Directorate for transfer unless a proxy is authorized to act on behalf of one of the parties. A sale agreement will be entered at the Directorate and therefore the parties should agree on the terms of the sale prior to the actual transfer.

Under Turkish law it is not compulsory to hire a real estate agent or an attorney. However, it is advisable to seek legal advice in order to gather further information about zoning plans, physical condition of the property, any unpaid taxes, encumbrances on the property and to prepare the necessary paperwork for application and actual transfer.

Taxes and duties

As stated above the legal ownership of the property shall only pass via official deed and registry signed at the Land Registry Directorates. Information including the name, surname, father's name of the seller and the buyer, purpose of acquisition and date (full title in case of a legal person), in case of joint ownership each owner's share proportion and servitudes and liens attached to the property may be reviewed from the title deed.

For acquisition of property, initially an application should be made with the relevant documentation should be made to the Land Registry Directorate. Upon reviewing the documentation and approval of the transfer, actual title transfer will occur. Both seller and the buyer is required to be present at the Directorate for transfer unless a proxy is authorized to act on behalf of one of the parties. A sale agreement will be entered at the Directorate and therefore the parties should agree on the terms of the sale prior to the actual transfer.

Under Turkish law it is not compulsory to hire a real estate agent or an attorney. However, it is advisable to seek legal advice in order to gather further information about zoning plans, physical condition of the property, any unpaid taxes, encumbrances on the property and to prepare the necessary paperwork for application and actual transfer.

> Foreign real persons who are not residing in Turkey.
>
> Turkish citizens living abroad for more than six months (with exceptions).
>
> Legal entities which have registered offices and headquarters outside Turkey, which do not generate any income in Turkey through a workplace or resident representative.

Zoning Law

The Zoning Law no. 3194 defines and determines the zoning plans and standards for land development process of lands within or without the boundaries of municipalities and urban areas.

The following plans are defined within the Zoning Law:

> Regional Plans are prepared for determining the socio-economic development trends, development potential of settlements, sectoral aims, distribution of activities and infrastructures.
>
> Environmental Plans determine the use of land as per the regional plans such as residential, industrial, agricultural, tourism and transportation.
>
> Master Plans are zoning plans in which the general use functions, main region types, future population densities of regions, structural density, development direction, sizes and principles of various settlement areas, transportation systems and problem resolution methods of the plots of land are shown. These plans are drawn on the regional or environmental plans through inscription of cadastral status and they are detailed within a report which constitute a whole together.
>
> Implementation Development Plans are plans drawn as per the principles of the master plans and they determine the construction blocks of various regions, their density and order, implementation phases which are necessary for roads and application in detail.

The Master Plans and Implementation Development Plans are prepared by the relevant municipalities as per the principles of regional plans and environmental plans. They enter into force upon approval by the municipal council. For areas outside the municipal boundaries the plans will be prepared and approved by the relevant governorship.

The main principle of the zoning law is the hierarchy of plans which require a lower scale plan to comply with an upper scale plan. Therefore, master plans and implementation development plans cannot contradict to regional plans and implementation development plans cannot contradict to master plans.

In terms of real estate (properties), for construction to start at a certain zone, the zoning structure described above should exist within that area. Except certain exemptions under the Zoning Law, a construction permit should be obtained for starting the works and upon completion of the construction occupancy permit will be issued by the relevant municipality or governorship if all the relevant legal rules and standards are complied with.

For agricultural land, no planning can be made for a use of land apart from agriculture unless the relevant permits are obtained as per the Soil Conservation and Use of Land Law.

Commercial leases

The Turkish Code of Obligations (TCO) no. 6098 regulates the commercial leases. TCO's aim is to protect the tenant's rights towards the landlord which is considered as the weaker party both by the scholars and courts. This approach was also adopted by the previous code of obligations.

It must be emphasized that under the TCO there is a specific distinction among types of commercial leases. Accordingly commercial leases are separated as commercial leases and roofed workplace leases. Some provisions only apply to roofed workplace leases. Therefore for example if a land is leased without any building on it, the general provisions of the TCO will apply to the relevant lease contract. Whereas if a unit of a building or a building is leased the aforementioned specific provisions will be applicable. It must be noted that some of the provisions regarding roofed workplace leases have been postponed to 1 July 2020.

Duration

The period of lease can be freely determined by the parties as per TCO which requires a fixed term or an indefinite term. Accordingly, the lease contract will be for a fixed term if the period of the

contract will come to an end without notification.

For commercial leases, the duration will be deemed as extended for a year with the same conditions unless a notification is made at least fifteen days before the end of the duration of the contract.

Rent

The rent may be freely agreed by the parties within the lease contract. Nevertheless, there are specific provisions regulating determination of the rent under the TCO which is not enforceable until 1 July 2020 as described below under the Article 344.

Accordingly, for roofed workplace leases, the renewed rent as agreed by the parties may not exceed rate of the increase under the producer price index of the previous year of lease. This article will also be applicable to roofed workplace leases which are longer than a year. The index is determined by the Turkish Statistical Institute each year.

For roofed workplace leases which are longer than five years or renewed after a period of five years and for the end of each five-year period, the renewed rent will be determined by a judge in accordance with the increase rate of the index, the status of the leased property and equity. This provision will be applied regardless of whether the parties have reached an agreement about this matter or not.

With reference to rent in foreign currency, the parties may not make an amendment to the amount of rent unless five years have passed. The only exception to this rule is the Article 138 of the TCO which regulates hardship where one of the parties to a contract requests from a judge to adapt the contract as per extraordinary situations. It should be noted that under TCO the conditions for adaptation are very difficult.

Prohibition preventing amendments to the detriment of the lessee

As stated above the TCO has a protective approach in favour of the lessee in terms of lessee and lessor balance. Therefore as per Article 343 which applies to residence and roofed workplace leases, the parties may not make an amendment to the detriment of the lessee apart from determining the rent, afterwards the conclusion of the contract

Alteration

As per the general provisions, renewal and alterations which should not necessitate termination of the contract and that can be expected to be endured by the lessee may be made to the property by the lessor. The lessor's written confirmation is required for renewal and alterations that will be made by the lessee.

Use and construction

The lessor is required to hand over the property at the agreed contractual date in a condition which is suitable for the use of the property as intended by the contract. This also includes the property to be legally suitable and hold any relevant permits such as occupancy permit.

Sublease and assignment

Provided that no alteration is caused which may damage the lessor, the lessee can freely sublease whole or part of the property or transfer the right of use. However, sublease and transfer of right of use is not allowed for residence and roofed workplace leases, unless a written confirmation is obtained from the lessor.

A written confirmation is required in order to assign the lease as per TCO, however for commercial leases (apart from roofed workplace) the lessor cannot avoid providing permission without a valid reason. For commercial leases the lessee will be jointly and severally liable with the assignee for up to two years.

Sublease and assignment are generally prohibited within the commercial leases and/or roofed workplace leases with the valid reasons defined under the contract.

Tax, insurance and expenses

Unless the parties determine otherwise or it is prescribed by the law, mandatory insurance, tax and similar burdens regarding the leased property shall belong to the lessor.

This liability shall also extend to collateral expenses regarding the use of the property. Nevertheless, for residence and roofed workplace leases, unless it is agreed otherwise the expenses related to heating, lighting, water, electricity, etc., shall belong to the lessee. These types of expenses are generally agreed to be paid by the lessee under the commercial leases.

Termination

As per the general provisions on leases, fixed term leases will terminate at the end of its duration.

For indefinite term leases, unless it is agreed otherwise, each party may terminate the contract as per the period of termination and notification periods defined by the TCO which will be applicable to commercial leases in general.

With reference to residence and roofed workplace fixed term leases there is a specific provision which requires a written notification to be made by the lessee at least fifteen days prior to the end of the duration of the lease contract. Otherwise the contract will be deemed to have extended for one year with the same contractual terms. Therefore the lessor cannot terminate the contract solely due to end of the duration of the contract. However, if the contract has extended for a period of ten years, the lessor may terminate the contract without any reason provided that a written notification is made at least three months before the expiry of the extension period.

For indefinite term residence and roofed workplace leases, the lessor may terminate the contract as per the general provisions afterwards a ten-year lease period. On the other hand the lessee may terminate the contract any time as per the general provisions.

In terms of residence and roofed workplace leases the TCO also allows the lessor to terminate the contract via filing a lawsuit for certain reasons such as reconstruction of the leased property, material refitting of the property due to zoning which are prescribed by the TCO.

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Framework

UK corporate law is based on both common law and statute. The legislative framework of UK company law was overhauled with the implementation of the Companies Act 2006 (the "2006 Act") which was intended to simplify and modernise company law in the UK.

The 2006 Act exists alongside the Companies Act 1985 and Companies Act 1989 (together with the 2006 Act, the "Companies Acts"). There are a number of other statutes to be considered depending on the activity a company wishes to follow. Although the provisions are similar in the constituent parts of the UK (England and Wales, Scotland and Northern Ireland), there are some differences and what follows applies specifically to England and Wales.

Types of Business Structure

The first question to be considered by anyone wishing to establish a business operation in the UK is the type of structure to be used.

Although the corporate structure is the one which is most widely used in the UK, there are a variety of other structures available to overseas entities seeking to establish a presence in the UK including setting up a branch or place of business of an overseas company, a partnership, joint venture or a limited liability partnership. In addition to corporate law considerations, the taxation consequences will also be significant in determining the final desired structure of any business structure.

Overseas companies can register as a branch or as a place of business in the UK. A branch is part of an overseas limited company organised to conduct business through local representatives in the UK. A place of business is for companies who cannot register as a branch because they are from within the UK, they are not limited companies or their activities in the UK are not sufficient to define it as a branch (for example if the activity is simply a representative office).

Types of Companies

There are different types of corporate structure, which can be used in the UK. The most common structure used is a private company limited by shares. Companies can be either public, which means that they can offer their shares or other securities for public subscription, subject to compliance with the relevant laws,or private, which means that they are not allowed to offer their shares or other securities to the public. A private company bears the suffix "Limited" or "Ltd" and a public company bears the suffix "PLC". Other types of corporate structure can be established such as companies limited by guarantee or unlimited companies, but these are not common for trading entities.

Public companies are generally subject to stricter regulations under the Companies Acts and, if they are quoted, they will also be subject to the regulations and codes of practice applicable to the relevant trading market.

The formation of a company in the UK is easy and a corporate vehicle structured to the relevant needs can be obtained very quickly and an expedited "same day" service is available. There are no requirements for local shareholders or directors and no minimum capital rules apply (in the case of a private company). Certain documents, for example the company's constitutional documents, must be filed with the Registrar of Companies to form a company.

A company is required to file its memorandum of association with the Registrar of Companies on applying for registration. The memorandum of association need simply state that the initial subscribers wish to form a company under the 2006 Act and they agree to become members of the company and to take at least one share each.

The articles of association contain the regulations relating to the internal management of the company covering matters such as the holding of meetings of directors and shareholders, transfer of shares and changes to share capital, appointment and removal of directors and the powers of directors. There is a standard or model form of articles of association, known as the Model Articles, which many UK private companies follow to some extent. The Model Articles will automatically apply to any company limited by shares that does not adopt its own articles of association on incorporation.

No government or other permission is required to establish a company, although there is some regulation of the use of certain business and trading names. Once registered, the name of a company can be changed by special resolution (75% majority) of the shareholders but care must be taken to check that the desired name is available for use by the company.

Under the 2006 Act, any person can object to a company's registered name on the grounds that it is the same as, or similar to, a name in which the objector has goodwill. Objections to the registration of company names must be lodged with the Companies Names Adjudicator.

Specific authorisation is required for the carrying on of certain types of business, for example, in financial services.

Liability of Shareholders

Every company having a share capital, whether public or private, must have at least one shareholder. There are no rules relating to the residency of shareholders.

In the case of both private and public companies, the liability of the shareholders or members is limited to the amount unpaid on the shares held by them. The company and its shareholders are regarded for company law purposes as separate legal persons.

Share Capital

Authorised Share Capital

A company's authorised share capital is the total number of issued and unissued shares in the capital of the company. An increase in a company's authorised share capital requires shareholder

approval by ordinary resolution (a simple majority).

There is no longer a requirement for a company to have an authorised share capital. If a company wishes to restrict the number of shares it can allot, it will need to amend its articles of association by special resolution (75% majority) to include suitable provisions to the extent the articles do not already contain any such restriction.

Issued Share Capital

The shares which are allotted and issued to shareholders will determine the company's issued share capital. In order to allot and issue shares, the company's directors must be authorised, by the articles of association or by shareholder resolution, to issue the relevant shares and also specifically authorised to issue shares where the directors wish to issue shares for cash otherwise than in proportion to existing shareholdings. Directors of private companies incorporated under the 2006 Act with only one class of share will automatically be free to allot shares without the prior authorisation from the members, subject to any express restriction on this power contained in the company's articles. A company incorporated under the Companies Act 1985 will first need to pass an ordinary resolution in order to give the directors the power to allot shares as set out above. These allotments are still subject to any rights of pre-emption in favour of existing shareholders, although these may be disapplied by the company's articles or by special resolution (75% majority).

Shares must be issued for not less than their nominal value, although shares can be issued as partly paid (subject to certain restrictions) and the directors can call up the unpaid amount at any time.

Minimum Shareholdings

Private Companies

There are no minimum requirements for the authorised and issued share capital for private limited companies and the most typical formation is for a company to have an authorised share capital of at least £100 divided into shares of £1. However, it is possible to establish companies with shares of different denominations and in currencies other than sterling.

Public Companies

Before a public company can carry on business, it must have a minimum share capital of £50,000 of which 25% of the shares must be paid up.

Share Capital Rights

The rights and restrictions attaching to the shares are set out in the company's articles of association. Most companies issue only one class of shares, known as ordinary shares. The rights and restrictions can be changed only by shareholder resolution (75% majority) and, where appropriate, a resolution of the holders of any affected class of shares. Preferred or preference shares would be expected to carry rights (eg to receive dividends, return on capital, etc) ahead of the ordinary shareholders and deferred shares would be expected to carry rights behind those of the ordinary shareholders. In the case of a quoted public company, it would be usual for the shares to be freely transferable and this would be a requirement of the UK markets. However, this is without prejudice to agreements restricting transfer, eg by way of a lock-up or to comply with the requirements of overseas securities laws.

Shares in UK companies are generally held in certificated form, although there is an electronic system known as CREST through which shares in quoted companies are generally traded in uncertificated (non-paper) form. When shares are issued or transferred, details of the shareholder are registered in the company's statutory books and a share certificate issued or a CREST account is credited, as applicable.

Shareholder Meetings

Most powers needed to run the company are vested in the directors by the articles of association, although it is possible to include specific provisions in the articles of association or in a shareholders' agreement requiring shareholder approval in relation to certain specified matters.

The Companies Acts set out those matters which require shareholder approval. In the case of a private company with few shareholders or which is a wholly-owned subsidiary, shareholder approval can be obtained by written resolution of the shareholders, or otherwise by the shareholders in a general meeting. The written resolution procedure is not available to public companies.

Shareholder meetings require a prior period of notice to shareholders of not less than 14 days save in respect of a private company's annual general meeting where 21 days notice is required. Where not less than 90% of the shareholders of a private company agree, however, these notice requirements can be dispensed with and the meeting (including the annual general meeting) may be held on short notice.

A public company can only dispense with the requirement for a notice period in respect of a general meeting if 95% of the shareholders agree and for an annual general meeting, if all the shareholders agree. A general meeting on short notice is not in any event permitted for a public limited company that is trading on a regulated market.

Matters reserved to the shareholders by the Companies Acts include authorisations in relation to share capital issues, certain categories of related party transactions, amendments to the company's constitutional documents and the decision to liquidate the company. A private company seeking to reduce its share capital will generally be able to do so using one of two procedures available to it designed to protect the creditors of the company. The first, and perhaps the simplest, procedure is a reduction of capital by means of a special resolution (75% majority) of the shareholders supported by a solvency statement. The second and more onerous procedure in terms of time and cost requires shareholder approval as well as the sanction of the court. Public companies seeking to reduce their share capital are restricted to using the court approved procedure.

A public company must hold a general meeting of its shareholders, known as the annual general meeting, each year at which it is usual to present the accounts, appoint auditors, deal with dividends and elect any directors who have been appointed since the last annual general meeting. Private companies are not required to hold an annual general meeting subject to any express provision to the contrary set out in the articles.

Directors and Officers

Appointment and Removal

A company may, if its articles of association permit, have only one director who must be a natural person, and be at least 16 years old.

The rights to appoint directors will be contained in the company's articles of association. Any person proposing to act must indicate his or her consent to act and provide specified information to

the Registrar of Companies. It is usual for the shareholders to have the right to appoint directors and for the directors to be able to fill any vacancy on the board subject to the right of the shareholders to confirm the appointment at the next annual general meeting. Similarly, the articles of association would set out the circumstances in which a director can be removed from office and there is also a statutory right, subject to compliance with certain procedures, for shareholders, by simple majority, to remove any director from office regardless of any agreement to the contrary in place with the director.

It should be noted that the office of director is quite separate as a matter of English law from the director's position, (in the case of executive directors), as an employee and accordingly, the removal from office of a director is without prejudice to the director's rights under his or her contract of employment.

Directors' Duties

Part 10 of the 2006 Act sets out the general duties of directors which are owed to the company. There are seven statutory duties which are based on and replace the previous common law and equitable principles relating to directors' duties. The various statutory requirements and restrictions placed on the powers of directors must be considered in the light of any proposed activity of the company. The effect of these duties is that the directors can be held personally liable if they are deemed to have failed in promoting the success of the company.

It should also be noted that in certain circumstances, directors may become liable to creditors in an insolvent liquidation and that directors will be personally liable for the information about the company contained in any prospectus issued for the purposes of a fund-raising.

Subject to the rules relating to conflicts of interest, as further described below, there is no general legal requirement for a company to have a proportion of independent directors on its board nor is there a requirement for companies to have a supervisory board. However, quoted companies will be expected to comply with best practice in relation to corporate governance, which includes, among other matters, the requirement for independent directors.

Similarly, there are no specific rules on the level of directors' remuneration in private companies and this will usually be a matter for negotiation. In some circumstances, such as payments proposed to be made to a director for loss of office, shareholder approval will be required. In the case of fully listed companies on a regulated market, shareholders must approve on an advisory basis, a remuneration report, which sets out, amongst other things, all payments and other benefits made to directors.

Conflicts of Interest

Directors have a statutory duty to avoid situations in which their interests can or do conflict, or may possibly conflict, with those of the company. Matters that give rise to an actual or potential conflict may be authorised by the board subject to the board having all necessary powers to authorise such conflicts. For private companies incorporated on or after 1 October 2008, the power to authorise is subject to anything in the company's articles of association invalidating such authorisation. Private companies incorporated prior to 1 October 2008, must pass an ordinary resolution (simple majority) expressly providing the board with the power to authorise conflicts. For a public company, the directors may only authorise a conflict of interest if permitted to do so by the company's articles of association.

Secretary

A public company must appoint a company secretary. The company secretary does not need to be a natural person. The company secretary is principally an administrative function and the appointed secretary should be familiar with the filing and other requirements of the Registrar of Compa-

nies. Accordingly, it would be usual for the secretary to be based in the UK.

There is no requirement for a private company to have a company secretary. If a private company chooses not to have a secretary, anything which is required or authorised to be done by the secretary can be validly done by a director or any person authorised by a director.

Confirmation Statement

Companies must complete a confirmation statement each year, which gives details of its share capital, shareholders, location of the statutory books, registered office, directors and secretary. It is now also necessary to maintain a register of persons with significant control and influence over the company and to file this information with the Registrar of Companies. Persons with significant control and influence include various categories of person, but broadly speaking are most usually persons who hold more than 25% of the shares or voting rights or have the right to appoint or remove directors but would also include persons who exercise significant control or influence, either directly or through an intermediate organisation.

Registered Office

A company needs to file details of its registered office in England and Wales with the Registrar of Companies and any official notifications will be sent to that address. Subject to certain exceptions, the full name of the company must appear at its registered office and business premises. Any change to the registered office can be made by simple board resolution and must be notified to the Registrar of Companies.

Company's Notepaper

All business stationery must show the company's full name and number and registered office. The names of the directors need not be included, but if the name of any director appears then so must the names of all the other directors.

Accounts and Auditors

Subject to exemptions for small companies, every company must appoint a firm of auditors to audit and report on its accounts for each financial period. Companies are also required to file accounts and a directors' report with the Registrar of Companies, and these documents must comply with the requirements of the 2006 Act and show a true and fair view of the financial position of the company.

The 2006 Act lays down detailed rules as to the form and content of accounts and time limits for their delivery to the Registrar of Companies. There are additional filing and compliance requirements applicable to public quoted companies.

Other Filings

Companies must also notify the Registrar of Companies whenever there is a change of share capital, directors and officers and whenever the company creates a charge over any part of its assets. In the case of a charge, the required information must be filed within 21 days of its creation to ensure the validity of the security in the event of liquidation.

The 2006 Act creates an offence where a person knowingly or recklessly causes to be delivered to the Registrar of Companies a document that is false or misleading and is liable for up to two years imprisonment or a fine.

Statutory Books

Every UK company must maintain a statutory register giving details of its shareholders, persons with significant control or influence, directors, secretary, any issues and transfers of shares as well as charge-holders. There should also be a minute book containing minutes of all meetings of directors and shareholders.

A company can now keep its statutory books at an address other than its registered office. This is known as a single alternative inspection location (SAIL); the location must be in the same part of the UK as the company's registered office and notification of the SAIL must be given to the Registrar of Companies.

Methods of Raising Finance

The appropriate method of raising finance will depend on the nature, size and stature of the company. Funds can be raised by way of seed, venture or crowd funding, private equity, a stock exchange listing or loan finance, and within these broad categories there are a variety of structures.

McCarthy Denning Limited

The following information is based on UK tax law and HM Revenue and Customs ("HMRC") practice currently in force in the UK. Such law and practice (including, without limitation, rates of tax) is in principle subject to change at any time. The information is correct as at today's date but may be subject to change following finalisation of the legislation for the Finance Bill 2020 and the UK's exit route from the EU.

The UK was due to leave the EU on 31 October 2019. However, due to recent developments, the date of the UK's exit route from the EU is uncertain. EU-derived law applies or has been implemented in the UK across a wide range of areas, including tax. It is currently unclear when, how and to what extent UK law in these areas will in future diverge from European rules and regulation.

Corporate Residence

A company is regarded as tax resident in the UK if it is incorporated in the UK or if its central control and management is exercised in the UK. A company incorporated in the UK can also be treated as not resident in the UK under an applicable double tax treaty. It is possible for a company to be dual resident.

Rates of Corporation Tax

Corporation tax is chargeable on a company's worldwide income and chargeable gains. The rate for the financial year ended 31 March 2020 is 19% after which it will be reduced to 17% for the financial year commencing 1 April 2020.

Non-resident Companies

Companies that are not resident in the UK are only subject to UK corporation tax if they carry on a trade in the UK through a permanent establishment. If this applies, the company will be subject to UK corporation tax on all business profits wherever arising which are attributable to that permanent establishment. The profits attributable to the permanent establishment are trading income, income from property held by the establishment and chargeable gains on UK assets used for the purposes of the permanent establishment. Typically, the business profits article of a double tax treaty will limit the corporation tax charge to the profits that are attributable to a permanent establishment in the UK. The profits for corporation tax purposes are then determined as if the establishment were a distinct and separate enterprise, dealing wholly independently with the non-resident company and assuming that it has the same credit rating as the non-resident company, and that its equity and loan capital are reasonable in the context of its independence.

Transfer Pricing

Transfer pricing rules apply to both international and domestic transactions. The basic rule may apply for transactions if an actual provision has been made between any two affected persons and one of them was directly or indirectly participating in the management, control or capital of the other or a third person was participating in the management, control or capital of both the affected persons. The basic rule requires the actual provision to be compared to an arm's length provision (which would have been made between independent enterprises) and, if the actual provision confers a potential UK tax advantage on one or both of the affected persons, an adjustment (to bring the profits up to what they would have been if the arm's length provisions had applied) is to be made to the taxable profits of the advantaged persons.

The UK transfer pricing legislation refers to the Organisation for Economic Co-operation and Development's ('OECD's) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ('OECD Guidelines'). With the continued globalisation of business, transfer pricing has become an issue of increasing importance and was one of the key areas of focus for the OECD initiative to counter Base Erosion and Profit Shifting ('BEPS') practices by multinational corporations.

The OECD Guidelines provide detailed guidance on how the arm's length principle should be applied in relation to related-party transactions, incorporating revisions made as part of BEPS Actions. The OECD Guidelines contain amended and further guidance on applying the arm's length principle, transaction profit split methods, intangibles, low value-adding intra-group services and cost contribution agreements. The UK legislation in Part 4 of Taxation (International and other Provisions Act 2010 ('TIOPA 2010') has been amended so that it refers to the latest version of the OECD Guidelines.

Controlled Foreign Companies

The Finance Act 2012 inserted Part 9A into TIOPA 2010, enacting a new regime for controlled foreign companies ('CFCs') for accounting periods beginning or on after 1 January 2013. A CFC is a non-UK resident company that is controlled by a UK resident person or persons. A CFC charge will arise if all of the following apply:

> A company resident outside the UK for tax purposes is controlled by a UK resident person or persons;
>
> A chargeable company (i.e. a UK resident company that has a sufficient interest in the CFC);
>
> The CFC has chargeable profits that pass through 'gateway' tests (that is profits of a specified type that are regarded as sufficiently connected to the UK); and
>
> The CFC is not entitled to the benefit of one or more of the entity-level exemptions. (the exempt period exemption, excluded territories exemption, low profits exemption, low profit margin exemption, tax exemption).

There are three alternative tests to determine control:

> Legal Control (namely the power to ensure the company's affairs are conducted in accordance with the holder's wishes either through holding of shares, possession of voting rights or by virtue of other constitutional documents);
>
> Economic rights (i.e. entitled to the majority of proceeds on a disposal of a company's shares, or income on a distribution of its income, or the company's assets available for distribution on a winding up); and
>
> Accounting (the 'parent undertaking' or 'parent' control test for the purposes of Financial Reporting Standard (FRS 2) provided that at least 50% of the non-UK resident company's chargeable profits would be apportioned to the UK company parent).

A UK resident may also have control if the company is at least 40% controlled by a UK person and at least 40% (but no more than 55%) controlled by a non-UK person (the 40% test).

Where a company is a CFC and does not satisfy any of the entity-level exemptions, then the total chargeable profits of the CFC and any creditable tax are apportioned among persons with a relevant interest in the CFC. A sum equal to corporation tax on the apportioned chargeable profits of the CFC (less the CFC's creditable tax on those apportioned chargeable profits) is charged to each chargeable company.

Action 3 of BEPS is aimed at developing recommendations for the design and strengthening of the CFC rules although the Government does not intend to make any further amendments to our domestic CFC rules to comply with Action 3. The Finance Bill 2019 contained provisions to comply with Anti-Tax Avoidance Council Directive 2016/1164/EU ('ATAD') which became section 20 of the Finance Act 2019.

Group Taxation

For corporation tax purposes, a group relationship exists between two companies if one company holds not less than 75% of the other's ordinary share capital or if both companies are 75% subsidiaries of a third company. In addition, a company which is to be included in a corporation tax group must also be an effective 51% subsidiary of a principal company. For group relief purposes, the requirement for a 75% shareholding relationship is extended so that the company owning the shares must also be beneficially entitled to 75% or more of the profits available for distribution to equity

shareholders and of assets available for distribution in a winding-up. It is possible to surrender current year trading losses and other amounts eligible for group relief to a profit making company within the same group. In many cases a payment for group relief is made by the claimant company to the surrendering company as consideration for the surrender. Consortium group relief is also available where a company is owned by a consortium where 75% or more of the ordinary share capital is beneficially owned by several companies between them none of which owns beneficially less than 5% of that capital. It is possible both for non-UK resident companies to be members of a group for group relief purposes and to trace the ownership of one UK resident company by another through a non-UK resident company. Previously, a non-UK resident company could not be the surrendering company or the claimant company unless it carried on a trade in the UK through a permanent establishment. However, in 2006 provisions were introduced that in theory allow group relief for a non-UK resident company's losses but such relief is dependant on various tests which in practice are rarely satisfied.

For accounting periods beginning on or after 1 April 2017, the Finance (No 2) Act 2017 introduced provisions reforming the rules on what companies can do with carried-forward corporation tax losses. The provisions include a new group relief for carried forward losses in respect of losses arising on or after 1 April 2017 only.

Tax Depreciation (Capital Allowances)

Tax allowances, called capital allowances, on certain purchases or investments can be claimed. The general rate is 18% per annum calculated on a reducing balance basis. This means a proportion of these costs can be deducted from taxable profits in order to reduce the tax charge. Capital allowances are available on items such as plant and machinery, buildings and fixtures. The amount of the allowance depends on what is being claimed for. In some cases, the rates are different in the year you make the purchase from those in subsequent years.

Under the Finance (No. 2) Bill 2017, legislation was introduced to provide 100% first year allowances for expenditure incurred from 23 November 2016 on new, unused electric vehicle charging point equipment installed solely for the purpose of charging electric vehicles. The Finance Act 2019 extended these allowances until 31 March 2023 for corporation tax and 5 April 2023 for income tax purposes.

Inter-company Domestic Dividends

Corporation tax is not normally chargeable on dividends and other distributions of a company resident in the UK, nor are such dividends or distributions taken into account in computing income for corporation tax. This rule also applies to dividends received by the UK permanent establishment of a non-UK resident company.

Substantial Shareholding Exemption

Capital gains arising from disposals of trading companies in which a trading company has at least a 10% shareholding held for an uninterrupted period of at least one year beginning no more than six years before the date of disposal are in certain circumstances free of corporation tax on chargeable gains.

Tax Incentives

Tax incentives are available for investment in unquoted trading companies providing income tax relief and capital gains tax relief.

Corporation Tax Administration

For companies with taxable profits of £1.5m or less, corporation tax is generally payable nine months after the end of the accounting period but large companies (those with taxable profits of over £1.5m) are required to pay in instalments.

Under the Finance (No. 2) Bill 2017, the Government's Making Tax Digital ('MTD') project will replace annual returns with digitised tax compliance, quarterly returns and end of year statements. Digital tax accounts were made available for small businesses from 2016-17. The new rules were due to apply to corporation tax from April 2020, subject to certain exemptions. However, the Government announced that this is the earliest date that the new rules may apply and that they will not apply until MTD has been shown to work.

Double Tax Treaties

The UK has a large number of double tax treaties a list of which is provided. Relief from double taxation can be by way of treaty, by unilateral relief or by deduction.

Other taxes

Stamp Taxes

There are currently three stamp tax regimes in the UK as follows. Stamp duty land tax ('SDLT') is a transfer tax charged on transfers of UK land transactions of whatever nature (subject to exemptions) regardless of the residence of the parties. The old slab system was replaced by the slice system so SDLT for residential property applies to slices of consideration rather than to all the consideration. For transfers of residential freeholds (or leases where the only consideration is a premium) the rate of duty starts at 2% for transactions in excess of £125,000 but not more than £250,000, 5% where the consideration is more than £250,000 but not more than £925,000, 10% where the consideration is more than £925,000 but not more than £1,500,000, rising to 12% for transfers over £1,500,000. Please note that lower rates of SDLT apply for first-time buyers purchasing residential properties worth £500,000 or less, with full relief from SDLT for dwellings up to £300,000. Higher rates of SDLT (applying an additional 3% levy) will apply to purchases of additional UK residential properties in England, Wales and Northern Ireland such as second homes and buy to let properties acquired for more than £40,000. A higher rate of 15% may apply to all the consideration where certain non-natural persons (such as a company) purchase an interest in a single residential property for more than £500,000.

Leases are generally chargeable at 1% of the net present value of the rentals under the lease (applying a 3.5% discount rate) where the net present value exceeds £125,000 in the case of residential property and £150,000 in the case of non-residential. Stamp duty reserve tax is a transfer tax charged on agreements to transfer UK shares and securities and on foreign shares and securi

ties which retain a register of shareholders in the UK. The rate of charge is generally ½% of the consideration. Stamp duty is payable on the transfer of UK shares and other marketable securities (where the consideration is over £1000) at the rate of ½% and cancels any stamp duty reserve tax which may be payable. Stamp duty is not chargeable on transfers of most other assets. There is no capital duty in the UK

Value-Added Tax

VAT is a tax paid when goods or services are bought from a VAT-registered business in the EU, including within the UK. VAT is not paid on all goods and services, and sometimes it is paid at a reduced rate. In some circumstances, refunds of VAT paid may be claimed.

Each EU country has its own rates of VAT. In the UK there are three rates.

> Standard rate. The standard rate of VAT on most goods and services in the UK is 20 %.
>
> Reduced rate. In some cases, for certain fuel and power, some energy saving materials, some residential property works etc. VAT is paid at a reduced rate of 5 %.
>
> Zero rate of 0%. There are some goods on which VAT is not paid, like most food items, books, newspapers and magazines and children's clothes.

The Government's MTD project will apply to VAT from April 2019 for businesses with a turnover in excess of the VAT registration threshold, subject to certain exemptions. Complex businesses must implement digital tax compliance for VAT by October 2019.

National Insurance Contributions

Employer's national insurance contributions are payable at the rate of 13.8% on earnings in excess of £162 per week. Employees national insurance is payable at the rate of 12% for earnings between £162 and £892 per week and at 2% thereafter.

Personal taxes

Residence and Domicile

An individual's liability to tax in the UK is determined by his residence and domicile status. Up until April 2013, the terms "resident", "ordinarily resident" and "domiciled" were not defined in UK legislation so it was necessary to rely on case law and the practice of HMRC. A Statutory Residence Test ('SRT") was introduced with effect from April 2013. The SRT is quite complex and requires a series of tests to be considered. Under the new rules an individual will be treated as tax resident in the UK if he satisfies one of the Automatic UK Tests or the Sufficient Ties Test, and does not satisfy one of the four Automatic Overseas Tests. In addition, the Government has abolished the concept of ordinary residence although it has been replaced by legislation that allows short-term UK resident, foreign domiciled employees to continue to claim the remittance basis where part of their duties is carried out overseas.

Domicile is a fundamentally different concept from residence. Unlike residence, it is not possible to have more than one domicile at any one time and it is not the same as nationality. Essentially, it is the place where an individual has his real home, and has the strongest cultural, economic and family links, and where he ultimately intends to reside. UK domiciled individuals are assessable on their worldwide income and gains.

Domicile can have a significant effect on UK tax liabilities. Resident non-UK domiciled individuals need not pay UK tax on income and capital gains arising overseas if they are not remitted to the UK. The remittance basis results in an individual paying tax on foreign income and capital gains by reference to amounts brought into the UK. Individuals domiciled outside the UK who use the remittance basis will pay an additional £30,000 charge if they have been resident in the UK for at least seven out of the nine preceding tax years, £60,000 if they have been resident in the UK for at least 12 years out of the 14 preceding tax years and £90,000 if they have been resident in the UK for at least 17 years out of the preceding 20 years. They will pay tax at the normal income tax rates (as opposed to dividend tax rates) on remitted foreign dividends.

The deemed domicile rules changed from 6 April 2017. From that date, those who are not domiciled in the UK will be deemed UK domiciled for tax purposes if they have been UK resident for more than 15 out of the last 20 tax years preceding the tax year in question. An individual who is a 'formerly domiciled resident' for a particular tax year will also be deemed UK-domiciled no matter what their actual domicile. Also the inheritance tax benefit of a non-domiciled individual holding UK residential property through an offshore structure has been removed.

Individual Tax Rates (for the tax year 2019/2020)

An individual's liability to tax in the UK is determined by his residence and domicile status. Up until April 2013, the terms "resident"

Dividends*SavingsOther

£1-£37,5007.5%20%**20%

£37,501-£150,00032.5%40% 40%

Over £150,00038.1%45%45%

* Dividend nil rate band on first £2000 of an individual's dividend income

** Personal savings allowance results in nil rate on £5000 of savings income where taxable income other than savings and dividends is below the upper limit of the starting rate band.

Dividends are treated as the top slice of total income, savings as the next slice and other income as the lowest slice.

Inheritance Tax

Inheritance tax is due on an individual's estate on death, on gifts within seven years of death and on certain lifetime gifts. It is charged at the rate of 40% on transfers in excess of £325,000 for the tax year 2019/2020. To the extent that chargeable transfers exceed the nil rate band, the tax rate is 20% for lifetime transfers where the donor survives seven years and 40% for transfers on death and in the three years preceding death. A tapered inheritance tax charge applies to gifts made between three and seven years before death. Inter spouse transfers are free of tax provided either both are domiciled or non-domiciled in the UK for inheritance tax purposes. The rules differ where the transferee spouse is non-domiciled but the transferor spouse is domiciled.

An additional residence nil rate band of £125,000 for 2018/19, £150,000 for 2019/20 and £175,000 for 2020/21 is available where a residence is passed on death to direct descendants. Any unused nil rate band can be passed to a spouse or civil partner.

Capital Gains Tax

Individuals are subject to capital gains tax on their chargeable gains subject to the annual allowance and other exemptions and reliefs. Capital gains tax also applies to other entities that are not companies such as trustees and personal representatives. Gains are taxed for a "year of assessment". Each year of assessment starts on 6 April and finishes on 5 April in the following year. Under the capital gains tax regime, an individual is taxed on gains arising in a year of assessment during any part of which the individual is resident in the UK. The rate of capital gains tax is 10% for basic rate taxpayers and 20% for higher and additional rate taxpayers and trustees and PRs. However, for disposals of UK residential property the rates are 18% and 28% respectively where principal private residence relief is not available. The annual allowance is £12,000 for 2019/20 (and £6000 for trustees).

Double tax treaties

Treaty and Non Treaty Withholding Taxes ('WHT')

The following chart contains the WHTs that are applicable to interest and royalty payments by UK companies to non-residents under the tax treaties currently in force. Where, in a particular case, a treaty rate is higher than the domestic rate, the latter is applicable. There is no withholding tax on dividends.

Relief at source may be granted on application. Please note that payments of interest and royalties to any UK resident company can be made free of WHT if the recipient is chargeable to tax on the interest or royalty.

Resident recipient	Interest (%)	Royalties (%)
Corporations	0/ 20	0/ 20
Individuals	20	20

Non-resident recipient corporations and individuals	Interest (%)	Royalties (%)
Non-treaty territories	20	20
Treaty territories:		
Albania	6	0
Algeria	7	10
Antigua and Barbuda	20	0
Argentina	12	3/5/10/15 (1)
Armenia	5	5
Australia	0/10 (2)	5
Austria	0	0/10 (3)
Azerbaijan	10	5/10 (4)
Bahrain	0	0
Bangladesh	7.5/10 (2)	10
Barbados	0	0

Belarus	0	0
Belgium	0/10 (5)	0
Belize	20	0
Bolivia	15	15
Bosnia-Herzegovina	10	10
Botswana	10	10
British Virgin Islands	20	20
Brunei	20	0
Bulgaria	5	5
Canada	0/10 (7)	0/10 (4)
Cayman Islands	20	20
Channel Islands:		
Guernsey (includes Alderney and Hern)	20	20
Jersey	20	20
Chile	5/15 (2)	5/10 (6)
China (excludes Hong Kong)	10	6/10 (4)
Colombia (not yet in force)	10	10
Croatia	5	5
Cyprus	10	0
Czech Republic	0	0
Denmark	0	0
Egypt	15	15
Estonia	10	0
Ethiopia	5	7.5
Falkland Islands	0	0
Faroes	0	0
Fiji	10	0/15 (7)
Finland	0	0
France	0	0
Gambia	15	12.5
Georgia	0	0
Germany	0	0
Ghana	12.5	12.5
Greece	0	0
Grenada	20	0
Guyana	15	10
Hong Kong	0	3
Hungary	0	0

Iceland	0	5
India	10/15 (2)	10/15 (6)
Indonesia	10	15
Ireland, Republic of	0	0
Isle of Man	20	20
Israel	15	0
Italy	0/10 (6)	0/8 (7)
Ivory Coast (Côte d'Ivoire)	15	10
Jamaica	12.5	10
Japan	0/10 (10)	0
Jordan	10	10
Kazakhstan	10	10
Kenya	15	15
Kiribati	20	0
South Korea (Republic of Korea)	10	2/10 (8)
Kosovo	0	0
Kuwait	0	10
Latvia	0/10 (2)	0/5/10 (6, 7)
Lesotho (new treaty not yet in force; royalty rate will be 7.5%)	10	10
Libya	0	0
Liechtenstein	0	0
Lithuania	0/10 (2)	0/5/10 (6, 7)
Luxembourg	0	5
Macedonia	10	0
Malawi	0/20 (3)	0/20 (4)
Malaysia	10	8
Malta	10	10
Mauritius	20	15
Mexico	5/10/15 (7)	10
Moldova	5	5
Mongolia	7/10 (2)	5
Montenegro	10	10
Montserrat	20	0
Morocco	10 (6)	10
Myanmar	20	0
Namibia	20	0
Netherlands	0	0
New Zealand	10	10

Nigeria	12.5	12.5
Norway	0	0
Oman	0	8
Pakistan	15	12.5
Papua New Guinea	10	10
Philippines	10/15 (2)	15/25 (9)
Poland	0/5 (2)	5
Portugal	10	5
Qatar	0	5
Romania	10	10/15 (4)
Russian Federation	0	0
St. Kitts and Nevis (St. Christopher and Nevis)	20	0
Saudi Arabia	0	5/8 (6)
Senegal	10	10
Serbia	10	10
Sierra Leone	20	0
Singapore	0/5 (2)	8
Slovak Republic	0	0
Slovenia	0/5 (2)	5
Solomon Islands	20	0
South Africa	0	0
Spain	0	0
Sri Lanka	10	0/10 (9)
Sudan	15	10
Swaziland	20	0
Sweden	0	0
Switzerland	0	0
Taiwan	10	10
Tajikistan	10	7
Thailand	25	5/15 (9)
Trinidad and Tobago	10	0/10 (9)
Tunisia	10/12 (2)	15
Turkey (excludes North Cyprus)	0/15 (2)	10
Turkmenistan	10	10
Tuvalu	20	0
Uganda	15	15
Ukraine	0	0
United Arab Emirates	0	0

United States	0	0
Uruguay	10	10
Uzbekistan	5	5
Venezuela	5	7
Vietnam	10	10
Zambia	10	5
Zimbabwe	10	10

Notes

UK domestic law generally charges WHT on patent, copyright, and design royalties, although there can be definitional uncertainties. Many treaties allow reduced rates for a wider range of royalties. These are mentioned in this table, even though there may be no UK WHT applied under domestic law.

3% for news; 5% for copyright; 10% industrial; 15% other royalties.

Lower rate for loans from banks and financial institutions.

Higher rate applies if recipient controls more than 50% of payer.

Lower rate applies to copyright royalties.

0% on loans between businesses.

Lower rate applies to industrial, commercial royalties.

Specific additional conditions apply for lower rate.

Lower rate applies for equipment royalties.

Lower rate applies to films, TV, and radio.

Higher rate applies to certain profit related interest.

Framework

Employment law in the UK is based on a mix of statute, contract and common law. Although employment law is not generally considered to be as onerous for employers as in many other European countries, employment is nevertheless highly regulated, and in many areas similar to mainland Europe due to the UK implementing EU Directives. In some cases, the UK has 'gold-plated' EU requirements, giving even greater protection to employees.

Employment Contracts

An employer is required to provide an employee with a written statement of specified employment particulars within two months of the start of their employment, although this expected to change from 6 April 2020, when the particulars will need to be provided no later than the first day of employment. The details these particulars should give are set out in statute and should include, amongst other information, the name of the employer, the date when employment began, the employee's period of continuous employment, the rate and intervals of remuneration, hours of work, holiday entitlement, sick pay, the notice required to terminate, as well as details of the disciplinary and grievance procedures that apply to the employment.

Cost of Dismissal and Notice Periods

When evaluating the cost of dismissing an employee, an employer needs to consider the value of the employee's notice period. Employees will typically have express contractual notice periods in their employment contracts, which should be at least equal to a statutory minimum notice period.

Contractual Rights

If an employee is dismissed in breach of their contract of employment, the employee may be entitled to claim damages for wrongful dismissal. Damages for wrongful dismissal are calculated to put employees in the position they would have been if the contract had been terminated correctly. Usually, this is the amount of salary and benefits to which the employee would have been entitled during the notice period or until the end of any fixed term contract. This entitlement to damages is subject to the employee's duty to mitigate the losses suffered by finding alternative employment. Claims for breach of contract may be brought either in the High Court or the County Court or, for claims limited to £25,000 in an employment tribunal.

Statutory Rights

Statute provides for minimum periods of notice. After the employee has been employed for one month, the employee is entitled to receive one week's notice of termination for each complete year of service up to a maximum of 12 weeks' notice for 12 years of employment. The employer is entitled to receive at least one week's notice of termination from the employee, irrespective of the employee's length of service. If an employment contract provides for a period of notice which is shorter than the statutory minimum notice, the statutory minimum notice will prevail.

Unfair Dismissal

Employees with two years' continuous employment with an employer qualify for protection against unfair dismissal. This means that an employer must have a "fair reason" to dismiss and must follow a "fair" procedure before deciding to dismiss. However, in some circumstances, the two year qualifying period is not required for an employee to have protection. For example, if an employee is dismissed for family reasons, including pregnancy, statutory maternity, adoption or parental leave, or for whistleblowing, or for exercising a statutory right or for trade union membership, the dismissal may be automatically unfair irrespective of how long the employee has been employed.

There are five potentially "fair" reasons for dismissing an employee: conduct, capability (ie competence or on health grounds), redundancy, illegality or "some other substantial reason" justifying the dismissal of an employee holding the position held by that employee. The procedures to be followed in relation to each category of potentially fair reason for dismissal are slightly different but they all involve consultation with the employee before the dismissal. The Tribunal will also consider whether the employer has acted reasonably in all the circumstances in treating the reason for the dismissal as a sufficient reason for dismissing the employee.

In determining whether the employer acted reasonably, the courts and tribunals will have regard for the ACAS Code of Practice and Disciplinary and Grievance Procedures ("ACAS Code"). If employers fail to follow the ACAS Code as a minimum, they risk a finding of unfair dismissal and an uplift to compensation, at the discretion of the Employment Tribunal.

If an employee is successful in bringing an unfair dismissal claim, an employment tribunal can order reinstatement, re-engagement or compensation. Compensation is the most common award and comprises the following elements:

> a basic award which is calculated in the same way as a statutory redundancy payment depending on the age and length of service of the employee and their weekly pay. A "week's pay", which is capped at an amount fixed by the Government in April each year. For 2019/20, the maximum "week's pay" is £525 per week;
>
> a compensatory award which will be assessed on the basis of the losses suffered by the employee. The award is capped at an amount fixed by the Government in April each year (for 2019/20, the cap is £86,444), or one year's gross salary, whichever is lower

Employment Contracts For Directors

Employment contracts for directors are commonly referred to as service agreements and should be approved by the board of directors of the company before they are entered into. They usually contain more onerous provisions specifying the director's duties to the company as well as protection for the company's confidential information, "garden leave" provisions, intellectual property rights, and restrictions on activities during employment and possibly post termination restrictive covenants. It is also common for directors to have longer contractual notice periods than other employees. A service agreement usually provides for the director to resign his office of director on termination of the employment. There is no special regime for the employment of directors. However, there are requirements in the Companies Act 2006 which limit the guaranteed term of a director's service contract to less than two years without the prior written consent of the shareholders of the company. There are also special provisions regarding notice and remuneration which apply to directors of UK quoted companies.

Employees' Representatives And Union Representation

Collective Consultation with Employee Representatives

In a situation where an employer is proposing to dismiss 20 or more employees by reason of redundancy within a 90-day period, there is a duty to inform and consult with employee representatives of the affected employees, and to notify the Government of the details. The legislation imposes a moratorium on dismissals in these circumstances, meaning that an employer must wait for 30 days between commencing consultation and the first dismissal, or 45 days if the number of dismissals is 100 or more in the 90-day period.

Failure to notify the Government of the proposals is a criminal offence. The penalty for non-compliance with the obligation to inform or consult over is up to 90 days' actual pay for each affected employee if an affected employee or his representative brings a successful claim for a protective award in an employment tribunal.

A duty to inform and consult with employee representatives can also arise where there is a transfer of a business (or part of a business), or in an outsourcing scenario. This arises under a piece of legislation known as "TUPE". The penalty for failing to comply with the obligations to inform and consult under TUPE is 13 weeks' actual pay per affected employee.

European Works Councils

The purpose of a EWC is for employers to inform and consult their workforce on an ongoing basis about measures which are proposed which may affect employment prospects and decisions which are likely to lead to substantial changes in the organisation such as redundancies or transfers of the business. The Transnational Information and Consultation Regulations 1999 (TICE Regulations) apply if central management of a "Community scale" undertaking or group of undertakings is in the UK. There must be at least 1,000 employees within the EU and at least 150 employees in each of two member states.

Information and Consultation obligations are not automatic; if there is no European Works Council (EWC) (either because central management has not initiated one or the employees have not requested one) there is no obligation to inform or consult. However, if a written request has been made by employees (or their representatives) covering 100 or more employees in at least two member states, central management must set up a special negotiating body to negotiate an EWC or a procedure for Information and Consultation. If management refuses to commence negotiations for an EWC agreement within six months of the request or when no EWC agreement has been reached within three years of an EWC request, the default model EWC provisions apply and

Information and Consultation obligations arise on matters which concern the undertaking as a whole or at least two undertakings in at least two different EEA states.

Union Representation

Almost one in four employees in the UK belongs to a trade union. A trade union is an organisation which consists wholly or mainly of workers of one or more description. A trade union's main aim is to reach agreements with employers over the contractual terms under which workers will work.

An employee who is a member of a trade union has rights which include the following in relation to his employer: to be accompanied to a grievance/disciplinary hearing by a trade union official; not to be refused employment, dismissed or subjected to any detriment by reason of his trade union membership or activities and the right to reasonable paid time off work to take part in trade union activities; where a trade union is recognised for collective bargaining purposes, the employer has a duty to consult on training for workers within the bargaining unit.

Collective Bargaining Agreements

A collective agreement is an agreement or arrangement made by or on behalf of a union and an employer which relates to matters such as terms and conditions of work, termination/suspension of employment, disciplinary matters or allocation of work. In large sectors of industry in the UK, levels of pay and other principal terms are agreed in a collective agreement.

Where a union has been formally recognised by an employer for collective bargaining, it can negotiate pay and other terms on behalf of a group (or groups) of workers. This will result in a collective agreement being formed.

The provisions of a collective agreement will be legally enforceable provided the agreement is in writing, and expressly states that the parties intend the agreement to constitute a legally binding agreement between the employer and the union. To be enforceable between the worker and the employer, the collective agreement must be incorporated into the worker's individual terms and conditions of employment. Such provisions will be enforceable between the employer and the worker even if the collective agreement is not legally binding as between the employer and the union.

There are statutory rights in the UK for trade unions to be recognised by employers for collective bargaining purposes, provided various conditions are satisfied. The regime seeks to promote voluntary recognition wherever possible. The recognition procedures are complex and were introduced in the Employment Relations Act 1999. The recognition machinery is contained in The Trade Union and Labour Relations Consolidation Act 1992.

Wages And Other Types Of Compensation

The National Minimum Wage Act 1998 specifies a minimum wage for employees over 18. The rates change each April. The rates for 2019/20 are as follows: for employees over school age but under 18 the minimum wage is £4.35 per hour, for employees aged 18-20 it is £6.15 per hour and for employees aged 21-24 it is £7.70 per hour, and for employees aged 25 and over, it is £8.21 per hour.

The requirement to work overtime and additional payment (if any) for overtime worked is something which is usually dealt with by the employee's contract of employment.

Auto-Enrolment Pensions

All UK employers are required to auto-enrol its eligible workers - referred to as "jobholders" - in a pension scheme meeting specific standards unless the jobholders are already active members of the employer's qualifying pension scheme. Jobholders can opt out of the pension scheme in which he has been auto-enrolled, but if they do not do so the employer will be obliged to pay minimum pension contributions as long as the worker remains an active member.

Insurance Benefits

It is common in the UK for employers to provide their employees with insurance benefits. Probably the most common is private medical insurance. Other benefits which are often provided are life insurance, travel insurance, permanent health insurance and critical illness insurance. Whether or not an employer provides these to employees is a matter for the contract. Where such benefits are provided, the contract should be carefully drafted to ensure that the employer reserves all necessary rights and does not put himself in a position where he is contractually obliged to provide a benefit for which he is not insured.

Employment Regulations

The following is a brief summary of some of the main statutory provisions which employers must be aware of when employing employees in the UK.

Working Time

The Working Time Regulations 1998 impose a limit on employee's working time of an average of 48 hours a week averaged over a 17 week reference period. Individual employees can choose to work longer than this by signing an opt-out agreement with their employer. There are also requirements for minimum rest breaks and daily and weekly rest periods. There are special provisions for night work.

Holiday

Full time employees are entitled to 28 days' paid holiday each year (including bank and public holidays) under the Working Time Regulations 1998. There are eight recognised public holidays per year which are included in this minimum entitlement. Employers are free to agree a more generous contractual entitlement and in the UK and it is common for employers to allow paid holiday entitlement of between 20 and 30 days and for bank and public holidays to be given in addition to this entitlement.

Sick Pay

There is a statutory entitlement to sick pay for up to 28 weeks under the Social Security Contributions and Benefits Act 1992. The rates change in April of each year. For 2019/20, the statutory sick

pay rate is £94.25 per week. The first three days of any sickness are "waiting days" when no sick pay will be payable. It is open to employers in the UK to agree a more generous contractual sick pay arrangement and it is common practice to do so.

Redundancy

Employees with two or more years' continuous employment who are dismissed by reason of redundancy, are entitled to receive a statutory redundancy payment from their employer. The amount of the redundancy payment is calculated by reference to the employee's age, length of service and weekly pay (subject to maximum, in 2019/20, of £525 per week). The maximum statutory redundancy payment (or basic award) for 2019/20 is £15,750.

Discrimination

Currently under English law, discrimination on the grounds of sex, race, disability, sexual orientation, age and religion or belief is unlawful. Compensation for workers who successfully bring discrimination claims against their employers is potentially unlimited and can include a claim for injury to feelings.

Protection for Part-Time and Fixed Term Employees

It is unlawful for an employer to subject to a detriment or treat part-time or fixed term workers less favourably than full time staff unless such treatment can be objectively justified. A worker whose fixed term contract is successively renewed will be considered a permanent employee after four years of continuous employment.

Data Protection

The GDPR and Data Protection Act 2018 govern how employers process data about their employees. Employers are required to comply with a set of principles for processing personal data and are required to show how they have complied with the principles. For example, employers will not only need to have policies which demonstrate that they comply with the principles but they will also need to be able to show how the policies have been implemented.

Maternity Rights

All pregnant women have the right to paid time off for antenatal care in preparation for the birth of their baby. Pregnant employees are entitled to six months ordinary maternity leave from work and then an additional maternity leave period of six months, regardless of their length of service with their employer.

Employees on maternity leave who meet the eligibility requirements are also entitled to statutory maternity pay which is pay of up to 90% of the employee's salary for the first six weeks of maternity leave and then for the next 33 weeks, the lower of 90% of normal weekly earnings or £148.68 (in 2019/20). An employer is able to recover a high percentage of this payment from the Government.

Paternity Rights

Employees with more than 26 weeks' employment may take up to two weeks' paternity leave. Employees who take this leave are entitled to all benefits except pay but they are entitled to statutory paternity pay which is currently £148.68 (in 2019/20) per week or 90% of normal weekly earnings if lower.

Shared Parental Leave Rights

Employees who are parents (whether by birth or adoption), may take shared parental leave (SPL) in the first year of their child's life or in the first year after their child's placement for adoption.

The shared parental leave scheme makes up to 50 weeks of SPL and 37 weeks of shared parental pay available for eligible parents to take or share (that is, everything other than a two week compulsory maternity leave period or an equivalent two-week period in adoption cases). A mother or primary adopter is able to end their maternity or adoption leave, or commit to ending it at a future date, and share the untaken leave with the other parent as SPL. This enables mothers and primary adopters to return to work before the end of their leave without sacrificing the rest of the leave that would otherwise be available to them. SPL can either be taken consecutively or concurrently, as long as the total time taken does not exceed what is jointly available to the couple.

Adoption Rights

The adoption regime provides essentially the same rights as those available to natural parents. The qualification provisions are the same as those applying to the maternity provisions. Statutory adoption leave (SAL) is available for up to 52 weeks', 39 weeks paid and 13 weeks unpaid. Statutory adoption pay (SAP) is paid at a flat rate which is £148.68 (for 2019/20) per week for the 39-week pay period, or 90% of average weekly earnings if lower. There is no enhanced pay for the first six weeks of SAL. Under the system of shared parental leave, eligible adoptive parents can share the statutory adoption leave and pay that was available only to the primary adopter. The parent who is not the primary adopter is entitled to take two weeks' ordinary paternity leave.

Parental Leave

Employees with one year's employment can take up to 18 weeks' unpaid parental leave for each child up to the child's eighteenth birthday. This is not to be confused with shared parental leave. This right transfers with the employee when he/she changes employer. Statute provides a scheme which allows parental leave to be taken in blocks of one week or more although no more than four weeks in any year. However, employers can agree arrangements that are more generous and in particular which permit leave to be taken in blocks of less than one week.

The Right to Request Flexible Working

Employees have the right to request flexible working arrangements from their employer. The requirements which must be fulfilled before such a request can be made are that the employee must have been in 26 weeks continuous employment and the employee must not have made another application to work flexibly under the right to request legislation during the preceding twelve months. The employer has an obligation to consider the request and give a reason for any refusal. A refusal to consider a request for flexible working arrangements from a female worker with childcare responsibilities may amount to indirect sex discrimination if it cannot be justified on objective grounds.

Time off to Care for Dependants

Employees may take a reasonable amount of unpaid time off to deal with family emergencies.

Health And Safety

An employer is under a common law duty to have regard to the safety of his employees. The employer must provide a safe place of work and safe access thereto, he should take reasonable care that employees are not subjected to unnecessary risks of injury, provide safe systems of work, safe equipment and materials and competent fellow employees. An employer can also be liable at common law for accidents caused by acts of his employees where the employees were acting in the course of their employment. In addition to these common law duties, statutory obligations have been imposed under the Health and Safety at Work Act 1974. The Occupiers' Liability Act 1984 imposes duties on an employer for both his employees and visitors to the premises. Breach of such obligations can result in criminal as well as civil liability.

Contracting And Outsourcing Of Work Or Services

The Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") which implements the EU Acquired Rights Directive protects employees' rights in the event of a transfer of a business or part of a business in which they are working. The TUPE regulations also apply to outsourcing arrangements but they do not apply to situations where the shares of a company are sold.

TUPE imposes a duties on employers to inform and consult with employee representatives before a transfer takes place. There are potentially significant penalties for failure to adhere to these obligations.

The main effect of the TUPE regulations is that in the event of a transfer of a business as a going concern, the employment rights and obligations of the employees of the business or the part of the business being transferred will be automatically transferred to the new owner of the business who will automatically assume those rights and obligations instead of the vendor.

Any pre or post transfer dismissal in connection with the transfer will be automatically unfair unless it is for an economic, technical or organisational reason which entails changes in the workforce. TUPE also makes it very difficult to change the existing terms and conditions of employment of transferring employees.

Unfortunately, it is not open to contracting parties to agree that the TUPE Regulations will not apply. As the obligations which result from a TUPE transfer can be significant, particularly for the purchaser, it is common for business and asset sale agreements in the UK to contain indemnities and other provisions whereby the parties agree the way in which costs and liabilities will be borne.

Social Security

The UK operates a pay as you earn ("PAYE") tax deduction system which must be operated by all employers. There are currently three rates of tax: basic (20%), higher (40%) and additional rate (45%). These percentages are applied to a portion of an employee's taxable income subdivided into bands. The PAYE system requires the maintenance of pay and tax records for virtually all employees. Tax deducted by the employer under PAYE must be paid to HM Revenue and Customs within specified time limits. Employers are required to use certain forms to record pay and tax information and these must be retained for three complete tax years.

In addition, employers must deduct National Insurance contributions. Generally employers must deduct National Insurance contributions on the earnings of the employee – known as employees' National Insurance contributions. In addition, employers must pay National Insurance contributions at 13.8% of the employee's earnings as employer's National Insurance contributions. Again

employers have duties to keep records and account to HM Revenue and Customs within specified time limits.

Benefits provided to employees are also taxable and subject to the deduction of National Insurance contributions. Special rules apply for company cars.

Claims

Employment disputes are normally heard in an Employment Tribunal, which have exclusive jurisdiction to hear statutory employment claims.

It is significant to note that for claims in the Employment Tribunal, each party bears their own costs so costs are not awarded against the unsuccessful party save in exceptional circumstances. This is different from the position in the civil court where costs will usually be awarded against the unsuccessful party.

Types of Ownership

For the purposes of this section, the UK means England, Wales and Northern Ireland but excludes Scotland. Scotland has a different system of land ownership.

A few words about terminology may help. Both the words "land" and "property" mean real estate. The word "premises" may also be used. This has the same meaning as "land" and "property" but is most commonly used to describe land or property included in a lease.

There are three types of ownership in the UK. They are freehold, leasehold and commonhold.

Freehold is absolute, unlimited ownership. The owner of a freehold has no landlord and can do whatever he likes with his property subject to the general law of the land and subject to any restrictions placed on the property.

Freehold ownership is most common for residential houses, large estates and investment property.

Leasehold ownership is where land is held by one person (called the tenant) from another person (called the landlord) for a limited period of time on the terms of an agreement (called a lease). Most business premises in the UK are occupied under leases. Residential flats (apartments) are also mostly occupied under leases. A tenant under a lease will pay a rent to the landlord. The lease will last for a limited amount of time. The lease document itself will contain rights and obligations both for the landlord and the tenant and numerous restrictions on what the tenant can and cannot do with the property. Modern commercial leases are long, complex documents which require legal advice. Some leases are extremely long (say 999 years) and these are sometimes referred to as virtual freeholds although that is not strictly a legal term. There are legal reasons why sellers will sometimes prefer to grant extremely long leases or virtual freeholds rather than selling a freehold.

The third form of ownership is commonhold which has been introduced recently. This new system of ownership was designed primarily for blocks of residential flats and other developments with lots of units. At the time of publication, the use of this new system of ownership is very rare.

Properties can be owned in a number of different ways, including by indivduals, companies, general partnerships, limited liability partnerships, charities and trusts. Professional advice should always be sought on the most efficient way of owning property in the United Kingdom and the tax implications of any option.

Land Registry

There is a computerised register of land in the UK maintained by a government agency called the Land Registry. The register is computerised and accessible via the internet. The register is maintained by a number of district land registries located throughout the country. At the moment, not all land in the country is registered but the vast majority is, especially in urban areas. The government is also committed to introducing a system whereby land can be transferred electronically. At present, that is not possible although the actual process of registration of land is usually now carried out electronically.

All registered land has its own "title number" and plan which identifies the land in question. The entries which appear on the register against a particular title number are definitive proof of ownership and most matters affecting the title to properties. There are certain rights and obligations (called overriding interests) which are not noted on the register of title. Overriding interests include matters like rights of way where there might for example be a footpath crossing a property but no express registered right on the title. Many but not all such rights and obligations will be apparent by a proper inspection of the land in question or by making enquiries of the current land owner/occupier.

Transfer and Contract

Generally, land can only be transferred by deed. A deed is a document usually prepared by a lawyer which is signed and witnessed and brought into effect in a particular way. This process does not require a notary. In order for a transfer of registered land to be effective, it must be completed by registration at the Land Registry. This cannot be done unless the relevant tax (Stamp Duty Land Tax) has been paid on the documents. This is commented on further below.

It is important to understand in the United Kingdom that verbal agreements in relation to land and even some written agreements are not always legally binding. There is usually a period after terms have been agreed during which either party can decide not to proceed if they want. It is usually only when contracts "have been exchanged" that a binding obligation arises and invariably time and costs have to be incurred before that stage is reached.

Mortgages And Charges

If money is borrowed to assist with the purchase of land in the UK, the lender will invariably take a mortgage or a charge over the land in question. A commercial mortgage will normally involve two key documents. The first is a loan agreement which can be in the form of a formal agreement or a letter (sometimes called an offer or facility letter). The second document is the mortgage itself which creates the security over the land and is registered at the Land Registry.

The lender who takes a mortgage is called a mortgagee or chargee. The mortgagee's main rights are as follows

> to be repaid the loan plus interest and costs.
>
> if the borrower defaults, to take possession of the mortgaged property and to sell it to repay his loan. It is not always necessary for a mortgagee to obtain a court order before taking possession or selling the mortgaged property.
>
> to appoint a receiver to manage and, if necessary, sell the property.
>
> to prevent a sale of the property if he is not repaid.

In practice, the mortgage or charge is now the only recognised formal, fixed security taken over land in the UK. Businesses may also be asked to provide floating charges in favour of institutional

lenders. These charge all the assets of the business (by way of a document called a Debenture) but only restrict dealings with those assets if the borrower is in default.

Restrictions on Acquisition

There are no restrictions on foreign ownership of UK property but the way in which property ownership is structured is critical and different types of ownership have different implications – including practical, fiscal and regulatory and professional advice should always be obtained. Any new person or body acquiring property in the United Kingdom will have to provide identification evidence and comply with the increasingly complex due diligence requirements imposed by the money laundering regulations.

Legal Protection for Buyers and Sellers

In general, the law gives no special protection to buyers or sellers of UK property. Those involved in property transactions will invariably use a solicitor to represent their interests. It is the job of the buyer's solicitor to ensure that the property being bought is free from undisclosed restrictions or obligations and that it is validly transferred at the correct price. The Latin phrase "Caveat Emptor" or "Let the buyer beware" is the fundamental principle: it is the responsibility of the buyer to ensure that it and its professional advisers carry out all appropriate due diligence to ensure that they understand exactly what it is that they are buying and all the implications which ownership of the property will entail before they commit to its purchase.

Restrictions on Development

UK law prohibits the development of land without planning permission. Development includes changing the use of land or carrying out building, mining or engineering operations on land. A planning permission is a permission given by the planning department of the relevant local authority. The local authority is allowed eight weeks in which to reach a decision on any planning application.

Some types of development are permitted without planning permission. Specialist advice needs to be sought on this as what is and is not allowed is tightly controlled.

The law also requires that anybody carrying out building works must comply with building regulations and generally obtain a building regulation consent. That is a formal consent from the District Surveyor (a local government officer) who will consider the plans and specifications of any building works before giving consent and inspect the progress of the works at key times and at their conclusion.

All local authorities prepare plans for how they want different parts of their areas to be used and developed. Those plans are available to the public. They will set out areas or zones where the local authority wishes to encourage (and only allow) particular uses (eg: retail, residential or industrial) and not permit other uses. The local government will consider any application for planning permission in the light of these plans so that, for example, applications for industrial development in residential areas will not succeed save in exceptional circumstances.

Leases

A lease is the most common way of holding commercial property in the UK. The length of leases will vary depending upon the circumstances and requirements of the parties. There is however a standard which is called an institutional lease. Such a lease is in a form which might be granted by a major financial institution such as an insurance company, investment trust or property company. Institutions sometimes look for longer leases of 10 years or more (though terms of 5 years or less are becoming increasingly common. Sometimes, landlords or tenants are given a right to terminate a lease before it expires. The rent will usually be subject to review, perhaps most commonly at 5 yearly intervals. Rent reviews in the UK are almost invariably on an upwards only basis. This means that the terms of the lease guarantee to the landlord that either the rent will go up in line with market rents or it will remain the same even if the market rent has fallen below the existing rental level. In recent years, it has become increasingly common for rent to be reviewed annually by reference to an Index, for example the Retail Prices Index. It is very common for no rent to be payable for a short time at the beginning of a new lease in recognition of the fact that tenants will usually want to fit-out their new premises and not be able to trade from them for a while.

An institutional lease will also be a "clear" lease. This means that the rent the landlord receives will be clear of any deductions to cover the cost of, for example, repairs and maintenance of the building, the supply of services to the building and the cost of insuring the building. All these expenses will be payable by the tenant or (in a building containing a number of tenants), by all the tenants together. These extra payments on top of rent are generally called a "service charge".

In addition to rent and service charge, there are local taxes to be paid to the local authority which are called business rates. These can be quite significant, particularly in cities.

The lease will impose obligations and restrictions on the tenant. The obligation which is most significant from a financial point of view is the obligation to repair, decorate and if necessary re-build or pay towards the cost of rebuilding. In an office block for example the tenant will be responsible for maintaining, repairing and decorating his own property. He will also be responsible through the service charge to contribute towards the cost of repairing and maintaining the building of which his offices form part including all services to the building (eg lifts, air-conditioning and heating plant and systems and so on). It is often the case that these expenses are not capped and if the building and its services are old, the tenant can face very significant extra costs through the service charge.

Some of the other important provisions in a typical commercial lease are as follows:

> restrictions on use
>
> restrictions on alterations to the property
>
> restrictions on disposing of the property
>
> VAT is often payable on the rent of commercial property.

Any lease granted for more than 7 years must be registered at the Land Registry.

Tenants of property used for business purposes will often (but not always) have statutory rights to remain in the property when the lease comes to an end. They will have to negotiate a new lease and pay a commercial rent but the landlord cannot insist that they vacate unless special circumstances apply. It is however quite common for the statutory rights to be excluded by agreement between the parties.

Stamp Duty Land Tax

Stamp Duty Land Tax ("SDLT") is a tax payable to the government on land transactions. Any sale of freehold or leasehold land or the grant of a lease at a rent can potentially give rise to SDLT. The tax is payable by the buyer or the tenant. The legislation is complex and frequently changing and professional advice should always be taken on the amount of tax payable on a transaction. The method of ownership as well as a number of other factors can have a bearing on the amount of tax payable.

VAT

Value added tax is generally not payable on residential land. In some circumstances it is payable on the purchase price of commercial land and it is also often payable on rent and charged to tenants. Professional advice should be sought in every instance.

Setting Up in Business in the UK

The property choices for a business setting up in the UK include:

Serviced Office

These are usually small offices where office services are supplied as part of the package. The extent of services varies between providers but normally they will include furniture, use of equipment (such as photocopies and fax machines), telephones and telephone answering, internet usage, conference facilities and secretarial services. The commitment is short term and the cost is relatively high. Such arrangements can however be extremely flexible.

Short Term Licence

This is similar to a lease but are often used in preference to a lease for very short terms. Or where occupation or facilities are shared. An occupier under a genuine licence, unlike a tenant, can never have security of tenure when the licence comes to an end. It is not uncommon however for arrangements which were supposed to be licences to be construed by the Courts as leases. Professional advice should therefore always be taken. Sometimes arrangements are granted on a rolling basis, so that they continue indefinitely until brought to an end by notice.

Lease

The minimum commitment would typically be for between three and five years. Shorter periods are sometimes available from tenants who themselves have surplus space (ie by taking an underlease). Landlords will wish to be satisfied above all that the incoming tenant is able to pay the rent and fulfil the tenant's obligations in the lease. They will want to see accounts and references that demonstrate this. They may also require a guarantor or a rental deposit or some other form of collateral security.

Buy a Freehold

This would involve a major capital commitment and may be inappropriate for smaller businesses.

It does however avoid entering into longstanding obligations with landlords and avoids an ongoing obligation to pay rent and usually means there is more control over when expenditure is incurred, for example to repair buildings

Ukraine

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Arzinger is an independent law firm headquartered in Kyiv which has regional offices in Western and Southern Ukraine, in Lviv and Odesa, respectively. Arzinger for over 17 years has been among the legal business leaders providing high-quality legal support to clients throughout Ukraine. Among the firm's clients are top representatives of international and local business.

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Real Estate Tax

Taxpayers and Tax object

The real estate tax became effective as of January 1, 2013. This tax under TCU is being split into real estate tax itself (which excludes land), transport tax and land payments. The information in this paragraph is dedicated solely to the real estate tax which is imposed on both individuals and legal entities, including non-residents, owners of residential and non-residential real estate and its portions.

The TCU stipulates certain exceptions from the real estate tax for following kinds of property:

- State-owned residential and non-residential property, as well as such property owned by local authorities and non-profitable organizations, maintained for the costs of state (local) budget;
- Residential and non-residential property located at exclusion zones as prescribed by law;
- Family-type orphanages;
- Dormitories;
- Residential property declared uninhabitable by local authorities due to its emergency conditions;
- Residential property owned by socially vulnerable children;
- Non-residential property used by SME's for the purpose of conducting economic activities (Small Points of Sales);
- Industry facilities;
- Facilities of agricultural producers used for agricultural activities;
- Residential and non-residential property owned by organizations of disabled persons and enterprises owned by such organizations;
- Property owned by religious organizations acquired within the charter purposes except for the property used for economic activities;
- Educational facilities;
- Non-residential real estate which belongs to non-profitable state or municipal enterprises for the health rehabilitation of the children;
- Non-residential real estate which belongs to non-profitable state or municipal enterprises for the sports education of the people;
- Certain non-residential property which is used for Olympic and Paralympic preparation of the sportsmen;
- Residential property owned by large families with five or more children.

Tax base

The total area of a respective facility is considered to be a tax base for the purpose of real estate tax assessment. If a taxpayer owns several real estate objects the tax base shall be calculated with respect to each individual object.

According to the TCU, there is a tax exemption for residential properties, owned by the individuals: 60 square meters of an apartment and 120 square meters of a house (non-taxable area) are exempted from taxation. This exemption is applicable once in a calendar year. If a taxpayer owns several residential properties (incl. apartments and houses) the maximum non-taxable area will amount to 180 square meters. Such tax exemption is not applicable in case (i) the property, owned by a private person, exceeds in its area the tax exemption by five times; and (ii) the property, owned by a private person, is being used for commercial activities (leased out, etc.)

Tax rate

The tax rates are set forth by decisions of local authorities depending on real estate object's location, however, the rates per one square meter could not exceed 1,5% of the minimum wage established by the laws of Ukraine as of 1 January of a reporting (tax) year for 1 square meter. Considering the currently effective minimum wage (UAH 4,173.00, approximately EUR 150), the maximum rate of real estate tax shall amount to UAH 62.60 (approx. EUR 2.20) per square meter.

For apartments with an area exceeding 300 square meters and/or houses with an area exceeding 500 square meters, the tax shall be increased by UAH 25,000.00 (approx. EUR 892.90) for each of such property or part of it per year.

Tax Payment Procedure

The real estate tax is paid by the taxpayers once a calendar year.

The tax amounts for individuals are assessed by tax authorities; a tax assessment notice with the amount of real estate tax should be received by the taxpayer by the 1st of July of the year following the year for which the tax is paid.

Legal entities are obliged to assess the tax amount in advance and file the tax return till the 20th of February of the year for which the tax is paid. The tax amount herewith should be divided into equal parts and paid in separate settlements on a quarterly basis.

Land Tax

Taxpayers and Tax object

The Land Tax is paid in Ukraine by both landowners (owners of the shares – "pai") and land users.

The objects of the taxation with the Land Tax under the TCU are the land plots that are being used or owned as well as land shares.

Tax base

The Land Tax is being assessed based on the normative monetary evaluation of the land plots and their areas. The normative monetary evaluation of the land plot establishes the normative rental income which is used for the calculation of the Land Tax. The Land Tax is being calculated based on the tax rates multiplied by normative monetary evaluation.

In case there exists no normative monetary evaluation of the land plot the taxpayers assess the Land Tax based on such evaluation of the arable land in this particular region

Tax base

The Tax rates for the Land Tax evaluation are being set forth by local councils. However, TCU sets out the ranges which should be considered while adopting respective tax rates. For the land plots

where the normative monetary evaluation of the land plot is available the rates for the Land Tax payment should be between 1 and 3 percent of such evaluation. For the agricultural lands there apply lower tax rates which constitute between 0,3 and 1 percent of their normative monetary evaluation. For the forest lands, the rate should be no more than 0.1 percent of their normative monetary evaluation.

The Land Tax for the land plots without normative monetary evaluation located outside the cities is paid based on the tax rates not exceeding 5 percent of the normative monetary evaluation of the arable land within the relevant region. For the agricultural lands there apply tax rates which constitute between 0,3 and 5 percent of their normative monetary evaluation. For the forest lands, the rate should be no more than 0.1 percent of their normative monetary evaluation.

Lease rates

For the land plots which are leased there is applicable one rule which should be respected by the land users: the rent payments should not be lower than the normative monetary evaluation of the land plot and should not exceed 12 percent of it.

The Ukrainian legislation deals with employees in general, making no distinctions based on their positions (with some minor exceptions). The Labour Code of Ukraine dd. 10.12.1971 is the principal legislative act governing employment relations in Ukraine. However, a number of its provisions are elaborated in the subordinate legislative acts. The specification of working conditions, remuneration and social privileges are commonly left to collective bargaining agreements provided that the agreements do not limit the guarantees established for employees, by law. The following defines some principal requirements vis-à-vis labour relations, established by the Labour Code and other legislative acts. There is a new Labour Code in progress which is meant to be more progressive and coincide with international working standards.

Working Hours

Working hours may not exceed 40 hours per week. For certain categories of employees, the working week is established at the level of 36 or 24 hours and for some categories irregular working hours are allowed. Overtime work is allowed by the legislation only in exceptional cases and may not exceed four hours within two days on the row or 120 hours per annum and is compensated at double rates.

Time Off

Employees are allowed to have breaks for resting and taking meals which last up to two hours. The breaks are not included into the working time. By a five-day working week employees have two days-off, and by a six-day working week – one day-off. The usual day-off is Sunday.

If a public holiday or a free day concurs with a day-off, the day-off is postponed to the next working day after such public holiday or a free day. In general, no work shall be done on days-off. It is allowed in exceptional cases that single employees work on such days.

Work on public holidays is allowed in exceptional cases according to the legislation. Work on public holidays is remunerated in double amount. Upon request of an employee he/she can also get another day-off. Work on days-off is remunerated either in double amount or by giving another day-off (mutual consent is required).

Vacation and Holidays

Statutory paid annual vacation is 24 calendar days. For certain categories of employees the law provides for a longer vacation period or additional vacations, including social one. In case of dismissal of an employee he/she receives a monetary compensation for all unused days of the annual vacation and the additional vacation for employees with children. There are some additional vacation types in Ukraine, for example:

- additional annual vacation for work under arduous and harmful work conditions;
- additional annual vacation for special work nature;
- additional annual vacation for employees with children under the age of 15 or adult child of type A, group I of disability;
- additional annual vacation for the participants of military actions, war-disabled persons;
- additional study vacation;
- research leave;
- maternity leave;
- childcare leave up to three years of age;
- adoption leave;
- additional vacation for employees with children;
- unpaid vacations.

Salaries and Wages

The salary amount should be established by an individual employment agreement with an employee. The minimum monthly salary for unqualified labour may be no less than the threshold established by the labour legislation (currently UAH 4,173.00). This amount will be increased by the Law "On the state budget" as of 2020. The minimum salary does not include such additional payments as payments for night work or overtime work, work in unfavourable working conditions and in increased risk for health, itinerant work, bonuses for holidays and anniversaries. The salary is subject to personal income tax that is presently levied at the rate of 18%. Salaries are paid in Ukrainian currency at least twice a month.

Guarantees and Compensation Payments

The labour legislation stipulates cases in which employees are entitled to salary even if they did not perform their work under the labour agreement – guarantee payments. Such payments are provided for employees in elective offices, donors, employees sent to qualification courses during working hours and some other categories.

Compensation payments are such remunerating expenses of an employee, which are connected to performance of the labour duties (in case of transfer, assignment to work in another region, business trips, amortization of tools owned by an employee for needs of an enterprise etc.).

Pension and Social Insurance

The employer is required to make obligatory payments to the State Pension Fund on behalf of employees. The rate of the unified social security contribution is 22% of an employee's remuneration (is paid by the employer). Any other social insurance (voluntary) is left to the employer's consideration.

Employment of Foreigners

Foreign nationals may be employed by Ukrainian employers subject to prior obtaining of the Ukrainian work permit according to the procedure, established by legislation. A work permit is issued as a rule for one year (may be issued for longer period for special categories of foreign employees, e.g. IT – specialists, graduates of the university that is included to the list of world top 100 universities, participants/founders/beneficiary of the Ukrainian legal entity, highly paid professionals etc. – up to 3 years) and is subject to renewal.

A work permit may be issued in case of payment of salary in the amount not less than 10 minimal salaries (5 minimal salaries in some cases) per month (except for special categories of foreign employees).

Persons with disabilities

The current legislation of Ukraine provides a quota of work places for persons with disabilities in the amount of 4% of the average number of employees per annum or, if there are 8-25 employees, in the amount of one work place.

Activity of Trade Unions

Citizens of Ukraine are entitled to participate in professional unions in order to protect their labour, social and economic rights and interests. A trade union is a voluntary, non-profitable non-governmental organization of citizens united by mutual interests by the nature of their professional (labour) activity (study). Trade unions are established in order to represent, exercise and protect labour, social and economic rights and interests of their members and can have a status of primary, local, district, regional, republican, or all-Ukrainian. Foreign citizens and stateless persons are not allowed to establish trade unions, but are entitled to join them, if this is provided by their statues.

Collective Bargaining Agreements

A collective bargaining agreement is concluded in order to regulate production, labour, social and economic relations and to coordinate interests of employees, owners and their authorized bodies. In a newly established enterprise a collective bargaining agreement shall be concluded upon initiative of one of the parties within 3 months after registration of the enterprise and shall be preceded by collective bargaining negotiations, in which both parties of the collective bargaining agreement shall participate.

There is no liability for lack of collective bargaining agreements, only for avoiding negotiations as to their conclusion. A collective bargaining agreement signed by the parties is subject to a notifying registration by the local state authorities. Any changes or amendments to a collective bargaining agreement shall be registered pursuant to the procedure for registration of collective bargaining agreements.

Labour Agreements

Under a labour agreement the employee obliges to work as provided by the agreement with adherence to the internal labour policy, and the employer obliges to pay the employee for the work and to ensure labour conditions necessary for work and as provided by the labour legislation, collective agreement and agreement of the parties.

It is not obligatory in Ukraine to conclude labour agreements in writing, except for some categories of employees (minors, work under some special conditions etc.) and in case if an employee insists on concluding the labour agreement in writing.

Terms of labour agreements which make the position of employees worse compared to the current legislation are null and void. Even though an employee may agree to such conditions, they may not be applied. A labour agreement may be concluded for an unlimited period of time, fixed-term or concluded for the period of execution of certain works. The laws of Ukraine prohibit unreasonable refuse in conclusion of a labour agreement (employment).

Labour Contract

A labour contract is a special labour agreement form for certain categories of employees where its validity term, rights and obligations of the parties (including material liability), financial conditions and organization of the employee's work, contract termination terms, including early termination, may be stipulated pursuant to the parties' agreement. Contracts are to be made in writing.

The laws of Ukraine directly stipulate the exact list of employees with whom the labour contracts may be concluded, for example scientists, employees of collective agricultural enterprise, directors of companies, policemen, teachers etc.

If the current legislation does not stipulate any possibility for contract conclusion in the respective case, the owner and the employee are not entitled to conclude the contract even upon their mutual consent.

Documents to be provided for employment

At conclusion of a labour agreement the future employee shall provide the following documents:

> passport or any other ID;
>
> labour book;
>
> a document on education (in cases provided by the legislation);
>
> a health status certificate (in cases provided by the legislation for workers on heavy, harmful and hazardous jobs and annually for persons younger than 21);

- military registration document;
- a copy of the individual tax number (for taxation purposes in regard to employee's salary);
- a copy of the social insurance card;
- copies of child birth certificates (if the employee is entitled to child care privileges and guarantees).

The Labour Code prohibits requiring provision of documents which are not stipulated by the legislation.

Employment Order

After agreement on work conditions with a potential employee, employment application submission, and in some cases conclusion of a labour agreement or contract in writing, an employment order shall be issued.

There is a standard approved form of the employment order, but in practice another more simple form of the order is used. The employment order is signed by the executive officer or any other authorized person. The employee reviews and signs the order. On the basis of the order an entry is made in the labour book.

The employee cannot be admitted to work without labour agreement set up by the employment order and without notification on employment sent to central executive authority that establishes and implements state policy on administering of single social contribution (currently tax authority).

Employer's actions before employee's admission to work

Before admission to work pursuant to the labour agreement the owner (an authorized body):

- explains to the employee his/her rights and obligations and informs his/her on work conditions, any harmful or hazardous production factors at the work place and possible consequences for the health, his/her rights and privileges for work remuneration according to conditions set out by the legislation and the collective agreement;
- provides to the employee for reviewing the internal labour regulations and the collective agreement;
- assigns the employee with a work place and provides all tools and accessories necessary for work;
- instructs the employee on safety and fire safety rules.

Probation period by employment

In order to determine whether the employee complies with the work at the beginning of his/her employment, a probation period is established for the employee upon agreement of the parties.

Probation cannot be applied to such persons:

persons under age of 18;

young employees after graduation from career scientific-educational institutions;

young professionals after graduation from higher educational institutions;

persons retired from military or alternative (non-military) service;

persons with disabilities sent to work pursuant to recommendations of a medical and social expert examination;

seasonal and temporary workers;

workers in case of employment in other region or transfer to other enterprise, institution, organization, transfer to other position within the same enterprise;

persons designated to a position;

winners of the competitive election for a vacant position;

persons who have passed internship with separation from the main work when hiring;

pregnant women;

single mothers with children under the age of 14 or children with disabilities;

persons who are to conclude a labour agreement of up to 12 month duration;

internally displaced persons;

in other cases, provided by the legislation.

There is no need to record information on employee's probation period in the labour book. During the probation period the employee has all the rights and all the obligations provided by the labour legislation. The only exception is an additional reason for dismissal of the employee as such who did not pass the probation period.
Duration of a probation period cannot exceed:

one month – for workers (at this, in order to define the term "worker" the Occupational Classification shall be used);

three months – for any other employee categories;

six months – in certain cases upon agreement with the trade union committee.

Change of essential working conditions

According to the Ukrainian legislation in case of changes in production and labour organization it is possible to change the essential work conditions (system and amount of payments, privileges, work regime, establishment or cancellation of part-time work, professions overlapping, change of categories or name of positions etc.). In such situation the employer shall provide respective employees with a two months prior notice before the changes come into force. If the previous essential work conditions cannot be preserved and the employee does not agree to continue work under the new conditions, the labour agreement shall be terminated.

Termination

Generally, employment relations, established for a definite period terminate after the employment term has expired. Employment relations, established for an indefinite period, may be terminated by employee at any time by giving two weeks prior notice. Employers may terminate employment only in limited circumstances enumerated by the Labour Code. The labour legislation of Ukraine provides following reasons for termination of a labour agreement:

agreement of the parties;

end of the labour agreement term, except for cases when labour relations actually continue and neither party demands their termination;

call or enrolment to military service, assignment to alternative service;

transfer of the employee upon his/her consent to another enterprise or to an elective office;

refusal of the employee to be transferred to work in another region together with an enterprise as well as refusal to continue work due to change of the essential work conditions;

coming into force of judgment pursuant to which the employee is sentenced to imprisonment or any other punishment excluding possibility to continue work;

reasons as provided by the labour contract;

employment in violation of the requirements of the Law of Ukraine "On Preventing Corruption" established for persons who have retired or otherwise ceased activities related to the exercise of state or local government functions during the year from the date of such termination;

reasons as provided by the Law of Ukraine "On Lustration";

reasons as provided by other laws;

upon employee's initiative;

upon employer's initiative:

- change in production and work organization, including liquidation, reorganization, bankruptcy or conversion of the enterprise, decrease of the personnel number or the staff
- determined employee's inconsistency with position or work due to insufficient qualification or health condition hindering continuance of such work
- systematic non-performance of duties stipulated by the labour agreement or the internal labour order without reasonable excuse if disciplinary penalties have been previously imposed on the employee
- truancy (including absence from work for more than 3 hours within business day) without a reasonable excuse
- nonappearance at work during four months on the row due to temporary disability, except for maternity leave, if the legislation does not stipulate longer period of work (position) preservation for certain illnesses. If an employee has lost its ability to work because of a labour injury or a professional illness, his/her place of work (position) shall be preserved for the period of rehabilitation or assessment of disablement

- reinstatement at work of the employee who previously performed this work
- appearance at work under alcohol, drugs or toxic influence
- stealing at work place (including petty theft) of employer's property determined by the court decision which came into force or resolution of a body authorized to impose administrative penalties or apply measures of public influence
- call or mobilisation of employer – individual entrepreneur during the special period
- determination of employee's inconsistency with work within the probation period
- single gross violation of labour relations by the director of an enterprise, institution, organization of any ownership form, his/her deputy, head accountant of an enterprise, institution, organization, his/her deputy, or officials of the customs service, state tax inspections with special ranks and officials of the state supervision and auditing service and bodies of the state price control
- wrongful acts of directors of enterprises, institutions, organizations which caused delay in payment or payment of lower amounts of salary compared to minimal wage as stipulated by the legislation
- wrongful actions of the employee working with monetary values or merchandise if such actions lead to loss of employer's trust
- immoral actions of educational personnel inconsistent with such work
- employment under subordination to an immediate relative in violation of the requirements of the Law of Ukraine "On Preventing Corruption"
- termination of authorities of corporate executives.

It is prohibited to dismiss certain categories of employees such as pregnant women, women with children under the age of three and single mothers with children under the age of 14 or children with disabilities, except some cases regarding the companies' liquidation with the obligatory subsequent employment. An employee is entitled to receive a one-month severance payment (or more, if provided for in the collective agreement) when dismissed upon the initiative of the employer for particular reasons.

An employee is entitled to receive a one-month severance payment (or more, if provided for in the collective bargaining agreement) when dismissed upon the initiative of the employer for particular reasons. If the owner violates labour legislation, collective bargaining or labour agreements, the employee is entitled to receive at least a three-month severance payment (or more, if provided for in the collective bargaining agreement) during dismissal for such reasons. If the authorities of a corporate executive are terminated by the owner (what is possible anytime without giving any reasons), the severance payment amounts to at least six month average salary of such an executive.

Suspension from work

In certain cases the employer is entitled to suspend the employee from work:

if the employee appears at work under influence of alcohol, drugs or toxins;

it the employee refuses or avoids obligatory medical examination, training, instructions and attestation in labour protection and fire safety;

in other cases stipulated by the legislation.

Suspension means that during a certain period of time the employee is not admitted to work which he/she is obliged to perform under the labour agreement. At this, labour relations and the labour agreement shall not be terminated.

After the end of the suspension term the employee may be admitted to work, transferred to another work, brought to a disciplinary liability or dismissed. Members of the executive body of a company may be at any time suspended from performance of their duties if statutory documents of the company do not stipulate reasons for their suspension. A suspension of executive body members (including head of the executive body) is not subject to labour law but the civil (corporate) law. In this case, it means revocation of management powers which is a form of protection of corporate rights of owners and is not a suspension of an employee in the meaning of the Labour Code.

Suspension of an executive body member is possible only for a certain period of time and does not result in termination of labour relations. Dismissal of an executive body member who was suspended from performance of duties shall be carried out pursuant to the labour legislation.

Consequences of termination of a labour agreement

On the day of employee's dismissal the employer is obliged to return the duly filled out labour book and to pay the employee off. In case of employee's dismissal he/she receives monetary compensation for all not used days of the annual vacation or the additional vacation for employees with children.

In case the employee did not work on the day of dismissal, such payments shall be made not later than on the next working day after the dismissed employee claimed the payment. In case there was no payment within stated terms due to the fault of the employer and if there is no dispute as to the amount of payments, the employer is obliged to pay the employee his/her average salary for the whole period of such delay up to the day of the settlement.

Necessity to agree dismissal with a trade union

In the following cases the labour agreement with the employee may be terminated only upon prior agreement with the trade union member where the employee is a member:

> change in production and work organization, except for cases of company's liquidation;
>
> determined inconsistency with the position held or work performed due to insufficient qualification or health condition hindering continuance of such work;
>
> systematic non-performance of duties under labour agreement or internal labour order without reasonable excuse if the employee has already been brought to liability in form of disciplinary penalty or measures of public influence;
>
> truancy (including absence from work during more than 3 hours within working day without a reasonable excuse;
>
> absence from work during more than four months on the row due to temporary disability, except for maternity leave, if the legislation does not provide a longer term for the work place (position) preservation in case of a specific disease;
>
> appearance at work under influence of alcohol, drugs or toxins;

wrongful actions of employees working directly with money or merchandise, if such actions cause loss of employer's trust towards an employee;

immoral actions committed by education personnel inconsistent with work.

The legislation may provide for other cases of labour agreement termination upon initiative of the employer without consent of the respective trade union body as well. If the primary trade union organization does not have an elective body, the termination of the labour agreement shall be agreed by a representative of the trade union authorized to represent interests of the trade union members.

The dismissal consent of the trade union is valid only if the employee is dismissed due to reasons stated in the employer's application. If the trade union consented to dismissal due to other reasons, the consent shall be invalid.

Liability for Violations of Labour Legislation

State and municipal auditors are vested with various control mechanisms in order to eliminate i.a. such infringements as shadow employment, violations of minimal wages guarantees and salary payment rules.

As a result of state or municipal labour audit a penalty in the amount of up to 100 minimal salaries may be imposed upon offenders.

In accordance with the legislation of Ukraine the term "real estate" is defined as land plots and the property located on land plots which cannot be relocated without its depreciation or changing its purpose.

A land plot is a part of the earth's surface with fixed boundaries, exact location and the defined rights attributed to it. The freehold (ownership) covers, within the boundaries of a land plot, the surface (soil) layer and water bodies, forests and perennial plantations located on such land plot, unless otherwise provided by law and provided that it does not affects third parties' rights, as well as the space above and beneath the surface for the height and depth necessary for construction of buildings.

Based on the above definition, to qualify for real estate, the property (if other than land) should have a foundation and should be inseparably attached to a land plot so that it cannot be removed from a land plot without its depreciation or changing its purpose.

The following types of property do not fall within the category of real estate as they do not meet all the requisite qualifications: temporary constructions, small architectural forms, non-capital facilities situated on the land plot (stationary outdoor advertising), facilities which are appurtenant or constituent part of another item, e.g. pipelines, automobile roads, power supply and heating networks, railroad tracks. At the same time, an integrated property complex of an enterprise is treated as being equivalent to real estate. As for the construction in progress, its disposal as a real estate property can be carried out only after its commissioning and registration of title to such construction as a completed construction project in accordance with the legislation of Ukraine.

Rights to Real Estate

In Ukraine, a building and the underlying land plot are subject to separate legal treatment. The Ukrainian legislation defines the following types of rights to real estate:

> **In respect of a land plot:** ownership (private, state and communal), lease, permanent use, emphyteusis, superficies, and easement;
>
> **In respect of other real estate:** ownership (private, state and communal), lease, right of operational management, right of full economic use, and easement.

The right of ownership to a land plot includes the right to own, use and dispose of a land plot. Land lease is a contract-based possession and use of a land plot required by a lessee for conducting commercial and other activities for a defined period and in consideration for an agreed payment. A leased land plot can be further sublet by a lessee to a third party upon prior consent of a landlord or if such consent is provided by the lease agreement.

The right of permanent use of land is the right to possess and use the land plot being in state or communal ownership without limitation of the term of use. The entities which are currently entitled to have the right of permanent use of a land plot can be divided into few main groups: (1) enterprises, institutions and organizations being in state or communal ownership; (2) Ukrainian non-profit organizations of disabled persons, their enterprises, institutions and organizations; and (3) religious organizations of Ukraine for the construction and servicing of religious or other buildings necessary for supporting their activities, (4) higher education establishments (irrespective of form of ownership); (5) Public Joint Stock Railway Companies; (6) condominium association. This year shall be adopted a list of drafts of law regarding significant reformation in regulation of this land title, namely, in respect to agricultural land.

Land easement is the right of an owner or a user of a land plot to use third party's land plot either for free or on a chargeable basis for pass, laying out cables, electricity transmission lines etc. Land easements can be either permanent or temporary. The existence of land easement does not entail the seizure of a land plot or termination of the owner's title to it.

Emphyteusis is the right to use a third party's land plot for agricultural purposes, while superficies means the right to use a third party's land plot for construction purposes. Emphyteusis and superficies are rarely applied in practice. Emphyteusis is also often used by agricultural legal entities as a legal ground for their business activity and instrument for the regulation of their relationships with private owners of the agricultural land. The total term of emphyteusis, as well as a superficies, shall not exceed fifty years.

In contrast to ownership and lease which are applicable to both land and other real estate, the right of operational management and the right of the full economic use are normally related to buildings and constructions and are mainly applied within the structuring of state, local authorities and their subordinate companies' activity. The right of operational management of state or municipal property may be granted to state and municipal institutions and organizations, which do not conduct commercial activity; for instance, ministries, local state administrations, government agencies, etc. An organization or institution which holds real estate property on the right of operational management is not entitled to dispose of it with the intention of gaining any profits. The respective ministry or department, acting on behalf of the state or local community, exercises control over the use of the granted property and they may withdraw the property from the operational management if property is used in breach of its designated purpose. The right of the full economic use is defined by the Commercial Code as the right of an entity that possesses, uses and disposes of the property assigned to it by the owner (or its authorized representative), with the limited authority to dispose of certain types of the property with the owner's prior consent only. The right of the full economic use is provided to the state-owned or municipal enterprises for

the purposes of their commercial activities. The owner of the property exercises direct or indirect (i.e., through its authorized representative) control over the use and management of the property without interference in the day-to-day business activities of the enterprise.

Registration of Proprietary Rights to Real Estate

The registration of the titles and proprietary rights is made in a unified State Register of Proprietary Rights to Real Estate (hereinafter – 'Register'), which contains records on all registered rights to real estate and their encumbrances. The peculiarity of the Register is that it contains the data to both land plots and buildings located on such land plots. What is more, recently there was introduced an obligation to mention the data on the land plot within the record on the ownership title to the building. One of the most important features of the Register is its public access upon the person's registration and verification of personal data.

The Register is maintained by Ministry of Justice of Ukraine. Registration of rights to real estate property is performed by state registrars acting within state enterprises such as state and municipal Administrative service centres and by notaries. Notaries perform functions of state registrars while certifying a property deed, which allows simultaneous conclusion of an agreement and registration of the respective title. Under the Ukrainian legislation the following rights and encumbrances are subject to compulsory registration: ownership right, easement, emphyteusis, superficies, right of economic use and operational management, lease (if the lease term exceeds three years), right of permanent use of land, mortgage, trust management as well as other proprietary rights, tax lien and other real estate encumbrances.

The right of ownership to real property or a land plot arises upon its state registration with the Register. The state registration of all rights to land is carried out after the state registration of land with the State Land Cadaster. Data regarding the owner, lessee, area and designed purpose of all land plots registered in State Land Cadaster is publicly available via Public Cadaster map of Ukraine. All the proprietary rights to real estate duly registered with previous registers (before 2013) and those, which had not to be mandatory registered under the previous legislation, remain valid.

In accordance with the new changes adopted, which will come into force in the nearest time, the registration will be performed under a territorial principle. It means that the deals may be executed only within the relevant administrative unit (region of Ukraine) based on the location of the property.

The latest inventions provide as well for the registration of the property title based on the occurrence of the certain condition precedents which may be stipulated by the agreement. This provides for more tangible structuring of the deals.

The Principle "Land Follows the Property"

The past years saw the general trend toward the gradual implementation of the principle "Land Follows the Property". In pursuance of the above principle, in accordance with both the Civil Code and the Land Code the indication of the cadaster number and the total area of a land plot are qualified as the material term and condition of an agreement for alienation of a building located on such land plot). In case of acquisition of title to a building, a freehold or leasehold of the owner of such building in respect of the underlying land plot terminates. The freehold of the land plot or part of it underlying the property passes to an acquirer without change of its designated use. Where the underlying land plot is not a freehold but is rather leased, the new owner acquires such right of land use in the same scope and on the same terms and conditions as available to the former land user (lessee). Where an acquirer is not entitled to own land under Ukrainian law, it acquires the

right of land lease instead.

Despite certain promising signs of the "automatic" transfer of land following the property, the above principle does not work properly yet. As before, the parties would have to comply with the ordinary formalities and procedures to execute the transfer of title to land. However, technically, this transfer, in case the owner of the building and underlying land plot is the same, is made under a sole application which is submitted upon execution of an agreement. The mentioned principle is hardly applicable to state and municipal land which was leased by the previous owner of property due to specific procedure of leasing state and municipal land and termination of such lease relations.

Restrictions on Foreign Ownership to Land

In accordance with the legislation of Ukraine, foreign legal entities, foreign citizens and joint ventures with foreign participation may purchase and lease buildings, constructions and their parts as well as lease both agricultural and non-agricultural land plots equally to Ukrainian citizens and legal entities without foreign participation. However, they may purchase land plots only according to the procedure and with limitations set out by the Land Code. As of today, foreign individuals, foreign entities and foreign states are prohibited from acquiring agricultural land into private ownership. However, it is anticipated that this approach will be changed with after possible adoption of the package of a draft law that may allow such right by virtue of share in legal entities established under the legislation of Ukraine. As far as non-agricultural land is concerned, foreign citizens and stateless persons are entitled to purchase non-agricultural land plots within residential areas without limitations and non-agricultural land plots outside residential areas only if such persons own real estate located on such land plots.

Foreign entities and joint ventures may only acquire land into ownership (i) within residential areas if they acquire real estate for the construction of the property involved in the commercial activities; or (ii) outside residential areas if they purchase real estate.

State or communal land may be sold to a foreign legal entity provided also it establishes and registers its permanent establishment in the form of a commercial representative office in Ukraine. State-owned non-agricultural land is sold by the Cabinet of Ministers of Ukraine, subject to the prior approval of such sale by the Ukrainian Parliament. Communal nonagricultural land is sold by the relevant municipal authorities, subject to the prior approval of such sale by the Cabinet of Ministers of Ukraine. The legislative guidance on the procedure for the obtaining of approval of the Cabinet of Ministers is lacking. In practice, the obtaining of such approval appears lengthy and complicated.

Those state-owned lands underlying the property which is subject to privatization may be sold to foreign legal entities by a state privatization body (State Property Fund of Ukraine) upon approval of the Cabinet of Ministers.

Please note that any land plot which is in state or communal ownership as well as the rights to it (lease, superficies and emphyteusis) should be sold on a competitive basis (at a land auction) subject to the extended list of exceptions. For example, when a land plot is underlying building owned by an individual or a legal entity, or a land plot is granted for subsoil use and special water use pursuant to a special permit (license), etc.

Land Moratorium

An important factor preventing the development of the land market in Ukraine is the temporary moratorium on the alienation of agricultural land plots. However, the moratorium is set not for all

kinds of agricultural lands. In particular, the following kinds of agricultural lands are not subject to alienation – commercial agriculture lands, personal farming lands (for land shares owners) and land shares. All other kinds of agricultural lands such as subsidiary farming lands, individual and collective gardening lands etc. can be alienated under Ukrainian legislation. Firstly introduced in 2001 the moratorium was initially planned to remain in force for five years – considered a reasonable period in order to properly prepare a legislative and institutional framework essential for the establishment of a well-governed land market. However, it has been extended several times and for now, members of Parliament extended the moratorium until the adoption of the law on agricultural land turnover, but not earlier than January 1, 2020.

The important fact is that today very large-scale legislative work is underway in Ukraine to adopt the law on agricultural land turnover by the end of 2019 and to lift the moratorium with some limitations for a transition period.

Escrow

The concept of escrow account has been introduced in Ukrainian law very recently, which is a major development.

The Escrow mechanism allows Ukrainian banks to keep the funds in the client's special (escrow) account (the client or a third party may transfer the funds to the account) until said funds have been released, upon certain agreed conditions (stipulated in the transaction), for the benefit of the client or a third party beneficiary. The release is made against the submission of documents confirming the fulfillment of the agreed conditions. Unless otherwise provided by the escrow agreement, the bank should only assess the external characteristics of the documents submitted. Until release the funds in the client's special (escrow) account are frozen and neither client nor third party beneficiary may dispose of the funds.

Acquisition of real estate

There are two forms of real estate acquisition: a direct purchase of real estate ("asset deal") or acquisition of shares in the company holding real estate ("share deal"). In choosing the preferable form of real estate acquisition, the following advantages and disadvantages of each option should be considered.

The main advantage of an asset deal is that the purchaser acquires a specific asset and it does not succeed to any debts and liabilities of the seller. Additionally, the registration of the property title is carried out simultaneously with the conclusion of the respective agreement.

The disadvantages of an asset deal are:

> not apply in the case of land sale);
>
> In the case of the sale of a real estate property built on a leased land plot, a land lease agreement will not be automatically assigned to the new owner of such real property. Upon transfer, a land lease agreement should be concluded with the new owner;
>
> The purchase price is subject to VAT (save for the sale-purchase of undeveloped land which is not subject to VAT);
>
> Ukrainian law is applicable to the agreement as the property is in Ukraine;
>
> In the event of sale of a land plot, construction documents and other permits for construction activities on a land plot may not be automatically transferred to the new owner. Respective documents should be re-registered for the new owner;

- Restrictions for foreign capital in respect of land relations;
- Registration of the title and execution of the deal within a region where the property is located.

The advantages of a share deal are:

- A relatively fast procedure for registration of documents necessary for the transfer of ownership to a participatory interest (share);
- VAT does not apply;
- An offshore exit is possible;
- A foreign governing law and foreign arbitration may be considered;
- It is not necessary to re-register the ownership title to the real estate property;
- No restrictions for acquisition by foreign investors;
- Land lease agreements, licenses, building permits, project documentation and licensing documentation for an investment project remain in force and do not need to be re-executed;
- Relatively low transaction costs.

The disadvantages of a share deal are:

- All the liabilities and debts of the target company are transferred to the purchaser;
- Acquisition may require a prior permit from the Antimonopoly Committee of Ukraine.

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