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A cross-border guide to starting a business

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Purpose of this guide

This guide provides high-level information for foreign investors aiming to start a business in selected jurisdictions. Topics covered include the main vehicles for starting a business, key formalities for setting up a company and some tax and employment highlights.

It is intended merely to highlight issues and not to be comprehensive, but we hope it proves useful. We have included the contact details of some of our experts who have contributed to this guide, but you should also feel free to get in touch with your own Linklaters contacts about any of the issues raised.

The Australian and Vietnamese content in this guide has been contributed by Allens, the Brazilian content by Lefosse Advogados, the Indonesian content by Widyawan & Partners and the South African content by Webber Wentzel.

Contents

Australia

How to start a business

Operating through a company: The most common type of limited liability company in Australia is a company limited by shares, either a proprietary company (most likely) or a public company.

A proprietary company must have no more than 50 non-employee shareholders and at least one director who is ordinarily resident in Australia. A public company must have at least three directors, two of whom must ordinarily reside in Australia. A public company is also required to have a secretary ordinarily resident in Australia. Both types of company also require a registered office in Australia and at least one shareholder. A proprietary company cannot offer shares in itself to any person other than existing shareholders and employees.

A company may be incorporated from scratch or acquired "off the shelf".

Setting up a branch: A foreign company can conduct business in Australia by setting up a branch (no separate legal personality).

Other options to establish a business presence include, for instance, partnerships, joint ventures or trusts.

Key formalities for incorporating a company or setting up a branch

To register a company, a person must lodge an application in the prescribed form with the Australian Securities and Investments Commission ("**ASIC**") and pay the necessary fee. The application must state certain information about the proposed company including the company's share capital structure (in circumstances where the company is limited by shares), directors and registered address.

In order to set up a branch in Australia, the foreign company will need to register as a foreign company (a "registered foreign company"). That process will involve the completion and submission of the necessary registration form and supporting documentation to ASIC, including a copy of the company's certificate of registration and constituent documents. A registration fee is also payable. Additionally, registered foreign companies are required to have a registered office in Australia and appoint an agent in Australia to ensure compliance with Australian law. Registered foreign companies have certain periodic filing obligations.

Key formalities for purchasing a shelf company

A shelf company that has been registered (but is yet to trade) can be purchased from businesses which set up companies for that purpose.

This normally involves the completion and registration of share transfer forms and related formalities.

Any foreign investment restrictions?

The rules surrounding whether approval is required under the Foreign Acquisitions and Takeovers Act 1975 (Cth) ("**FATA**") regime are complex and consist of a layered system of categories, exceptions and various thresholds.

Where no special rules apply, a foreign person requires approval to acquire a substantial interest (20% or greater) via the issue or transfer of shares if the target is: (i) an Australian company carrying on business in Australia; (ii) an Australia unit trust; or (iii) a holding entity of either of them, where the target is valued above A$252m (indexed annually) based on the higher of its total asset value or the total value of its issued shares. A higher threshold of A$1,094m (indexed annually) applies for acquisitions by United States, Chile, China, Japan and New Zealand investors, except for investments in prescribed sensitive sectors (including media, telecommunications, transport and military).

Special rules apply in a number of situations, including with respect to foreign government investors, agribusinesses, the media sector, land and land-rich entities.

A transaction that is subject to the FATA approval regime should be conditional upon obtaining approval from the Australian Treasurer by way of a "no-objection notice".

Corporate governance and ongoing obligations

Public companies are required to hold a shareholders' general meeting within five months of the end of the company's financial year. There is no such requirement for proprietary companies.

Companies must maintain a register of members, as well as a record of the minutes of the meetings of the company and its directors. Additionally, ASIC maintains a publicly accessible register of certain information relating to the company (officeholders, company's share capital or structure, etc.). Any changes must be notified to ASIC.

Directors are subject to fiduciary duties, including a duty to act in the best interests of the company. A director who fails to perform its duties may be guilty of a criminal offence, be personally liable to compensate the company for any loss, or prohibited from managing a company.

Public companies and large proprietary companies are required to lodge annual financial, directors' and auditors' reports with ASIC. Foreign companies registered in Australia must also lodge copies of their financial statements and comply with various notification obligations under the Corporations Act, as well as notify ASIC, among others, of any change in officeholders or registered address, or whether the foreign company ceases to carry on business in Australia, is wound up, dissolved or deregistered in its place of origin.

Tax highlights

Both residents and non-residents who have a permanent establishment in Australia are subject to corporate tax at a rate of 30%.

Generally, interest incurred in respect of a borrowing is deductible (and may be limited under "thin capitalisation" rules). In relation to equity funding, Australia has an imputation system of company taxation under which shareholders in an Australian resident company may be entitled to a credit for tax paid by the company. If a company makes a "franked distribution", resident shareholders may be entitled to a "franking credit" for the amount of tax paid by the company.

Non-residents are taxed on capital gains arising from the disposal of Australian real property or certain "non-portfolio" interests in entities the assets of which, directly or indirectly, consist principally of real property in Australia. A purchaser acquiring such property from a foreign resident may be required to withhold 10% of the purchase price to remit to the Commissioner of Taxation.

Australian withholding tax will generally apply to payments of interest (10%), royalties (30%) and dividends (30%) to non-residents, with certain exceptions. Withholding tax may be reduced by the applicable tax treaty.

Australia also has a goods and services tax regime, which is similar to other value added taxes such as VAT. Each of Australia's States and Territories also imposes stamp duty on certain documents and transactions (acquisition of certain types of property).

Employment highlights

Employers and employees are free to agree on the terms of an employment contract subject to the minimum standards set out in the Fair Work Act 2009 (Cth) ("**FWA**"). Also, if a modern award applies to the employee, the employment contract cannot provide for terms that are less favourable than those under the award.

All employers must make regular payments, on at least a quarterly basis, into a pension plan (known as a "superannuation fund") chosen by the employee, at the rate of 9.5% of the employee's "ordinary time earnings" up to a limit of A$51,620 per quarter (indexed annually on 1 July).

Under the FWA, employees are entitled to certain minimum notice periods for termination based on the length of their service. It is also possible to pay an employee in lieu of notice. Employees who earn less than the high income threshold (A$138,900 and indexed annually on 1 July) are "protected" employees and their dismissal must be fair (that is, for a valid reason, pursuant to a fair procedure, and must not be harsh, unjust or unreasonable in the circumstances).

An employer seeking to enforce a restraint against a former employee will need to demonstrate that it has legitimate business interests.

Issues that surprise foreign investors

> The Competition and Consumer Act 2010 (Cth) prohibits acquisition of shares/assets that would have the effect of substantially lessening competition in any market in Australia (it specifies a non-exhaustive list of "merger factors" to be taken into account). These merger provisions are enforced by the Australian Competition and Consumer Commission ("**ACCC**"), who can seek a court injunction to prevent a merger from proceeding. It is also possible for the ACCC to seek a court order for divestiture or financial penalties where an acquisition has already taken place. While notification of a merger to the ACCC is voluntary, in practice, the ACCC expects to be notified of mergers well in advance where the merger will result in a single firm having a market share of greater than 20% in the relevant market.

> Australia's privacy legislation is far-reaching and touches on a number of different types of activities that a business may engage in. The Privacy Act 1988 (Cth) imposes 13 Australian Privacy Principles ("**APPs**") as a minimum standard for handling personal information. The APPs regulate the collection, use, disclosure and handling of records or "personal information". Special provisions also apply to certain types of "sensitive information" (e.g. a person's health, racial or ethnic origin, and religious and political beliefs). Entities are required to have a clearly expressed and up-to-date privacy policy, which is to be made available free of charge.

Belgium

How to start a business

Operating through a company: The two most common types of company are the company limited by shares ("**SA/NV**") and the private limited liability company ("**SPRL/BVBA**"). An SA/NV is commonly used by large and medium-sized businesses, and is the standard corporate form for listed companies. It requires a minimum capital of €61,500 and at least two shareholders. The SPRL/BVBA is usually used for smaller businesses and subsidiaries of U.S. companies (as it qualifies for check-the-box election for U.S. tax purposes). It can be set up by a single individual and requires a minimum capital of €18,550. A company may be incorporated from scratch or acquired "off the shelf" (not a common practice).

Setting up a branch: A branch is not a company in itself, but the operation of a foreign company in Belgium. It has no separate legal personality from its foreign "parent", so it cannot enter into contracts in its own name. For its operation, a place of business in Belgium and an on-site representative authorised to represent the foreign company are required.

Other options include, for instance, partnerships, joint ventures or carrying on a business through distribution, agency or franchise agreements.

Key formalities for incorporating a company or setting up a branch

The incorporation of a company in principle does not require prior governmental filings or approvals. However, it does require the use of a notary. The notary will prepare and execute the deed of incorporation. This deed specifies the details of the shareholders and the amount of their contribution. It will also include the company's articles of association. A budget forecast covering the first two years of operations must also be prepared. If the company goes bankrupt within three years of incorporation, the budget forecast will be used by the court to assess any founders' liability.

A company limited by shares (SA/NV) will obtain legal personality as of the date of filing of the deed of incorporation with the clerk's office of the competent court. The company will also need to be registered at the Crossroads Bank for Enterprises.

In principle, companies are free to choose their name. It must, however, be sufficiently distinctive from that of other companies, so as to avoid confusion.

Establishing a branch in principle does not require prior governmental filing or approval either. However, a number of documents and information relating to the "parent" company must be filed with the clerk's office of the competent court and disclosed.

Key formalities for purchasing a shelf company

Shelf companies are companies which have already been incorporated and registered with the Crossroads Bank for Enterprises. They often only have the minimum share capital required by law, standard articles of association and no previous activity.

In Belgium, it is not common to purchase shelf companies. This is mainly due to the relative ease with which companies can be incorporated. However, some investors prefer to purchase a shelf company, so as to avoid specific cases of founders' liability (which expires three years after incorporation).

However, if a shelf company is purchased, the transaction will take the form of a share deal. In principle, no regulatory approvals or corporate formalities are required. On the date of transfer of the shares, the names of the shareholders will be amended in the share register, at which time the new shareholders will take control of the company. Immediately after the purchase, the new owners will usually hold a shareholders' meeting (before a notary). During this meeting, they amend the corporate name and registered seat, tailor the articles of association to the needs of the company and make all necessary appointments, such as the new directors and, as the case may be, the statutory auditor.

Any foreign investment restrictions?

There are no general restrictions on foreign ownership of businesses in Belgium, although there are some rules which apply to companies operating in certain sectors, such as national defence and aviation.

There are no exchange control or currency regulations.

Corporate governance and ongoing obligations

A company limited by shares (SA/NV) is required to have at least three directors, unless there are no more than two shareholders. The shareholders' meeting can dismiss directors at any given time, without notice. A private limited liability company (SPRL/BVBA) can be managed by a single manager.

There is no legal requirement as to nationality or residence of directors or managers. The board of directors or managers may perform all acts which are necessary or useful to pursue the corporate purpose. Each director or manager has a duty of care to act in good faith and in the company's interest.

The board of directors or managers must convene regularly, as many times as the company's interest requires. This must be at least once a year to draw up the annual accounts. The shareholders are also required to convene at least once a year.

A company is obliged to keep books and records of its business. It must comply with certain corporate formalities, such as filing its annual accounts with the National Bank of Belgium. Filings must also be made with the clerk's office of the competent court, such as whenever a director or manager resigns or is replaced or if changes are made to the articles of association. Extracts of these decisions must be published in the Belgian State Gazette.

Further and, in some cases, stricter rules apply to listed companies.

Tax highlights

The information below relates to non-SMEs:

Belgian resident companies are taxable on their worldwide income (incl. capital gains). Capital gains on qualifying shares held for at least one year are subject to a separate tax of 0.412%.

Belgian permanent establishments of non-Belgian resident companies are taxed like Belgian resident companies on the income attributable to such establishment.

Acquisition costs related to shares are in principle fully tax deductible, subject to the general 5:1 debt:equity rule for intra-group debt and tainted loans.

A fairness tax of 5.15% is due upon dividend distributions from income which was not effectively taxed due to use of certain tax assets.

The domestic withholding tax rate is 27% for both dividend and interest payments (subject to domestic and treaty exemptions). A reduced withholding tax of 1.6995% applies to dividends distributed by a Belgian company to foreign minority corporate shareholders (subject to conditions).

A transfer of shares without the intervention of a Belgian financial intermediary does not, in principle, attract transfer taxes or stamp duties.

Employment highlights

Before employing personnel, the company will have to affiliate with official bodies (e.g. the National Social Security Office, child benefit fund, inter-company medical service) and take out insurance against industrial injuries. A payroll agency will normally deal with all practical aspects of the payroll.

The employer will belong to a joint industrial committee for its sector. They will also have to comply with specific provisions of Collective Bargaining Agreements applicable to the industry in which the company is active. The industrial committee fixes, among other things, the minimum wages per specific occupation. Belgian employment conditions will thus apply to every employee working in Belgium.

Belgium has a well-developed social security system. Employers and employees must both contribute a specified proportion of the employee's wages to the social security system.

Employees are protected by a set of procedural safeguards regarding termination of their employment contract. Specific restrictions on the dismissal procedure apply to certain employees and situations (i.e. pregnant women, members of the Works Council, etc.).

Belgian law provides for very strict rules on the use of languages in relation to the employer-employee relationship.

Issues that surprise foreign investors

> Investors must be mindful of the Belgian regulations on the use of languages. These entail that "all documents required by law" (e.g. the deed of incorporation, articles of association and annual accounts) must be drafted in one of Belgium's official languages (i.e. French, Dutch or German). The language to be used will depend on the linguistic region where the company has its place of business (with the exception of Brussels, where the choice between French and Dutch is free). These regulations do not, however, prevent the use of, for instance, English translations of these documents.

> As to the management of a company limited by shares (SA/NV), members of the board of directors have no certainty that they can hold office for a specified minimum duration: at any given point, the shareholders' meeting must be able to dismiss and replace them.

Brazil

How to start a business

Operating through a company: The most common types of entity used as corporate vehicles of foreign companies to establish a presence in Brazil are: (i) *Sociedade Limitada* ("**Ltda**") regulated by Law No. 10.406/02; and (ii) *Sociedade Anônima* ("**SA**") regulated by Law No. 6.404/76. Both the Ltda and the SA (when owned by entities or individuals domiciled abroad) must be incorporated by at least two quotaholders/shareholders, who do not need to be Brazilian citizens or residents of Brazil. A company may be incorporated from scratch or acquired "off the shelf".

Setting up a branch: The establishment of a branch of a foreign entity in Brazil involves a lengthy and bureaucratic process which includes the granting of an authorisation by presidential decree and therefore is rarely chosen as a feasible alternative for setting up a presence in Brazil.

Other options include establishing a joint venture with another company on a purely contractual basis (e.g. pursuant to a consortium, silent partnership agreement or co-operation agreement). Such purely contractual structures, however, are usually more suitable for partnerships with a narrower and less permanent scope.

Key formalities for incorporating a company or setting up a branch

A Ltda is incorporated by its founding quotaholders with the execution of the articles of association (*contrato social*) and an SA with the execution of the minutes of incorporation (*ata de constituição*), both of which need to be filed with the Commercial Registry in Brazil.

Once the constitutional documents have been filed with the Commercial Registry, the company undergoes a process of registration with the public authorities and obtainment of permits before it becomes operational (the length and complexity of the registration procedure depends on the relevant sector and has to be analysed and planned on a case-by-case basis).

In general, any corporate acts of either an SA or a Ltda that need to have effect in relation to third parties (including constitutional documents and any amendments thereto, minutes of shareholders' meetings authorising execution of agreements, etc.) have to be filed with the Commercial Registry and automatically become publicly available.

An SA is subject to more publicity requirements than a Ltda (including, for example, annual publication of financial statements in the Official Gazette).

Key formalities for purchasing a shelf company

There are many service providers which offer shelf companies for sale and the process of acquiring a shelf company is straightforward.

It usually merely involves foreign investors granting powers of attorney for representatives in Brazil to receive service of process and represent them as quotaholders/shareholders in the acquired entity (notarisation and legalisation requirements must be observed), as well as: (i) in the case of acquiring a Ltda, to amend the articles of association transferring the quotas, appoint new management and restructure the company's governance framework; or (ii) in the case of acquiring an SA, to execute the share transfer book, share register book and minutes of shareholders' meeting, appoint new management and restructure the company's governance framework.

The price of acquisition of a shelf company ranges between USD 2,500 and USD 5,000 (depending on whether the shelf company is a Ltda or an SA, respectively, and on its date of incorporation). Such price generally includes paralegal fees to update the company's basic records with federal, state and municipal public authorities.

Any foreign investment restrictions?

In Brazil, overseas ownership of Brazilian companies is restricted in certain regulated sectors, such as media (radio and TV broadcasting, newspapers and magazines), banking, aviation, telecommunication and real estate.

Overseas investments in Brazil are also subject to registration with the Brazilian Central Bank through a declaratory electronic system (SISBACEN). Such registration, which is usually completed swiftly, is also necessary for remittance of profits and reinvestment transactions performed by non-resident shareholders.

Corporate governance and ongoing obligations

Ltdas have two statutory governance bodies: the board of officers (in charge of the daily representation and conduct of business of the Ltda) and the quotaholders' assembly (generally competent to decide upon any matters of interest of the Ltda or the quotaholders). That said, the articles of association of the Ltda may provide for additional governance bodies provided that they observe the statutory competences set forth in the Brazilian Civil Code.

SAs may have up to four statutory governance bodies: the board of officers (generally competent for the daily representation and conduct of business of the SA), the board of directors (responsible for overseeing the activities of the board of officers), the fiscal council (responsible for reviewing the management accounts) and the shareholders' assembly (generally competent to decide upon any matters of interest of the SA or the shareholders). However, a privately-held SA may choose not to have a board of officers and a fiscal council and limit its governance to the board of directors and the shareholders' meeting.

Costs and formalities associated with the maintenance of a Ltda and a privately-held SA are similar. The legal framework applicable to Ltdas, however, results in lower maintenance costs than the SA (especially due to fewer publication requirements). On the other hand, it limits the creation of more complex governance and financing structures which are available for SAs.

Tax highlights

The incorporation of a legal entity in Brazil is not subject to stamp or duty tax.

Brazilian companies are subject to corporate income tax ("**CIT**") on a worldwide basis at a combined approximate rate of 34%.

Brazilian companies are also subject to Social Contributions on Gross Revenues at the general rate of 9.25% or 3.65% depending on whether they elect for the actual or presumed profit method and on their actual activities.

Dividend payments are currently not subject to withholding taxes and are not regarded as taxable income in the hands of the beneficiary (if Brazilian resident) to the extent that they derive from profits accrued in accordance with the Brazilian commercial/accounting rules.

Interest, royalties and services are generally subject to withholding at the rate of 15% (rate is increased to 25% if the beneficiary is a resident of a tax haven). Services payments are also subject to other taxes.

Prices on import and export transactions performed between related parties must observe Brazilian transfer pricing rules. Loan agreements entered into between related parties must also observe Brazilian transfer pricing rules as well as thin capitalisation limits for the deductibility of interest expenses for CIT purposes.

Employment highlights

As a general rule, employment contracts must be executed for an indefinite term. Brazilian labour law limits negotiation between the parties and excessively protects employees: employees cannot renounce/waive their statutory rights, and employers must not change terms and conditions of employment to the detriment of employees (even with their prior consent).

Most labour rights are provided by law. Collective bargaining agreements may provide for additional rights, usually with regard to compensation and other benefits (e.g. minimum wage and annual salary increase). The terms negotiated benefit all employees of the relevant category and jurisdiction and bind all companies represented by the relevant employers' union.

Except for employees who enjoy temporary job stability (e.g. pregnancy), employment agreements may be terminated by the employer at any time upon prior notice without cause, with payment of mandatory severance and without any consultation or prior communication to authorities or unions. Termination with cause may occur only in very few situations expressly stipulated by law, and would still demand payment of some of the mandatory severance rights.

Foreigners have to obtain a visa and a work permit from the Ministry of Labor to be allowed to work in Brazil. As a general rule, at least two thirds of a company's workforce must be Brazilian.

Issues that surprise foreign investors

Positive surprises:

- Brazilian shareholders' agreements binding the company and all shareholders are effective and enforceable if such agreements are duly registered at the company's head office. They can be enforced in Brazilian courts.
- Ltdas and SAs usually have lower maintenance costs than equivalent corporate forms in other jurisdictions.
- The Brazilian corporate law framework is a hybrid system which includes many efficient mechanisms of both civil and common law traditions.

Negative surprises:

- Instead of being easier than incorporating a legal entity (Ltda or SA), establishing a mere branch of a foreign entity with no presence in Brazil involves a lengthy and bureaucratic process which even requires an authorisation by presidential decree.
- Liquidating a company in Brazil is a lengthy and bureaucratic process which may take more than 24 months to be completed.

France

How to start a business

Operating through a company: A number of limited or unlimited liability companies exist under French law. The most common types used by sizeable businesses are “**SA**” (*société anonyme*) and “**SAS**” (*société par actions simplifiée*), that are both limited liability companies.

An SA is a corporate form generally used by large businesses and is the standard form for listed companies. An SA must have a minimum share capital of €37,000 (subject to sector-specific higher requirements) and at least two shareholders. An SAS is becoming the most common corporate form for private companies in France and in particular for intra-group subsidiaries. An SAS is a flexible corporate form as only a limited number of rules are imposed by French law on this type of company and many rules can therefore be set forth in the by-laws. There is no minimum capital requirement and an SAS can have a single shareholder.

Setting up a branch: A branch is not a separate legal entity but merely a division of a company, which is responsible for all its branch’s obligations and liabilities.

Other options such as agencies, franchises and joint venture agreements may be pursued when investing in France.

Key formalities for incorporating a company or setting up a branch

Key documents and steps to incorporate a company include (i) drafting and execution of the company’s by-laws (which do not need to be notarised), (ii) payment of initial cash capital contribution to the company’s bank account (to be certified by the bank) and (iii) execution of a lease or equivalent agreement for the company’s registered office. Such documents, as well as the documentation relating to the corporate officer(s) and statutory auditor(s), must be filed with the relevant Companies Registry.

Branches of a foreign company shall also be registered at the Companies Registry. Registration of a branch requires the provision of various documents, including a commercial lease, a translation of the articles of association of the foreign company and the name of the local representative responsible for its management. The company setting up a branch is thereafter subject to filing requirements, including the obligation to file the accounting documents published in its country of origin (translated into French) with the relevant Companies Registry.

New rules on ultimate owners will enter into force in 2017. Companies established in France will be required to obtain and keep information on their ultimate owners and file this with the Companies Registry (rules will be supplemented by Governmental Decree).

Key formalities for purchasing a shelf company

Acquiring a shelf company is very rare in France.

Any foreign investment restrictions?

Restrictions on foreign investments exist in certain sectors in France and include the requirement to obtain prior approval from the French Treasury in “sensitive” sectors, so as to preserve and protect French national interests (e.g. defence, weapons, energy, telecommunications, transport, public health), as well as regulations relating to maximum foreign ownership (e.g. in the press and broadcasting).

Foreign investments in France may still give rise to an obligation of notification to the French government or to the French central bank.

Corporate governance and ongoing obligations

Regarding corporate governance, French law draws a distinction between an SA and an SAS.

An SA can either have a board of directors or both a management board and a supervisory board. In an SA with a board of directors, the CEO may or may not be the chairman of the board of directors. An SA must have statutory auditor(s). If the staff of the company and of its subsidiaries, in France or worldwide, exceeds certain thresholds for two consecutive years, one or two board members (with voting rights) must be appointed to represent employees.

As only a few rules are imposed by French law, an SAS is a legal form characterised by a very flexible internal structure. The only requirement is that an SAS must have a "chairman", and, apart from this, there is a wide range of options for creating other management bodies if desired. An SAS is only required to have statutory auditor(s) when certain conditions are met.

Branches do not have a corporate officer(s), but a representative must be appointed.

All commercial companies are required to keep books and records of accounts in French and the accounting documents must be kept for at least 10 years. On an annual basis, companies are also required to draft their financial statements and to file them with the competent Companies Registry.

Tax highlights

Limited liability companies are generally subject to corporate income tax (CIT) on income derived from their French activities (no worldwide taxation for French tax resident companies, subject to French CFC rules). The standard CIT rate is up to circa 34.43%.

Capital gains are taxed as ordinary income unless they qualify for the participation regime (in which case they are 88% tax exempt). Such regime applies to capital gains derived from the sale of shares that, *inter alia*, represent at least 5% participation and have been held for two years. Capital gains made by non-resident significant shareholders (typically holding at least 25% of the financial rights) on the sale of shares in a French company might be taxable in France, subject to tax treaties.

Dividends received are generally 95% exempt (99% in certain cases) provided that they qualify for the participation regime. Dividends paid by French companies are subject to a 3% contribution, subject to certain exemptions, and, when paid to non-French residents, to French withholding taxes (WHT) at a rate of up to 30% (75% if paid in a non-cooperative jurisdiction). Tax treaties and EU law allow certain qualifying companies to receive such dividends free of WHT.

Interest payments are generally tax deductible, subject to various limitation rules. France does not levy withholding tax on interest (save in limited cases).

The sale of shares in a French company can be subject to registration duties.

Employment highlights

French employers must: (1) be registered with the French authorities; (2) check that employees have the right to work in France and, if necessary, carry out criminal record and/or regulatory checks; (3) have filled out a prior declaration of hiring; and (4) take precautions to protect the health and safety of staff and insure against liability for personal injury or disease sustained by employees.

Companies are usually given an industry-wide collective bargaining agreement depending on their main activity that notably provides for the classification of the employees, minimum wages and employment conditions.

The French pensions system is mostly public and state controlled. Employees benefit from two mandatory pension schemes (the scheme provided for by the Social Security and a complementary mandatory scheme). Most of these schemes are provided by insurers and are based on defined contributions. Employers and employees must contribute a specified proportion of the employee's wages in order for the employee to benefit from the social security and welfare schemes.

Companies with 11 employees or more must organise the election of staff delegates and, with 50 employees or more, set up a works council and a health and safety committee with various information and consultation rights prior to major decisions affecting the company or the running of the business.

Employees are protected by a set of procedural safeguards regarding termination of their employment contract.

Issues that surprise foreign investors

> The French state plays a particularly active role in the country's economy, with over €110 billion worth of investments in French companies, and may pose restrictions in certain sectors. Potential investors should be aware of the regulatory environment and develop positive relationships with regulators and institutions.

> Labour laws in France may appear restrictive to foreign investors. Working hours are controlled for many types of workers by the famous 35-hour working week and significant burden is placed on employers. However, France still maintains one of the highest productivity levels in the world. A thorough understanding of French employment law is essential for potential investors.

Germany

How to start a business

Operating through a company: Foreign investors often opt for a limited liability company (*Gesellschaft mit beschränkter Haftung* or "**GmbH**") since the GmbH offers a flexible internal structure and can be tailored to the foreign investor's needs.

An alternative can be a Limited Partnership (*Kommanditgesellschaft* or "**KG**"). In most cases, this exists in the hybrid form of a GmbH & Co. KG, i.e. a limited partnership where the general partner is a GmbH. If the foreign investor intends to raise funds in the capital markets, an alternative choice of legal entity would be a German stock corporation (*Aktiengesellschaft* or "**AG**"). However, the AG requires a higher minimum share capital (€50,000 compared to €25,000 for a GmbH) and is subject to stricter formalities. A company may be incorporated from scratch or acquired "off the shelf".

Setting up a branch: A branch is not a separate legal entity but merely a division of a company. The company will remain responsible for the obligations and liabilities of its branch.

Besides the alternatives stated above, other options such as agency, franchise or joint venture agreements may be pursued when investing in Germany.

Key formalities for incorporating a company or setting up a branch

The GmbH, AG and also the GmbH & Co. KG require a notarial deed of incorporation. The GmbH and AG legally exist once they are registered in the Commercial Register of the competent Local Court. The registration process may take some time, depending on how busy the register is. The register is kept in electronic format and notifications have to be filed by a notary public.

The incorporation of a branch of a foreign entity also requires the registration in the Commercial Register of the competent Local Court. Certain documents of the "parent" company need to be disclosed and filed with the register.

Key formalities for purchasing a shelf company

Shelf companies (generally GmbHs) are companies that are already registered with the Commercial Register. They are usually incorporated by corporate service providers with the minimum share capital required by law (i.e. €25,000 in the case of a GmbH), have standard articles of association and no previous activity.

The acquisition is made by way of a share deal. Following the acquisition, a new shareholders' list must be filed with the Commercial Register by the notary.

Simultaneously with acquiring the shelf company, the investor would commonly pass the relevant corporate resolutions to change the articles of association (e.g. company's name, object of the company, etc.) and to appoint new managing directors. The amendment of the articles of association will become effective upon its entry in the Commercial Register.

Any foreign investment restrictions?

Generally speaking, there are no restrictions on the takeover of private companies in Germany apart from merger control regulations.

However, any direct or indirect acquisition by a foreign (i.e. non-EU and non-EFTA) investor of (i) a German company or business or (ii) 25% or more of the voting rights in a German company, is subject to a right of the government to prohibit such an acquisition, or to impose conditions on the purchaser, if public policy or security is jeopardised. Whilst the provisions are not limited to specific industries, the legal thresholds for using these powers are high and to our knowledge they have not been used by the government so far.

Corporate governance and ongoing obligations

A GmbH usually has two corporate bodies, the managing directors and the shareholders' meeting. The managing directors are in charge of the daily business and represent the company vis-à-vis third parties. However, the shareholders' meeting is entitled to give instructions to the management. A supervisory board is generally not mandatory for a GmbH. In principle, only companies which are subject to employee co-determination are required to establish a supervisory board.

In contrast, an AG must have a supervisory board in addition to the management board and the shareholders' meeting. In the case of an AG, the shareholders' meeting has no authority to give instructions to the management board.

Branches act through the representatives of the company themselves. A representative whose power of representation is limited to the affairs of the branch may be appointed.

A wide range of corporate documents has to be filed with the electronic Commercial Register (generally accessible to the public). Groups and large companies are subject to further publication requirements. Branches are not obliged to publish their financial statements but those of their head office have to be disclosed.

Any amendment to the articles of association of the GmbH or AG or to the branch's information must be filed with the Commercial Register.

Tax highlights

Acquisitions of shares are in principle exempt from German VAT.

German resident corporations, such as GmbH and AG, are subject to German corporate income tax at a cumulated rate of 15.825%, including solidarity surcharge. Additionally, trade tax is levied on a company's domestic income after certain adjustments at an average rate of approx. 15% (minimum 7%) depending on the municipality in which the company is located. Non-resident companies operating through a permanent establishment in Germany are subject to German corporate income and trade tax at the identical rates on their income which is attributable to the German permanent establishment. Partnerships are subject to separate specific tax provisions.

Dividend payments are in principle subject to 26.375% withholding tax, which may be reduced to 15.825% for dividends received by corporations and further reduced for EU resident corporations or according to double taxation treaty exemptions, in each case provided that the receiving entity fulfils certain requirements.

Germany does not levy withholding tax on interest (save in limited cases). The deductibility of interest expenses may be limited in particular if the relevant annual net interest expenses exceed a threshold of €3 million (interest barrier rule).

Employment highlights

Terms and conditions of employment (e.g. pay, working time, holiday, termination notice period, continuation of remuneration during sickness) are generally regulated by a combination of statutory provisions, the individual employment agreement, collective agreements (concluded with a union or a works council if applicable) and custom and practice.

Subject to the number of employees employed at a site, employees may have statutory protection against unfair dismissal, i.e. any termination issued by the employer will have to be based on a legal reason and would otherwise be considered invalid, the legal remedy generally being reinstatement.

Employee representative bodies may be established, having certain information and participation rights. The most significant employee representative bodies are usually the works council and the economics committee. The works council has certain co-determination rights in relation to a number of aspects relating to the employees and the working activities at the relevant site. The economics committee must be informed about the company's economic matters on a regular basis. In the event of a transaction or a restructuring and subject to the respective structure, both employee representative bodies may have information and/or consultation rights.

Issues that surprise foreign investors

> Employee participation has been broadly implemented as a way to involve employees and prevent conflicts. This results in a rather low incidence of work disruption arising from strikes and lock-outs.

> Germany has quite recently implemented a women's quota of 30% for the supervisory boards of large listed companies which are also subject to parity employee co-determination.

> It is not required that managing directors or board members hold German citizenship or are resident in Germany permanently. However, potential adverse tax consequences may occur if the company's centre of management is transferred out of Germany, i.e. the relevant decisions for the day-to-day management are no longer taken in Germany.

> Domination and Profit-/Loss Transfer Agreements (DPLTAs) are a commonly used, widespread instrument for both tax planning as well as corporate governance purposes.

Hong Kong

How to start a business

Operating through a company: A company has separate legal personality from its directors and members, and its members' liability is limited to their shareholdings or guarantee. A company may be incorporated from scratch or acquired "off the shelf".

Setting up a branch: An overseas company can establish a branch office in Hong Kong by registering the overseas company as a non-Hong Kong company. A non-Hong Kong company has no separate legal personality from the overseas company so it will enter into contracts and engage in business in the name of the overseas company.

Alternative methods of establishing a business presence include partnerships, joint ventures or carrying on a business through distribution, agency or franchise agreements.

Key formalities for incorporating a company or setting up a branch

Applying for incorporation of a company requires the submission of (i) an incorporation form, (ii) the articles of association (the constitutional document of a company) and (iii) payment of application fees.

Setting up a branch in Hong Kong requires an overseas company to be registered as a non-Hong Kong company with the Companies Registry within one month after the establishment of the place of business in Hong Kong. The registration requires the submission of (i) a registration form, (ii) a certified copy of the constitutional documents and the certificate of incorporation of the overseas company, (iii) the company's latest published accounts and (iv) payment of application fees.

Both Hong Kong incorporated companies and branches must be registered under the Business Registration Ordinance. This is simply a form filing procedure which notifies the Hong Kong Inland Revenue Department of your presence in Hong Kong. This could be submitted to the Companies Registry with the incorporation/registration documents or separately.

Key formalities for purchasing a shelf company

Shelf companies are companies which have been incorporated and registered with the Registrar of Companies but which have not yet traded. These may be purchased from company formation agents.

On acquisition of the shelf company, certain steps will need to be taken and a number of filings will need to be made to the Registrar of Companies to effect, among other things, the transfer of shares, the resignation and appointment of officers, the change of registered office and, if necessary, changes to the articles of association.

Purchasing a shelf company has historically been perceived as a preferable route to establishing a company, on the basis that it tended to be quicker than incorporating a company. However, since the introduction of the electronic filing system at the Companies Registry, the incorporation of a company can take place within an hour from the electronic delivery of documents, assuming all the paperwork is in order. Also, the new requirement introduced in 2014 that all companies must have at least one "natural person" director means there is reduced appetite for company formation agents to set up shelf companies for sale. Purchasing a shelf company has become less of a norm in Hong Kong.

Any foreign investment restrictions?

There are no general restrictions on foreign ownership of businesses in Hong Kong, although there are some rules which apply to companies operating in certain sectors, such as broadcasting and telecommunications.

There are no exchange control or currency regulations.

Corporate governance and ongoing obligations

A private company is required to have at least one director and one of whom must be a "natural person". A public company needs to have at least two directors and it cannot appoint "corporate" directors. Directors owe certain duties to the company, including a duty to act in the best interest of the company for the benefit of the members as a whole.

A company must keep books and records of its business, for example, a register of members. A private company must circulate its annual accounts to its members within nine months from the end of its relevant accounting reference period and file them with the Registrar of Companies. A public company must do the same within six months from the end of its relevant accounting reference period.

Filings must be made with the Registrar of Companies: (i) if a director is appointed or retires or resigns; (ii) when any changes are made to the company's articles; and (iii) when certain resolutions of members are passed. A company must also file with the Registrar of Companies an annual return which includes, among other things, details of its share capital, members and directors.

Further and, in some cases, more strict rules apply to public companies.

Tax highlights

On a transfer of shares in a company incorporated in Hong Kong or which has its share register maintained in Hong Kong (i) a fixed stamp duty of HK$5 and (ii) an *ad valorem* stamp duty of 0.2% on the value of the company will normally arise. For a sale and purchase of shares, the *ad valorem* stamp duty will be charged on the amount of the consideration if it is higher than the value of the company.

Both Hong Kong companies and branches are generally subject to local taxes (corporate tax of 16.5%) and must comply with formal tax obligations.

Employment highlights

As soon as a business engages employees it must have employees' compensation insurance which provides not less than HK$100 million per event (if it has not more than 200 employees) or not less than HK$200 million per event (if it has more than 200 employees).

There is no requirement in Hong Kong for a contract of employment to be in writing. In practice, all employment contracts for a duration in excess of one month will be in writing and signed by both parties, otherwise the employment contract will be treated as a one-month contract, renewable from month to month.

Employees must be paid at least the minimum wage (currently HK$32.50 per hour) and most eligible workers must be enrolled into a pension scheme by their employer, who is required to make minimum mandatory contributions into the scheme (5% of relevant income, capped at HK$1,500 per month).

Employees enjoy a range of statutory protections relating to, among other things, dismissal and pay and rights in relation to holiday, sickness and pregnancy.

There is no automatic transfer of employment upon a transfer of business.

Issues that surprise foreign investors

Although Hong Kong has built up a reputation for its high-tech and professional capabilities, where efficiency and speed are the catchwords, investors may be caught unaware that some aspects of Hong Kong's legal and regulatory infrastructure still lag behind commercial reality. There are instances where applicable laws were drafted decades ago or are based on assumptions that are anachronistic. For example:

> The timing requirements for payment of stamp duty for a transfer of Hong Kong stock under the relevant law are specified in terms of a certain number of days after execution of the relevant documents. This formulation assumes the occurrence of a physical closing meeting which, since the advent of electronic communications, is fast fading into the annals of history.

> Hong Kong law requires deeds to be sealed by a corporation, failing to recognise that foreign corporations may not legally be required to adopt a seal under their local laws, and therefore causing uncertainty as to how such corporations should execute Hong Kong law governed deeds.

Indonesia

How to start a business

Operating through a company: An investor can incorporate a limited liability company (known as *Perseroan Terbatas* – "**PT**") under the foreign investment framework. They can also acquire an existing (private or public) company subject to compliance with the requirements set out in general corporate and investment laws, and in the case of public companies, the disclosure and mandatory tender offer procedures set out in the Financial Service Authority (*Otoritas Jasa Keuangan* – "**OJK**") regulations. All non-listed PTs with foreign shareholders must have "foreign investment" (PMA) status ("**PMA PT company**").

Setting up a branch: Other than in the banking sector, it is not possible to set up a branch of a foreign company in Indonesia.

Representative offices: It is possible to set up representative offices in Indonesia. However, they are generally prohibited from engaging in commercial activities and can only conduct limited activities (e.g. market research and promotional activities).

Key formalities for incorporating a company or setting up a branch

An in-principle licence from the Indonesian Investment Coordination Board ("**BKPM**") is required to incorporate a PMA PT company.

A PMA PT company is expected to obtain an operating licence within one year but no later than five years after the issuance of its in-principle licence (depending on its business activities). The PT's deed of incorporation (which includes the company's articles of association) must be notarised. Articles of association also need to be lodged with the Ministry of Law and Human Rights ("**MOLHR**"). Supporting documents such as the PT's letter of domicile and evidence of payment of the minimum capital from the founding shareholders are also required for the incorporation. The PT will obtain its limited liability status only after the MOLHR has approved the incorporation of the company.

The minimum investment amount in a PMA PT company is IDR 10 billion. This amount can be funded from a combination of equity and debt. The BKPM will specify the relevant debt to equity ratio on a case-by-case basis.

Foreign banks that intend to set up a branch must get prior approval from the OJK and meet certain conditions (e.g. place a minimum capital of IDR 3 trillion and have its total assets ranked in the top 200 banks in the world).

Key formalities for purchasing a shelf company

It is not common to purchase shelf companies in Indonesia, as the acquisition process, from a timing and cost perspective, is not significantly different from incorporating a new PMA PT company.

The approval of the BKPM and the applicable sectoral regulators will be required for the purchase of shares by foreigners in an existing PT.

Shareholders' approval of the target company is required. If the acquisition results in a change of control of the target company, the proposed acquisition must be: (i) announced in at least one newspaper of national circulation in the Indonesian language; and (ii) notified in writing to the employees of the target company. These must be done at least 30 days prior to calling the general shareholders' meeting to approve the proposed acquisition.

Shares are transferred by way of a deed of transfer. If the acquisition results in a change of control, the deed of transfer must be granted before an Indonesian civil notary.

Any foreign investment restrictions?

Foreign investment in Indonesia is coordinated by the BKPM except for specific sectors (e.g. financial institutions and insurance, which are supervised by the OJK). Indonesia has a relatively open foreign investment regime, but it is subject to restrictions on investment in certain sectors.

These restrictions are primarily set out in the Negative Investment List issued by the BKPM (current version of 2016), as well as in certain sector-specific regulations.

Corporate governance and ongoing obligations

A PT has the following governing bodies: (i) the general meeting of shareholders ("**GMS**"); (ii) a board of commissioners ("**BOC**"); and (iii) a board of directors ("**BOD**").

The BOD is responsible for the day-to-day management of the company. It is typically made up of the President Director (being the equivalent of a CEO), the CFO and the COO.

The BOC is responsible for the overall supervision of the management of the company by the BOD and provides guidance to the BOD. It has the power to suspend the BOD. In practice, the BOC plays a role that is similar to the board of directors in common law jurisdictions.

The GMS is the ultimate governance body and has authority for matters which have not been allocated to the BOC or the BOD under general company law or the articles of association.

For contracting purposes, unless otherwise provided in the articles of association, each member of the BOD has the authority to act for and on behalf of the PT. Members of the BOC and BOD must act in the best interests of the company and in good faith.

A public listed company is subject to disclosure requirements and must comply with additional corporate requirements, including maintaining a certain number of independent commissioners and the formation of certain committees.

Tax highlights

The standard corporate income tax rate is 25%. Public companies are entitled in certain situations to a tax discount of 5% off the standard rate, providing an effective tax rate of 20%.

Dividend income from a PT is taxable as ordinary income for a tax resident shareholder. However, if the shareholder is a PT with a minimum shareholding of 25% and the dividend is paid out of retained earnings, it is exempt from corporate income tax. Where the shareholder is not resident in Indonesia, a withholding tax rate of 20% applies, subject to variation by tax treaties.

Value added tax is charged at 10%.

Capital gains are taxable as ordinary income if the shareholder is an Indonesian tax resident.

Employment highlights

Most foreign nationals who wish to work in Indonesia require a work permit (*IMTA*) and a stay visa (*KITAS*). An expatriate director or commissioner who does not reside in Indonesia does not require a work permit.

There are sectoral restrictions which prohibit foreign nationals from working in certain fields such as human resources, health and safety and legal.

Where a proposed acquisition results in a change of control of the target, the target's employees have a statutory right to elect to terminate their employment contract with the target, in which case they are entitled to be paid a severance package, calculated according to a statutory formula.

Issues that surprise foreign investors

> Indonesian laws evolve rapidly and often in an unpredictable manner. Different ministries and regulatory bodies of the central government often do not consult in the implementation of regulations and this may result in inconsistent regulations being issued. Regional autonomy laws and regulations are changing the regulatory environment in Indonesia by decentralising certain regulatory and other powers from the central government to regional governments, which often creates uncertainty.

> The BKPM, as the coordinator in respect of foreign investment, has wide discretion in interpreting and implementing the investment laws. Industry specific regulations often require additional approvals that can prolong transaction timelines.

> Corruption is still a significant issue at the central and, even more so, regional governmental level. Courts are susceptible to influence and bribery. Foreign investors prefer international arbitration as the forum to settle disputes in most cross-border transactions. Indonesia is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Italy

How to start a business

Operating through a company: The most commonly used is the limited liability company ("**S.r.l.**"), due to its organisational flexibility (a peculiar type of limited liability company is the simplified limited liability company, also known as "start-up").

The joint stock company ("**S.p.A.**") is the form which best suits substantial investments with a large number of shareholders and it is the form required by law for a company to be listed on the Italian stock exchange.

Acquiring a shelf company is no longer common practice in Italy, as incorporating a company can be done fairly quickly.

Setting up a branch: The branch is an extension of a foreign company, depending legally, administratively and economically on its headquarters. It does not constitute a separate legal entity and the parent company is responsible for all its obligations and liabilities.

Other options include investing in an ongoing business through joint venture agreements or carrying on a business through distribution, agency or franchise agreements.

Key formalities for incorporating a company or setting up a branch

Incorporating a company requires that the deed of incorporation and the by-laws be drawn up as a public deed by an Italian notary, who is then required to file them with the competent Companies Register.

The minimum share capital of a limited liability company (S.r.l.) is €1. When the amount of the share capital is between €1 and €10,000, equity injections may only be in cash and shall be paid up in full on subscription; when the share capital is equal to or greater than €10,000, at least 25% (or 100% in case of a sole shareholder) of the share capital must be paid up immediately (contributions in kind must be in any case made in full). The latter rule also applies to joint stock companies (S.p.A.), whose minimum share capital amounts to €50,000.

Setting up a branch requires that details of the branch office be registered with the Companies' Register, as well as the deed of appointment of a legal representative and the main documents of the foreign company (constitutional documents and articles of association). All documentation must have been issued by a public authority and a sworn translation in Italian is required.
A branch is not required to comply with any minimum capital requirement.

Key formalities for purchasing a shelf company

Acquiring a shelf company is no longer common practice in Italy, as incorporating a company (both S.r.l. and S.p.A.) can be done fairly quickly. Shelf companies (both in the form of S.r.l. and S.p.A.) are companies that are already registered with the Companies Register. They are usually incorporated by specialised corporate services providers, have standard articles of association and no previous activity.

Generally speaking, the acquisition is a normal share deal, therefore it is made by means of a notarial deed of transfer of the entire issued and outstanding share capital of the shelf company. The transfer must be recorded in the shareholders' register.

Simultaneously with acquiring the shelf company, the investor would commonly pass the relevant corporate resolutions to effect the resignation and appointment of the company's directors and other officers, to change the official address and, if necessary, to amend the by-laws of the company (e.g. in order to change the company name).

The resignation and appointment of directors and other officers and, if applicable, the amendments of the articles of association, must be registered with the Companies Register.

Any foreign investment restrictions?

Foreign investments in Italy are generally permitted subject to certain specific rules viewed as necessary to preserve Italian national interests or to protect consumers. The two main sets of rules to be considered are the following:

> Reciprocity rule: Foreign investments in Italy are permitted to the extent that a similar right is granted to Italian investors operating in the foreign investor's country of origin. However, verification of such reciprocity condition is not necessary in certain circumstances, such as where the foreign investor is a citizen of one of the EU Member States or a citizen of a country for which there is a specific international agreement with Italy governing international investment (so-called "Bilateral Investment Treaties" or "BITs").

> Golden Powers: Acquisition of shareholdings in an Italian company or of an Italian business activity in the following sectors may require prior notification to the Italian government or, under certain circumstances, be subject to a veto right of the Italian government: defence and national security, energy, transport and communication.

Corporate governance and ongoing obligations

Three options are available for S.p.A., depending on how the relationship between management and control is arranged (traditional system, two-tier system and one-tier system). There must always be a supervisory body monitoring the management.

S.r.l. is characterised by a very flexible internal structure, which can be tailored to the investor's needs. There is a wide range of options for the management body (sole director, board of directors, two or more directors acting jointly or severally).

It is mandatory to appoint statutory auditor(s) or an external auditor under certain circumstances (e.g. when the company is required to prepare consolidated financial statements or when the company satisfies certain thresholds).

Branches do not have directors, but a representative must be appointed.

All companies are required to keep books and records of accounts and the accounting documents must be kept for at least 10 years.

On an annual basis, companies are also required to draft their financial statements and to file it with the competent Companies Register.

Tax highlights

Resident companies are generally subject to corporate income tax ("**IRES**") at a 27.5% flat rate on their worldwide income. Non-resident companies are subject to IRES only on Italian-source income, provided that they carry on their activity through an Italian permanent establishment.

Dividends paid to non-Italian residents may be exempt from withholding tax in Italy if the investor is an EU-resident company under the domestic law implementing the EU Parent Subsidiary Directive. Otherwise, dividends are generally subject to a 20% withholding tax. Specific percentages are established for withholding tax applied to pension funds and entities subject to corporate income tax in a white-list jurisdiction.

Capital gains arising from the disposal of stock in a local corporation are considered Italian-source income and are subject to IRES, at a rate which varies depending on whether the shareholding disposed is "qualified" or "non-qualified". However, most income tax treaties entered into by Italy provide that such capital gains are tax exempt in Italy (and therefore subject to the exclusive right of taxation of the State of residence of the seller).

Any taxpayer carrying on business activities shall pay the regional tax on business ("**IRAP**"), at a rate ranging from 3.9% to 5.9%. Most indirect taxes (including non-creditable VAT) are deductible, as well as a portion of IRAP.

Employment highlights

In the event that companies and branches intend to hire employees, Italian law requires compliance with the following obligations: (i) register the company/branch with the Italian social security authority (*Istituto Nazionale della Previdenza Sociale*) and with the Italian insurance authority for accidents at work (*Istituto Nazionale per l'Assicurazione contro gli Infortuni sul Lavoro*) and (ii) inform the competent labour office (*Centro per l'Impiego*) of any newly established employment relationships.

It should be noted that a branch does not have its own legal personality. Hence, the foreign entity will be the formal party to the employment contract acting through the branch.

If no explicit choice of law is made, Italian law will be the law applicable to the employment contract for those employees who will be habitually employed in Italy.

In addition to employment laws, employment contracts could be also governed by national collective agreements ("**NCAs**" – there are several NCAs depending on the industry sector of the company/branch), which integrate applicable law and govern all employment aspects. The application of an NCA is not mandatory, however, it is standard practice.

Issues that surprise foreign investors

- An issue which may surprise foreign investors in a positive way is a constant trend in past and ongoing reforms of Italian bankruptcy law, which sees a progressive rise in the importance and use of rescue procedures which aim to preserve corporate resources and activities, instead of liquidating them. The underlying purpose is that of reducing the opening of bankruptcy procedures, by favouring an early disclosure of financial and business distress. This has significantly restricted the use of claw back actions, adding legal certainty to contractual relationships.
- Listed companies in Italy must ensure that their corporate bodies comprise both men and women in a balanced proportion. In particular, the least represented sex must hold at least one third of the body's seats and this ratio must persist for a minimum of three mandates. Any prolonged violation of this rule will result in a quite steep administrative fine and, eventually, if the violation persists, in the forfeiture of the office.

Japan

How to start a business

Operating through a company: The most commonly used are stock companies (*kabushiki kaisha*, "**KK**") and, to a lesser extent, limited liability companies (*goudou kaisha*, "**GK**"). The responsibilities of the members are limited to the amount of investment made by the holders of the shares/quotas. A GK has a more flexible legal framework than a KK. A company may be incorporated from scratch or acquired "off the shelf".

Setting up a branch: A branch is not a company in itself, but the operation of an overseas legal entity in Japan. It has no separate personality from its overseas "parent" so it cannot enter into contracts in its own name.

Limited liability partnership: A limited liability partnership has some of the same features as a company; for example, limited liability for members, but also some important differences; for example, it is a scheme of contractual relationship among the members, and is not a corporate entity.

Other options include establishing a partnership, investing in an ongoing business through joint venture agreements or carrying on business through distribution, agency or franchise agreements.

Key formalities for incorporating a company or setting up a branch

Incorporating a KK or a GK requires a registration application to be filed with the Legal Affairs Bureau having jurisdiction over it. The application shall include, *inter alia*, the articles of incorporation (in the case of a KK, notarised articles of incorporation) and documents evidencing the subscription of shares. A company comes into existence at the time its registration of incorporation is made in the Commercial Register.

Setting up a branch requires a registration application to be filed with the Legal Affairs Bureau having jurisdiction over it. The application shall include, *inter alia*, a notarised affidavit. A branch is not permitted to carry on business in Japan until it is registered in the Commercial Register.

Key formalities for purchasing a shelf company

Shelf companies are companies that are already incorporated and registered with the Commercial Register. They are usually incorporated by specialised shelf company providers and have standard articles of incorporation and no previous business activity.

In order to acquire a shelf company, the purchaser will need to enter into a share purchase agreement. Simultaneously, a general shareholders' meeting of the shelf company would be held to pass the relevant corporate resolutions, such as to change the articles of incorporation (including changing the company's name) and elect new board members.

Any foreign investment restrictions?

In the following sectors, ownership in Japanese companies by foreign investors is restricted to less than the following ratios: (i) 1/5 for television and radio broadcasters; (ii) 1/3 for airline companies or their holding companies; and (iii) 1/3 for Nippon Telegraph and Telephone Corporation.

No one may hold 20% or more (under certain circumstances, 15% or more) voting rights in companies operating stock exchanges or commodity exchanges.

Further, an acquisition by a foreign investor of shares in a non-listed Japanese company or setting up of a branch office whose business falls in a sensitive sector (e.g. agriculture, telecommunication services, transportation, aircraft, weapons, atomic energy) is subject to a pre-transaction filing requirement for approval by the Finance Minister and other competent ministers, except for an acquisition from another foreign investor.

Corporate governance and ongoing obligations

A KK must have at least one director who will have power to represent the KK. Each director owes statutory duties to the company, including a fiduciary duty to the company to exercise a duty of care of a prudent manager in performing his/her duties and to supervise the other directors of the company.

Companies must prepare minutes of the proceedings at shareholders' meetings and board meetings, and keep such minutes for 10 years from the date of the relevant meeting.

A representative director of a company has full authority to bind the company and is generally responsible for the administration of the company, including tasks such as preparing minutes and updating company registrations. He/she must also ensure that the company's financial statements and the business reports are prepared every financial year.

A branch must appoint at least one representative in Japan who is a resident of Japan. The representative in Japan will have a power to act judicially and extra-judicially (i.e. it must have full power) in Japan on behalf of the overseas "parent".

Stricter rules apply to companies listed on Japanese stock exchanges.

Tax highlights

No stamp duty is required on share transfer agreements executed in Japan.

Stamp duty is imposed on business transfer agreements executed in Japan. The tax amount increases with the value of the transaction, up to a maximum of JPY 600,000.

An 8% consumption tax is imposed on assets transferred.

Furthermore, an acquisition tax is imposed on the transfer of real estate. The rate is 3% (for a piece of land and a residential building) or 4% (for other buildings) of the real estate's value. The real estate's value is not the purchase price but the one calculated by the government for tax purposes.

Employment highlights

Employers must provide employees with written particulars of employment (setting out the basic terms and conditions of employment including, but not limited to, wages, hours of work, term of employment, place of work, work description, holiday entitlement and termination matters) when entering into an employment contract. Upon employment, employers must make necessary arrangements (such as filings) in order for their employees to participate in the statutory labour and social insurance scheme.

Employees must be paid at least the national minimum wage. Salary must be paid in cash and at least once a month.

Employees are entitled to receive at least 30 days' prior notice of termination from their employer, although the employment contract can specify a longer notice period. Employers can elect to pay their employees in lieu of all or part of the notice period.

Compulsory dismissal is allowed only if there are "objectively reasonable grounds" which justify the dismissal. In determining "objectively reasonable grounds", Japanese courts apply different standards, rules and criteria depending on the grounds based on which the relevant compulsory dismissal is effected and the situation and circumstances where the relevant compulsory dismissal is challenged.

Issues that surprise foreign investors

> A company seal is typically required and used instead of signatures for official documents to be submitted to the government offices. It is a mandatory requirement for a company to register at least one company seal. Registered company seals are considered more reliable than signatures.

> A KK can elect to issue share certificates by stipulating such in its articles of incorporation. In this case, care should be taken to store the share certificates because under Japanese law (a) the possessor of the share certificates will be presumed to be the lawful owner of the shares represented by such share certificates and (b) transfer of shares will only be effective upon delivery of the share certificates.

> The fiscal year of most Japanese companies commences from the beginning of April and ends at the end of March the following year. There is no mandatory requirement on the fiscal year and typically a Japanese subsidiary of a non-Japanese parent company applies the same fiscal term as the one applied to the non-Japanese parent company.

Luxembourg

How to start a business

Operating through a company: The most common types of company are the company limited by shares (*société anonyme* or "**SA**") and the private limited liability company (*société à responsabilité limitée* or "**SARL**"). The SA is the type of company used for listed companies. The SARL cannot have its shares listed. The SARL is subject to lower share capital requirements (€12,000, compared to €30,000 for an SA) and is used for smaller business. Both companies can be set up with one single shareholder.

Alternative setups: *"Société en commandite spéciale"* or "**SCSp**", a Luxembourg structure similar to the UK Limited Partnership. The SCSp has no legal personality, which is where it differs from the classic Luxembourg partnership "**SCS**" or *"société en commandite simple"*.

Setting up a branch: A branch has no legal personality separate from that of the foreign company. As a consequence, it cannot enter into agreements in its own name. The branch must be represented by a permanent agent located in Luxembourg who has the authority to bind the company.

Other options include the setting up of investment funds, either regulated or unregulated, which is a core activity in Luxembourg.

Key formalities for incorporating a company or setting up a branch

Incorporating a company in Luxembourg requires that articles of association are enacted by a public notary before whom the founders must appear either in person or by proxy.

Evidence that the relevant minimum share capital is blocked in a bank account of the company with a Luxembourg bank must be provided to the notary.

There is no requirement to obtain a licence from the government if the company does not engage in actual business activities in Luxembourg (otherwise a permit application must be filed with the General Directorate for SMEs and Entrepreneurship or with the Minister of Finance if the company wishes to engage in banking, in other financial activities or in insurance).

Following the enactment of the articles of association by the notary, these must be filed with the Luxembourg Trade Register (*Registre de Commerce et des Sociétés, "***RCS***"*) and then published in the electronic Official Gazette (*Recueil Electronique des Sociétés et Associations*).

The branch must be registered with the RCS and obtain a registration number. Once established, it is subject to disclosure and publication obligations and will have to file some information with the RCS.

Key formalities for purchasing a shelf company

Shelf companies are companies which have been incorporated and registered with the Luxembourg Trade Register but have not yet engaged in any activities. They usually have the minimum share capital and standard articles of association.

They can be acquired ready to use so that the purchaser does not have to take care of the formalities of incorporation.

Any foreign investment restrictions?

There are no general restrictions on foreign ownership of businesses or shares in Luxembourg, and as a general rule there is no particular restriction on overseas investment in Luxembourg.

Some particular rules only exist for regulated markets such as banking or other financial activities.

Corporate governance and ongoing obligations

An SA is required to have at least three directors, unless there is only one shareholder (in that case, only one director is required). A SARL is managed by one or more managers.

For both types of company, the directors or managers are appointed by the shareholders. The board of directors or managers may perform all acts which are necessary or useful to pursue the corporate purpose, and must therefore meet as many times as the company's interest requires. Nevertheless, it remains possible to hold board meetings by videoconference under certain conditions.

A shareholders' meeting for both SA and SARL (for the SARL only if there are more than 60 shareholders) must be held at least once a year in order to approve the annual accounts. Some documents must be made available to the shareholders prior to a general meeting.

A company must file its annual accounts with the Luxembourg Trade Register. It must also file any change in the management of the company, and any amendment made to the articles of association. These have to be published in the electronic Official Gazette.

Tax highlights

A fixed registration duty of €75 is due on incorporation of a Luxembourg company.

Luxembourg resident companies are subject to Luxembourg corporate income tax and municipal business tax on their worldwide profits at the current combined rate of 29.22%* (for companies established in Luxembourg City). Dividends and capital gains on shares are however tax exempt under the conditions of the Luxembourg participation regime.

Luxembourg net wealth tax is due annually by Luxembourg resident companies at the rate of 0.5% on their total net asset value below or equal to €500 million and at the rate of 0.05% for the part exceeding €500 million. "Qualifying participations" are exempt from Luxembourg net wealth tax.

The domestic withholding tax rate is 15% for dividends but dividend distributions can be made withholding tax free under the conditions of the Luxembourg participation regime. Interest payments are not subject to withholding tax.

Special tax regimes are applicable for investment vehicles such as SICAR, SIF, SPF, RAIF, pension funds and securitisation vehicles.

The VAT standard rate is 17%.

** It is expected to be reduced from 29.22% to 27.08% in 2017 and to 26.01% as from 2018*

Employment highlights

The provisions of Luxembourg labour law apply to both foreigners and nationals working in Luxembourg. All employers must affiliate themselves with the Luxembourg Social Security System.

Specific tax exemptions apply for the first five years to expatriates living in Luxembourg. Non-EU nationals must apply for a working visa. The parties to an employment contract can choose the applicable law but certain Luxembourg labour law provisions which are of public interest apply to any employment contract nonetheless.

The employment contract must be in writing and must specify, *inter alia*, the parties' identity, remuneration, working hours, etc. The minimum wage in Luxembourg varies depending on the employee's qualifications. Employees will also benefit from provisions of the relevant Collective Bargaining Agreements, which are mandatory for certain sectors.

The legal working time in Luxembourg is 40 hours per week and eight hours per day. Flexibility is permitted but the aforementioned maximum must be respected.

Issues that surprise foreign investors

> A translation of the articles of association in French or German, alongside the English version, is generally required.

> A notarial deed is required for the constitution of a Luxembourg company as well as for each amendment made subsequently to the articles of association (except for the SCS and SCSp), which includes any change to the nominal capital.

> In order to avoid challenges of a foreign tax administration, an administrative and decision-making centre of a company must be located in Luxembourg (e.g. the place where board meetings are held is taken into account).

The Netherlands

How to start a business

Operating through a company: The most commonly used are: private companies with limited liability (*besloten vennootschap met beperkte aansprakelijkheid* or “**BV**”) and, to a lesser extent, public companies with limited liabity (*naamloze vennootschap* or “**NV**”).

Minimum share capital requirements apply to the NV (€45,000). The BV has a more flexible legal framework; minimum share capital requirements do not apply, provided at least one BV share must be outstanding with third parties.

Acquiring a shelf company is no longer common practice in the Netherlands; incorporating an entity (e.g. a BV) can be done fairly quickly.

Setting up a branch: A branch is not a separate legal entity but merely an extension of the head office, which is responsible for all its branch’s obligations and liabilities.

Other options include establishing a partnership, investing in an ongoing business through joint venture agreements or carrying on a business through distribution, agency or franchise agreements.

Key formalities for incorporating a company or setting up a branch

Incorporating a BV or NV requires a notarial deed of incorporation (which includes the company’s articles of association), executed before a Dutch civil law notary. A certified copy of the deed must be filed with the Trade Register. In addition, certain other information on the company must be registered, such as details of the company’s share capital, managing directors, supervisory directors (if applicable) and sole shareholder (if applicable, if the company has more than one shareholder, registration of the shareholders’ details is not required).

Establishing a branch requires the branch to be registered as a Dutch establishment with the Trade Register. This requires the submission of, in any case, various Trade Register forms and, if the parent company is not a Dutch company, recent proof of registration of the parent company, setting out the authorised signatories.

Key formalities for purchasing a shelf company

Shelf companies (generally BVs) are companies that are already registered with the Trade Register. They are usually incorporated by specialised corporate services providers, have standard articles of association and no previous activity.

Generally speaking, the acquisition is made by means of a notarial deed of transfer of the entire issued and outstanding share capital of the shelf company. The transfer must be recorded in the company’s shareholders’ register. To the extent that all shares are held by a sole shareholder, such shareholder must be registered with the Trade Register.

Simultaneously with acquiring the shelf company, the investor would commonly pass the relevant corporate resolutions to effect the resignation and appointment of managing directors and other officers, to change the official address, and, if necessary, to amend the company’s articles of association (i.e. to change the company’s name), which must be registered with the Trade Register. An amendment of the company’s articles of association will be effected by execution of a notarial deed before a Dutch civil law notary.

Any foreign investment restrictions?

As a general rule, there are no specific restrictions on overseas investments in the Netherlands.

Corporate governance and ongoing obligations

The company's management is entrusted to the managing board, consisting of one or more directors. The company may opt for a one-tier board, consisting of both executive and non-executive directors.

The company is represented: (i) by the entire managing board; or (ii) unless the articles of association provide otherwise, by a sole director. Directors are subject to fiduciary duties and must act in the best interests of the company and its enterprise.

A company must comply with corporate formalities, such as keeping a shareholders' register and holding annual general shareholders' meetings.

A company must prepare annual accounts and a management report (if applicable) and make these available for the shareholders within five months of the end of the financial year, which term may be extended by five months in special circumstances. Annual accounts, together with the management report (if applicable), must be filed with the Trade Register within eight days after their adoption, or, if they have not been adopted, within 12 months after the end of the financial year. For a branch, the annual accounts and management report of its foreign parent company have to be filed with the Trade Register.

Any amendment to registered information on a company or a branch must be filed with the Trade Register.

Tax highlights

The incorporation of a Dutch company or branch is exempt from capital duty.

Generally speaking, resident companies are taxed on their worldwide income. Non-resident companies are subject to Dutch corporate income taxation on certain Dutch-source income. Losses sustained may be carried back to be set off against profits of the preceding year and carried forward for nine years.

The Netherlands has a two-tier corporate income tax system. Taxable profit up to €200,000 is taxed at 20%; taxable profit exceeding this amount is taxed at 25%.

The Dutch tax system provides for a participation exemption, avoiding double taxation on profits distributed by a subsidiary to its parent company. Qualifying dividends and capital gains are tax exempt. Dividends paid are in principle subject to a 15% withholding tax. Residents can credit, are exempted or can obtain a refund of such withholding tax. Non-residents are, based on EU law as implemented in the Netherlands or tax treaties, entitled to a reduction, exemption or refund of such withholding tax. Furthermore, non-residents can often offset or credit such withholding tax against their domestic income tax.

There is no withholding tax on interest and royalties. The standard VAT rate is 21% and the reduced rate is 6% or 0%.

Employment highlights

There is a wide range of obligations that Dutch employers need to comply with regarding items such as health and safety, working time and wage taxes/social security contributions.

Specifically noteworthy is that most employers are subject to mandatory industry collective labour agreements, containing rules on e.g. remuneration, holidays and working time. Similarly, most employers are subject to mandatory industry pension funds, which provide for a mandatory pension scheme for those employees working within a certain industry.

Quite different from most other jurisdictions, employees who become ill cannot be dismissed for 104 weeks and 70% of their latest salary should be continued (subject to a statutory cap). During those 104 weeks, reintegration obligations apply to both parties.

Dutch employees may not be dismissed by simply giving notice. As a main rule, employees may only be dismissed with either a dismissal permit or by a court ruling regarding the dissolution of the employment contract (depending on the reason for the dismissal).

Employers with over 50 employees have the obligation to set up a works council with various advice and information rights. Smaller employers also have employee information and consultation requirements, but these are much smaller in nature.

Issues that surprise foreign investors

> A person may not be a managing director (or an executive director in a one-tier board) of a company that qualifies as "large" pursuant to Dutch law, if: (i) he or she already holds more than two supervisory positions with other "large" companies or foundations; or (ii) he or she acts as chairman of the supervisory board or, if applicable, the one-tier board of another "large" company or foundation.

> Furthermore, a person may not be a supervisory director or non-executive director of a "large" company if he or she already holds five or more supervisory positions with other "large" companies or foundations; whereby acting as chairman of the supervisory board, or, if applicable, the one-tier board of another "large" company or foundation counts as two positions.

People's Republic of China (PRC)

How to start a business

Operating through a foreign investment enterprise ("**FIE**"): The most commonly used enterprise forms of an FIE are (i) wholly foreign owned enterprise ("**WFOE**"), a limited liability company wholly owned by foreign investors and (ii) equity joint venture ("**EJV**"), a limited liability company with at least one foreign investor and one domestic investor.

FIEs are not required to have a minimum registered capital, although a minimum registered capital may be imposed by other applicable industry rules and regulations or otherwise required by the authorities.

The concept of incorporating a shelf company ready-for-sale to investors, without an operating business, does not exist in the PRC. Instead, foreign investors acquiring PRC targets may invest in an existing FIE/its business or acquire a domestic PRC company or business from domestic owners.

Setting up a representative office: Often used to test the waters in the PRC; they normally only engage in "non-profit making business" in the PRC.

Key formalities for incorporating a company or setting up a branch

Foreign investment in the PRC is governed by an approvals and filings based system. We set out below the key features for the approval of a new FIE:

> Depending on the size and sector of the project, approvals need to be sought from, or a filing made with, one of various levels of the National Development and Reform Commission, which requires a project application report or an information report to be submitted.

> All newly established FIEs require their proposed names to be reserved with the competent administration for industry and commerce ("**AIC**"). The name will typically contain details such as the location, a unique industry trade name and the form of business organisation.

> Formal approval of the establishment of an FIE is issued by the Ministry of Commerce or its local counterpart ("**MOFCOM**"). However, if the FIE is not subject to national restrictions on market access, the approval process is replaced by a filing made with MOFCOM.

The issue of a business licence by AIC marks the formal establishment of an FIE. There are distinct procedures and requirements in the banking and other regulated industries.

Key formalities for purchasing a shelf company

The concept of incorporating a shelf company ready-for-sale to investors, without an operating business, does not exist in the PRC. Direct acquisition of a domestic PRC company from domestic owners (resulting in the domestic entity becoming an FIE) involves the following:

> Governmental Approval: The acquisition will need the approval of at least one governmental authority (normally from MOFCOM). This approval will be a substantive one and the relevant approval authority may require amendments to the transaction documents. In addition, in certain regulated industries (e.g. the financial sector), the foreign investor may be required to meet certain investor qualifications.

> Other approvals or registrations are also commonly required on cross-border payment issues and from AIC to register the change of ownership.

Equity acquisitions are currently more common than asset acquisitions. Foreign investors may consider using their existing presence in the PRC (if they have one) to make the acquisition as this will normally simplify and shorten the acquisition process.

Any foreign investment restrictions?

The Foreign Investment Industrial Guidance Catalogue (the "**Catalogue**") determines whether a foreign investment will require a filing to be made with or approval to be obtained from MOFCOM, and sets out four categories of activity and industry for foreign investment purposes: encouraged, permitted, restricted and prohibited.

The Catalogue also specifies whether a PRC partner is required and, if so, whether the PRC partner must have either a majority or relative majority (i.e. greater than any foreign partner) interest.

Foreign investment in industries within the restricted category is usually subject to stringent entrance requirements and high-level governmental approval, which may be more difficult to obtain.

Corporate governance and ongoing obligations

In the PRC, all companies adopt a single board of directors (i.e. one-tier structure). However, companies must also establish a supervisory board or have one to two supervisors to supervise the behaviour of the board of directors and better protect the interests of the shareholders.

The board of directors is responsible for the overall governance and management of the company. In a “traditional” form of FIE such as an EJV, the board of directors is also the highest decision-making authority of the company and exercises powers and functions which would normally be reserved for shareholders in other jurisdictions.

An FIE established in the form of a limited liability company must have a board of directors of between three to 13 members. A WFOE may consider having one executive director only under certain circumstances.

The legal representative of a company holds a special position and is the officer with the legal power to represent, and enter into binding obligations on behalf of, the company. The chairman of the board of directors, executive director (where there is no board of directors) or general manager can be the legal representative.

Tax highlights

FIEs must pay income tax on income obtained from production, business operations and other sources. Representative offices also have to pay income tax on the income they obtain from production, business operations and other sources, where such income is derived from inside the PRC (a cost plus method is often used to determine the chargeable income of a representative office). The enterprise income tax (“**EIT**”) rate applicable in the majority of cases is 25%.

In addition to EIT, foreign investors should be aware that value added tax is levied on a wide range of industries in the PRC, including insurance, construction, transportation, modern services, postal services, telecommunications, real estate, financial services and consumer services, at a rate of 6%, 11% or 17% depending on the nature of the service.

PRC stamp duty is payable on the sale of shares in companies listed on a PRC stock exchange at the rate of 0.1% and on the sale and purchase of equity interests, or shares, in non-listed companies at a rate of 0.05%.

Employment highlights

Foreign employees require an Employment Permit and a Residence Permit if they are employed by an employer in the PRC, including the branch or representative office of a foreign company. In addition, an employer is generally required to prove that a “special need” exists before employing a foreign national (defined as the requirement to fill a position for which there is a temporary shortage of suitable local candidates). The foreign employee must not have a criminal record, be at least 18 years old and in good health, have a valid passport or other travel document and have the necessary professional skills required for the relevant position.

A foreign incorporated company employing PRC nationals to engage in business in the PRC must do so through a local presence. Employing PRC nationals directly will expose the foreign employer to tax residency and other compliance risks. In contrast, FIEs may recruit and hire local employees directly. Some FIEs choose to outsource employment of PRC nationals (via a labour dispatch arrangement) to a local employment agency to deal more efficiently with various aspects of local employment law. Such an arrangement is however limited to staff in temporary, ancillary or replaceable positions only and the dispatched staff cannot exceed 10% of a company’s total workforce.

Issues that surprise foreign investors

> There is a fundamental distinction between “rights of ownership in land” and “rights to use land” in the PRC. Land in the PRC is owned either by the state (state-owned land) or by rural collectives (collectively-owned land). Land in urban areas is owned by the state, while land in suburban and rural areas is generally owned by rural collectives.

> When an FIE is established, it must complete foreign exchange registration after its business licence is issued. An FIE must maintain separate foreign exchange bank accounts for current account items and capital account items. Foreign exchange transfer for capital account items into and out of the PRC are relatively more restricted than for current account items. Capital account items are transactions arising from the inflow and outflow of capital, for example, direct investments, loans and securities.

The contents set out above do not constitute any opinion or determination on, or certification in respect of, the application of PRC law. Any comments concerning the PRC are based on our transactional experience and our understanding of the practice in the PRC.
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Poland

How to start a business

Operating through a company: The most commonly used are capital companies: limited liability companies (*spółka z ograniczoną odpowiedzialnością* or "**LLC**") and, to a lesser extent, joint-stock companies (*spółka akcyjna* or "**JSC**").

The JSC is required if the company will be listed on a stock exchange. The LLC is subject to lower share capital requirements (PLN 5,000 compared to PLN 100,000 for the JSC) and has a more flexible legal framework.

A company may be incorporated from scratch or acquired "off the shelf" (quicker and generally less costly than incorporating a company).

Setting up a branch: A branch is not a separate legal entity but a part of the enterprise of the foreign investor. The scope of activities which may be undertaken in this form is limited to economic activities covered by the corporate purpose of the foreign investor in the investor's home jurisdiction.

Other options include a partnership, representative office, investing in an ongoing business through joint venture agreements or carrying on business through distribution, agency or franchise agreements.

Key formalities for incorporating a company or setting up a branch

A company is incorporated upon registration in the Commercial Register at the appropriate court for the company's seat.

Prior to submitting an application to the Commercial Register: (i) the articles of association of a company need to be concluded in a form of notarial deed; (ii) the members of the corporate bodies of a company need to be appointed and (iii) the contributions to the shares in the share capital of a company need to be paid (in full in the case of an LLC and to cover the minimum requirements in the case of a JSC). The registration of a company in the Commercial Register usually takes between two to four weeks from the date of submitting all required documents to the court.

A branch may commence its activity after being registered with the Commercial Register. In order to register the branch, the foreign investor should submit an application together with (i) a notarised specimen signature of the person authorised to represent the foreign investor in the branch and (ii) copies of the founding deed and excerpt from the Commercial Register of the foreign investor. The registration of a branch usually takes between two to four weeks.

Key formalities for purchasing a shelf company

Shelf companies (generally the LLCs) are companies already registered with the Commercial Register, that have a tax identification number and are registered for VAT. They are usually incorporated by corporate services providers with the minimum share capital required by law, have standard articles of association and no previous activity.

The acquisition of a shelf company is made by conclusion of the share purchase agreement with signatures certified by the notary public. The share transfer must be notified to the company and recorded in the company's share register. The investor may operate through the acquired LLC from the day of its purchase.

Simultaneously with acquiring the shelf company, the investor would usually pass the relevant corporate resolutions to change the company's business name, its registered office and management board composition. These changes must be notified on the Commercial Register.

Change of the company's business name, as well as any other amendments to the articles of association, become valid upon registration with the Commercial Register, which usually takes between two to four weeks.

Any foreign investment restrictions?

As a general rule, there are no restrictions on the foreign ownership of shares.

However, Polish law sets forth restrictions regarding foreign ownership of shares in companies operating in certain regulated sectors (e.g. television and radio operators).

Moreover, the Minister of State Treasury may control transactions involving strategic companies in some sectors (fuel, energy, chemical, petrochemical, telecommunications and defence sectors). The Minister is authorised to adopt a regulation listing the strategic companies. The acquisition of a stake exceeding thresholds of 20%, 25%, 33% or 50% in a company listed as strategic must be notified to the Minister of the Treasury. In such cases, the Minister will issue a decision on permission for, or objection to, the acquisition within 90 days. The regulation listing the strategic companies has not been adopted so far.

Corporate governance and ongoing obligations

The bodies that control a LLC/JSC are the management board and the shareholders through the shareholders' meeting. The management board may consist of one or more members and is responsible for the day-to-day management of the company.

Additionally, a supervisory board or an audit commission is required (i) in all JSCs and (ii) in the case of LLCs, where the share capital exceeds PLN 500,000 and the LLC has more than 25 shareholders.

In the case of a branch, the foreign investor is required to indicate a person authorised to represent the foreign investor in the branch.

Polish companies must comply with corporate formalities such as keeping a share register and holding annual general shareholders' meetings. Branches are not subject to the above obligations, but they are required to maintain accounts in Polish in compliance with Polish accounting principles.

Companies must approve their annual financial statements within six months from the end of the financial year. Financial statements must be filed with the Commercial Register and the tax office. Branches are in general not obliged to approve their own annual accounts, but they are required to file the annual financial statements to the Commercial Register and the tax office.

Any amendment to the company's articles of association or to the branch's information must be filed with the Commercial Register.

Tax highlights

Acquisitions of shares in a Polish capital company are, in principle, not subject to VAT. However, fees paid to the corporate service provider may be subject to VAT depending on the VAT status of the purchaser.

In principle, civil law acts tax ("**CLAT**") is due on the acquisition of shares in capital companies, calculated as 1% of the market value of the shares. CLAT at a rate of 0.5% is also due on the value of the share capital on incorporation of capital companies and any future capital increase.

Polish capital companies are subject to Polish corporate income tax at a rate of 19% on the amount of the net income. Non-resident companies operating through a branch in Poland are also subject to Polish corporate income tax at a rate of 19% on the worldwide income attributable to the branch.

Poland levies withholding tax on dividends at a rate of 19% (subject to domestic and double tax treaty exemptions).

Poland levies withholding tax on interest payments at a rate of 20% (subject to domestic and double tax treaty exemptions).

Both Polish companies and branches are generally obliged to comply with formal tax obligations.

Employment highlights

Both Polish companies and Polish branches of foreign entrepreneurs must be registered with the Polish labour and social security authorities if they want to hire employees. The commencement of activities at the workplace must be notified to the labour authorities.

The minimum working age is 16 and, as a general rule, employees under 18 are not permitted to work at night. The latter applies also to pregnant women. Polish law prohibits discrimination in hiring, dismissing, terms and conditions of employment, promotion and training on grounds such as gender, age, race, religion, etc.

If the employment contract is not concluded in writing, the employer must confirm to the employee the terms and conditions of employment in writing not later than the day of commencement of work.

Entities employing at least 20 employees must introduce Work and Remuneration Regulations.

Generally, foreigners from countries outside of the EU and EEA must hold a work permit to work in Poland. There are some exceptions to this rule (e.g. working for less than six months per year as a member of the management board of a Polish company).

Issues that surprise foreign investors

> It is not possible to establish an LLC by a sole founder which is itself a wholly owned Polish or foreign LLC.

> There are specific rules regulating the purchase of agricultural land. According to newly introduced legislation, agricultural land may be as a rule acquired only by individual persons running farms on their own. Agricultural land may be acquired by other persons upon consent of the President of the Agency of the Agricultural Lands. Moreover, in the case of an intention to sell the shares in a company which owns agricultural land, the State has a pre-emption right to acquire such shares, subject to some limited exemptions.

Portugal

How to start a business

Operating through a company: The most commonly used are public limited companies (*Sociedade Anónima* or "**SA**") and private limited liability companies (*Sociedade por quotas* or "**Lda**"). SA is designed for a medium or large business having a minimum required share capital of €50,000. The Lda is subject to lower share capital requirements and it is the most used for small companies.

Other aspects, e.g. whether the company will own real estate property, may also be relevant when deciding which company to incorporate.

Setting up a branch: The branch is an extension of a foreign company. It does not constitute a separate legal entity and the parent company is responsible for all the branch's obligations and liabilities.

Other options include investing in an ongoing business through joint venture agreements or carrying on a business through a representative office or through distribution, agency or franchise agreements.

Key formalities for incorporating a company or setting up a branch

A company is officially established when the memorandum of association is signed by all members or their representatives (signature must be legalised and attested personally). After that, the company must be registered at the Registry of Companies. The Registry of Companies will require the publication of the company's articles of association.

Investors willing to start a new business in Portugal may also take advantage of the regime known as the "On-the-Spot Firm", that allows the incorporation of an SA in a more simplified and expedite manner.

A similar regime is also available in relation to branches. The "On-the-Spot Branch" regime enables the instant creation of permanent representations in Portugal of commercial and civil enterprises in the form of companies, co-operatives, joint ventures and European Economic Interest Groupings headquartered abroad, with the simultaneous appointment of their respective representatives. However, any investor may set up a branch through the traditional procedure. The traditional procedure avoids the need for personal appearance by a representative of the entity setting up the branch; the registration for the setting up of the branch being able to be carried out by any legal representative (including an attorney) by means of the submission of a form requesting registration.

Key formalities for purchasing a shelf company

The acquisition of a shelf company is an alternative fast way to commence business in Portugal. A shelf, or ready-made company, is a business entity already incorporated and registered in Portugal with or without previous activity, although usually without any form of prior business. In order to acquire a Portuguese shelf company, the shares of the company must be transferred to the buyer. For this purpose a share transfer agreement is required to be signed by both parties.

After the conclusion of the share transfer the new shareholder is in control of the company and modifications can be made. The owner of the company may change the address, name of the company, bank representative, add or change corporate purpose. Also, the new board of directors or managers (depending on whether it is an SA or Lda company) must be registered.

After the new articles of association are completed and signed, they must be registered in the Commercial Register along with any other changes made.

Any foreign investment restrictions?

There are no restrictions in Portugal on foreign investment. Portuguese law is based on a principle of non-discrimination based on the investor's nationality. There are no requirements for shareholders to be Portuguese and no limitations on the repatriation of profits or dividends.

The rules that will apply to a foreign investor are the same that rule the national investment and the foreign investment is not subject with any special registration or notification with any authority (without prejudice to mandatory registration obligations or compliance with regulatory obligations in specific activities, namely financial entities and investment companies, insurance, energy, technology, media and telecommunications).

As a rule, there are no restrictions on foreign ownership of shares. However, Portuguese law sets forth restrictions regarding ownership of shares in companies operating in certain regulated sectors (e.g. electricity and gas). These restrictions apply to all purchasers, whether Portuguese or foreign.

Corporate governance and ongoing obligations

SA: Three alternative structures are possible: (i) a board of directors (or sole director, if share capital does not exceed €200,000) and an statutory audit board (or sole statutory auditor); (ii) a board of directors (including an audit commission) and an auditor; or (iii) an executive board of directors (or sole director, if share capital does not exceed €200,000), a general and supervisory board and an auditor.

Lda: For management, one or more directors are required. An auditor is not mandatory, however, companies which do not have a Statutory Audit Board or a Single Statutory Auditor must appoint an Auditor to audit the company's accounts when two of the following limits are exceeded (for two consecutive years): total balance sheet: €1,500,000; net turnover: €3,000,000; average number of employees: 50.

Branches do not have directors, but a representative must be appointed.

Portuguese companies must comply with corporate formalities, such as keeping a register of members and holding an annual general shareholders' meeting. All companies are required to keep books and records of accounts and the accounting documents must be kept for at least 10 years. Any amendments to the company's articles of association or to the branch's information must be filed with the Commercial Registry.

Tax highlights

Non-resident entities are subject to corporate income tax ("**CIT**") only on Portuguese-source income, provided that they carry on their activity through a Portuguese permanent establishment or derive certain elements of income specifically listed in the law (e.g. investment income, capital gains and certain fees).

Companies' dividend payments may be exempt from withholding tax in Portugal if the investor is an EU resident company under the domestic law implementing the EU Parent Subsidiary Directive. Otherwise repatriation of profits would be taxed in Portugal, unless otherwise set out under an applicable tax treaty. There is no branch profits tax, meaning post-CIT profits can be distributed without any additional taxation. Under Portugal's participation exemption, dividends received and capital gains realised by a resident company from domestic or foreign shareholdings are exempt from tax, provided that, among other conditions, the shareholder is not considered a transparent entity and has held, directly or indirectly, at least 10% of the capital or voting rights of the other company for at least 12 months.

Both Portuguese companies and branches are generally subject to local taxes such as municipal property transfer tax and municipal annual property tax and must comply with formal tax obligations. Stamp tax is also due on a variety of taxable events, including loans and guarantees/security under certain conditions.

Employment highlights

Both Portuguese companies and branches must be registered with the Social Security system before hiring any employees. All employees must also be registered with the Social Security system.

Permanent contracts are the standard type of employment contract. Such contracts may be validly executed verbally although some information duties shall be in writing. Term contracts, as well as intermittent, part-time, teleworking and temporary-work contracts, must be executed in writing. If no explicit choice of law is made, Portuguese law will be the applicable law for employees habitually working in Portugal.

As a general rule, the minimum working age is 16 and employees under 18 are, usually, not permitted to work at night. Discrimination on grounds such as gender, age, race, religion, etc. is prohibited. Termination of employment contracts in Portugal is strictly regulated and may only occur in cases determined by law.

It is possible to apply for a residence permit to pursue investment activities by those who enter the country regularly (e.g. holders of valid Schengen Visas or beneficiaries of Visa exemption), by transferring capital, creating jobs or acquiring real estate, with advantageous periods of stay in Portugal. Holders of a residence permit for investment activity may gain access to a permanent residence permit, as well as to Portuguese citizenship in accordance with the current legal provisions.

Issues that surprise foreign investors

> The actions of the Portuguese government are concentrated on implementing wide-ranging structural reforms to boost productivity, simplify Portuguese bureaucracy and promote investment. All these reforms may play a key role in attracting private investments in Portugal.

> Portuguese investment funds: As from 1 July 2015, most of the income obtained by investment funds is CIT exempt in Portugal. Non-resident investors without a local permanent establishment (provided they do not have their residence in a blacklisted jurisdiction and no more than 25% of their share capital is held by Portuguese residents) are exempt from Portuguese taxation in respect of income derived from undertakings for collective investment (with the exception of real estate investment funds, in which case a 10% rate applies).

> "On-the-Spot Firm": The "On-the-Spot Firm" initiative makes it possible to form a private limited company or public limited company in just one office in a simple and very rapid manner (around 1 hour). An "On-the-Spot Firm" can be formed in Company Registry Offices and/or at Company Registry desks operating in Company Official Procedures Centres (CFE).

Russia

How to start a business

Operating through a company: The most commonly used forms both for a wholly owned subsidiary and for a JV are limited liability companies ("**LLC**") and joint stock companies ("**JSC**"), which may be either public or non-public. The regulation of non-public JSCs and LLCs is quite similar. Both enjoy substantial flexibility in relation to corporate governance. A public JSC is, on the contrary, very heavily regulated which is due to the fact that its shares (securities convertible into shares) can be publicly placed through an open subscription and publicly traded.

Setting up a branch or representative office: Branches and representative offices have no separate legal identity. All their activities in Russia will be carried out in the name of the head company which will be liable for all their activities. The activity of a representative office is restricted to representing interests of its head company, whilst a branch may engage in commercial activities. However, we will use the term "branch" to refer to both branches and representative offices.

Some activities which require licensing in Russia have to be carried out through a subsidiary rather than a branch.

Key formalities for incorporating a company or setting up a branch

The incorporation of a Russian corporate entity usually involves the following steps:

> registration with tax authorities (or other competent registration bodies, e.g. Central Bank for banks);

> obtaining registration codes from the State Statistics Committee and registration with the pension fund and the social insurance fund; and

> opening bank accounts and payment of the charter capital. The minimum charter capital for a public JSC is RUB 100,000 (approximately €1,100) and for both an LLC and a non-public JSC RUB 10,000 (approximately €100).

Since shares of a JSC are "issued" securities, the incorporation of a JSC will also involve registration of a share issue with the Russian securities authority (Central Bank). The incorporation of a Russian entity may require prior clearance from the Russian competition authorities if its charter capital is paid by shares or assets of another company. A branch first needs to be accredited with the competent accreditation body (either tax authorities or other competent bodies, e.g. Central Bank for banks), and then receive statistics codes, get registered with the pension fund and social insurance fund and open bank accounts.

Key formalities for purchasing a shelf company

Russian law is not familiar with the concept of shelf companies. The acquisition of an existing company will normally involve:

> Subject to meeting the relevant financial thresholds, a transaction may require either consent from the Russian competition authorities prior to completion of the transaction or a notification sent to them after completion has occurred;

> Certain regulatory consents may be required depending on the sector in which the target is active;

> Russian strategic investments legislation requires prior approval from the Foreign Investments Commission for the acquisition by a foreign investor, or by a group of persons including a foreign investor, of control over a Russian "strategic entity". The concept of what is considered "strategic" is very broad. The definition of "control" is different for different sectors and is not always linked to the acquisition of a controlling stake;

> Subject to the provisions of the articles, transfer of shares in a Russian LLC or a non-public JSC may be subject to pre-emption rights of the other shareholders or the company itself or require consent from the other shareholders or (in the case of an LLC only) from the company.

Any foreign investment restrictions?

In Russia, specific foreign ownership restrictions exist in such areas as banking, insurance, mass media, fishing, agriculture and other industries, where certain restrictions on participation in share capital by foreign legal entities or individuals and/or restrictions on participation in the management of Russian legal entities are imposed.

Corporate governance and ongoing obligations

A Russian company may have up to four layers of governance (i) general shareholders' meeting; (ii) a collective non-executive body (a "board of directors" or "supervisory board"); (iii) a collective non-executive body ("management board"); and; (iv) an individual executive body, i.e. CEO (usually called "general director"). The CEO's functions may be performed by several persons acting jointly or separately.

By default each company will be managed by the general meeting and CEO. A public JSC must also have a board of directors comprised of at least five members. More stringent requirements may exist for entities in particular sectors (for instance, banks must have all the four levels of governance).

Members of the management bodies must act in the interests of the company reasonably and in good faith.

Russian companies must comply with quite a lot of corporate formalities such as holding annual general meetings and approval of annual statements.

The form in which a branch is organised and managed is at the discretion of its head office. The head of the branch acts on the basis of a power of attorney issued by its head office.

Tax highlights

Acquisitions of shares in a Russian company are not subject to VAT.

The standard corporate income tax rate is 20%. For certain kinds of income, there are different tax rates, e.g. for domestic dividends the tax rate is 9%. Corporate income tax is divided between the federal and regional budgets and regional authorities have the right to introduce tax exemptions reducing the total rate of corporate income tax to a minimum of 15.5%.

Interest paid to foreign corporate lenders is subject to a withholding tax at a rate of 20% and dividends received from Russian companies by foreign individuals and companies are subject to withholding tax at a rate of 15%. The relevant double taxation treaty may reduce or eliminate such taxes.

A foreign company which carries out regular business activities in Russia through a branch or otherwise is considered to constitute a permanent establishment (PE). The tax regime for such foreign company is substantially the same as that for a Russian company, with the distinction that repatriation of profit by a PE is not subject to withholding tax and thin capitalisation rules do not apply to PEs.

Russian legal entities and offices of foreign companies are subject to a considerable number of accounting and reporting requirements. They must keep their accounts in Roubles and are required to file tax returns.

Employment highlights

Most foreign nationals who wish to work in Russia generally require a work permit and a work visa.

Russian immigration laws favour expatriate employees whose remuneration is equal to, or greater than, RUB 167,000 (approximately €2,000) gross per month. Such individuals are considered "highly skilled specialists" and employers can use a simplified procedure for obtaining work permits for them.

A similar simplified procedure can be used for obtaining a work permit for the applicant who has worked for at least one year for a foreign company registered in a WTO member state before their assignment to Russia and who is assigned to Russia for work in such company's branch or subsidiary in a managerial position.

As regards secondments, the general rule is that secondees must be employed by the host entity. Russian employment law expressly prohibits any arrangement whereby an employee is assigned from one organisation to another and where they remain employed by the first organisation but day-to-day control over their work transfers to the host organisation. Currently, the only exception to this rule is the use of agency workers. However, the use of such workers is subject to various statutory restrictions.

Issues that surprise foreign investors

> Russian law is constantly changing and the changes are quite unpredictable. Russian law puts emphasis on form over substance. It is essential to know regulators to understand seemingly arbitrary/contradictory ways in which rules are interpreted and applied. Court decisions are often inconsistent.

> State registration of most Russian legal entities is currently done by tax authorities.

> There is a quite strange Russian legal provision applicable to LLCs, non-public and public JSCs which states that a Russian company cannot have as its sole shareholder another company which, in its turn, has only one shareholder (in Russia we call them "matryoshka structures").

> Until quite recently, a vast majority of transactions in relation to the acquisition of Russian shares or assets used to be structured using an offshore JV vehicle and/or governed by English law. However, during the last few years we have been witnessing a substantial shift towards more frequent use of Russian onshore structures and Russian law in cross-border transactions involving Russian parties or assets.

Singapore

How to start a business

Operating through a company: A company has separate legal personality from its directors and members. It may be private or public. Companies which raise capital by issuing shares to the public have to be public companies, which are subject to stricter regulation. Using a company also means that members' liability is limited to their shareholdings or guarantee. A company may be incorporated from scratch or acquired "off the shelf".

Limited liability partnership: A limited liability partnership has some of the same features as a company, for example, limited liability for members, but also some important differences, for example, it does not have share capital. An LLP also has some features of a common law partnership.

Setting up a branch: A branch is not a company in itself, but the operation of an overseas legal entity in Singapore. It has no separate personality from its overseas "parent" so it cannot enter into contracts in its own name.

Other options include partnerships, joint ventures or carrying on a business through distribution, agency or franchise agreements.

Key formalities for incorporating a company or setting up a branch

A company comes into existence at the time its certificate of incorporation is issued.

Applying for incorporation is carried out online through the website of the Accounting and Corporate Regulatory Authority of Singapore ("**ACRA**") and involves the reservation of the name and filing of various documents including the constitution of the company and payment of various fees amounting to approximately S$320.

There are various restrictions on the name which may be adopted by a company. Different companies may not have names which are too similar. Certain words, which carry implications of a particular function or authority, may require the prior approval of government or the appropriate professional body before they are used in a company name.

Establishing a branch in Singapore requires the branch to be registered with ACRA. Registration is carried out online through the website of ACRA and involves the reservation of the name and filing of various documents including the certificate of incorporation and constitutional documents of the overseas parent, along with a certified English translation (if the original documents are in a language other than English), and in some circumstances, the accounts of the overseas parent company.

Key formalities for purchasing a shelf company

Shelf companies are companies which have been incorporated and registered with ACRA but which have not yet commenced business or traded. These may be purchased from company formation agents or some large law firms.

However, it is relatively unusual for shelf companies to be bought as a company can usually be incorporated on the same day on which an online application is made. In addition, on acquisition of the shelf company, certain steps will need to be taken and a number of filings will need to be made to ACRA to effect, among other things, any change of name, the transfer of shares, the resignation and appointment of officers, any change of registered office, and, if necessary, changes to the constitution.

Any foreign investment restrictions?

There are no general restrictions on foreign ownership of businesses in Singapore. There are, however, certain sectors which are regulated in Singapore, insofar as there are statutes which limit or require prior regulatory approval for share ownership in companies engaged in those sectors. These sectors are generally perceived to be critical to national interests, for instance, banking, finance, insurance, media and telecommunications.

There are no exchange control or currency regulations.

Corporate governance and ongoing obligations

All Singapore companies are required to have at least one director who is ordinarily resident in Singapore. Directors owe common law and statutory duties to the company, including a duty to act honestly and use reasonable diligence in the discharge of their duties.

A company is obliged to keep books and records of its business, for example, the minutes of meetings of shareholders and directors and a register of officers. ACRA maintains an electronic register of members and officers for Singapore companies.

Filings must also be made with ACRA: (i) if there are any changes to the officers; (ii) if changes are made to its constitutional documents; and (iii) when certain resolutions of members are passed.

A company must prepare and file audited accounts unless it is a dormant company or it is a small company within the criteria set out in the Companies Act (for example, its revenue does not exceed S$10 million and it does not have more than 50 employees, in each year for two consecutive financial years).

Stricter rules apply to public companies.

Tax highlights

A company is taxed at a flat rate of 17% on its chargeable income regardless of whether it is a local or foreign company. However, there are various tax exemptions and rebates that may apply depending on the nature of the business.

When a person makes payment(s) of a specified nature (for example, royalty, interest, technical service fee) to a non-resident company or individual, he is required to withhold a percentage of that payment and pay the amount withheld to the Inland Revenue Authority of Singapore. Singapore does not impose withholding tax on dividends.

Goods and Services Tax or "**GST**" is a broad-based consumption tax levied on the import of goods (collected by Singapore Customs), as well as nearly all supplies of goods and services in Singapore. A business must register for GST if its yearly taxable turnover is or is expected to be more than S$1 million. Voluntary registration for GST is also possible.

On a sale of shares in a Singapore company, stamp duty is payable on each instrument of transfer at the rate of 0.2% on the higher of (i) the purchase price and (ii) the net asset value of such shares.

Employment highlights

The Employment Act provides statutory protections relating to, among other things, dismissal and pay and leave rights. It also contains limited statutory protections on the transfer of a business as a going concern. All employers are required to issue itemised payslips and key employment terms to employees covered under the Employment Act.

The Employment Act does not apply to managers or executives earning a salary of more than S$4,500 per month. The rights and obligations of these employees will be typically covered in their contract of employment.

All foreigners working in Singapore must have a work visa/employment pass before they start work. Before submitting an employment pass application and subject to certain exemptions, the employer must advertise the job vacancy to Singaporeans for at least 14 days on the Jobs Bank administered by the Singapore Workforce Development Agency.

Employers and employees (Singaporeans and Singapore permanent residents only) contribute to the Central Provident Fund, a mandatory social security savings scheme.

The minimum retirement age for Singapore citizens and permanent residents is 62. However, employers are required to offer re-employment or offer an employment assistance payment to eligible employees who turn 62, up to 65 (to be extended to 67 in 2017).

Issues that surprise foreign investors

> All Singapore companies are required to have a common seal which must be affixed to any document executed as a deed. As there are various procedural requirements for the use of the common seal (for example, the constitution will typically state that the use of the common seal requires the signatures of two directors) and a common seal cannot be used overseas unless the company has created an official seal for that particular overseas jurisdiction, executing a deed outside of Singapore may give rise to practical issues.

> ACRA maintains an electronic register of members and register of officers for Singapore companies. These electronic registers serve as prima facie evidence of the matters stated in the registers and have replaced the physical registers which used to be maintained by companies. A share transfer can only be completed when the electronic register of members is updated by ACRA. Entry into the electronic register of officers is not necessary to effect the appointment of an officer of the company. However, it is a criminal offence if ACRA is not notified of any changes to the information in the electronic register of officers.

South Africa

How to start a business

Operating through a company: The most common form of investment vehicle in South Africa is a private limited liability company, which has separate legal personality from its directors and shareholders. A company may be incorporated from scratch or acquired “off the shelf”.

Partnership: Partnerships may be constituted by contract or by implication from the conduct of the partners. Partnerships are regulated by common law and not statute. They do not have separate legal personality. South African law recognises various types of partnership.

Setting up a branch: Instead of incorporating a subsidiary company in South Africa, a foreign company may register as an external company (also known as branch office). A branch has no separate legal personality from its foreign “parent”. It is regarded as an extension of the foreign company, therefore the parent company will be liable if the branch debts are not paid.

Other options include joint ventures, a business or trading trust or carrying on a business through distribution, agency or franchise agreements.

Key formalities for incorporating a company or setting up a branch

A company is not registered until a registration certificate is issued by the Companies and Intellectual Property Commission (CIPC) (or certificate of incorporation for companies incorporated in terms of the repealed Companies Act 1973).

Applying for incorporation requires submission to the CIPC of (i) the relevant form, (ii) a fee of R175 or R475 (for a private company), and (iii) the memorandum of incorporation (the constitutional document of a company).

There are extensive restrictions on the name which may be adopted by a company. Different companies may not have names which are too similar.

Establishing a branch in South Africa requires the branch to be registered as an external company with the CIPC within 20 business days after it first begins to conduct business in South Africa. This requires the submission to the CIPC of (i) the relevant form, (ii) a fee of R400, and (iii) a notarial certified copy of the constitutional documents of the foreign parent company, its certificate of incorporation or comparable document registered in the foreign jurisdiction, along with translated copies of these documents if the originals are not in an official language of South Africa.

Key formalities for purchasing a shelf company

Shelf companies are companies which have already been incorporated and registered with the CIPC but are not operative. These may be purchased from specialist corporate services providers or law firms.

Purchasing a shelf company is often the preferable route to establishing a company, as it tends to be quicker to customise one than incorporating a company from scratch.

On acquisition of the shelf company, certain steps will need to be taken and a number of filings will need to be made with the CIPC to effect, among other things, the change of name, the transfer/issue of shares, the resignation and appointment of directors and officers, the change of registered office and, if necessary, changes to the constitutional documents.

Any foreign investment restrictions?

South Africa’s exchange control laws regulate the flow of capital into and out of South Africa. Exchange controls affect all cross-border transactions, which are subject to approval by the exchange control regulator or authorised dealers (a local bank licensed to deal in foreign exchange).

Certain sectors (such as banking, insurance, broadcasting and aviation) have specific statutory restrictions on the percentage holdings that a foreigner can hold in a South African company.

Corporate governance and ongoing obligations

Companies have two statutory governance bodies: the shareholders, acting in general meeting, and the board of directors, entrusted with the day-to-day management of the company.

A private company is required to have at least one director, and a public company at least three. Foreign nationals or residents may be directors of South African companies. However, the company's public officer (appointed to act as a representative for tax purposes) must be a South African resident.

Directors owe certain fiduciary duties to the company, including exercising their powers and performing their functions in good faith and for a proper purpose and in the best interests of the company.

A company is obliged to maintain books and records of its business, such as a register of members. A company is required to file its annual return to the CIPC each year on the anniversary of its incorporation, which includes the company's revenue for the financial year. Companies must also provide the CIPC with up-to-date information about the business such as: appointment or resignation of directors, changes to constitutional documents and changes in share capital.

More onerous accountability and transparency rules apply to public companies and certain private companies.

Tax highlights

A subsidiary is a separate legal person from its parent and therefore a taxpayer in its own right. A branch established in South Africa will not be resident for tax purposes in South Africa but is essentially a footprint of the foreign company.

A South African branch is taxable only on South African sourced earnings, subject to any applicable double taxation agreement (i.e. which would typically result in South Africa being able to tax only profits attributable to a permanent establishment in South Africa).

South African resident companies are subject to corporate income tax at a flat rate of 28%. They also pay dividend tax at a rate of 15% on dividends remitted to a foreign holding company. Certain dividends may be exempt from dividend tax or subject to reduced treaty rates. South Africa also imposes a 15% withholding tax on interest and royalties. Branches are taxed at the same rate as domestic companies but profits can be remitted to its head office free of dividend tax. Transfer pricing and thin capitalisation rules apply to cross-border related party transactions.

South African resident companies are subject to capital gains tax on all asset disposals at an effective rate of 22.4%. Non-resident companies (including branches) are subject to the same rate, but only in respect of immovable property assets in South Africa, certain indirect interests in such property and assets effectively connected to a permanent establishment in South Africa.

Employment highlights

Employment and labour relations are highly regulated in South Africa. In the individual employment sphere, there are laws which govern minimum conditions of work, occupational health and safety, and in certain sectors of the economy minimum wages are set for various categories of employee. Most of these provisions apply to employees falling under a set threshold of earnings. Higher paid employees' terms and conditions are typically governed by contract.

Employees are protected against unfair dismissal, discrimination and employees transfer to the employ of the purchaser when a business is sold as a going concern.

Depending on the industry involved, employers may be required to contribute to various benefit funds. The only statutory benefit that covers all employees is the unemployment insurance fund, and an employer is required to register with this fund and contribute, together with the employee, from the commencement of employment.

The labour relations system supports collective bargaining and trade unions are granted extensive rights in the workplace dependent upon their level of representation.

Issues that surprise foreign investors

- Businesses that require licences, concessions or authorisations from the South African State (e.g. mining permits and electronic communication network services licences), wish to provide goods and services to organs of State or public entities in South Africa, wish to acquire State-owned enterprises or wish to enter into partnerships with the State may need to comply with black economic empowerment legislation to qualify or increase the likelihood of being successful. This sets out certain requirements for black ownership of South African companies and maintenance of these ownership levels.
- Shares held by a non-resident must be endorsed "non-resident" by an authorised dealer. The endorsement ensures that dividend payments, or the payment of sale proceeds in respect of the shares, will be freely remittable to shareholders offshore, without the need for specific exchange control approval having to be sought and obtained at a later stage.

Spain

How to start a business

Operating through a company: The most commonly used are limited liability companies: private limited companies (*sociedad de responsabilidad limitada* or "**SL**") and, to a lesser extent, public limited companies (*sociedad anónima* or "**SA**"). Unlimited liability companies are rarely used.

An SA is required if the company will be listed or carry on certain regulated activities (e.g. banking or insurance services). The SL is subject to lower share capital requirements (€3,000, compared to €60,000 for an SA) and has a slightly more flexible legal framework from a corporate perspective.

A company may be incorporated from scratch or acquired "off the shelf" (quicker and generally less costly than incorporating a company).

Setting up a branch: Branches are not separate legal entities but merely an extension of the head office, which is responsible for all its branch's obligations and liabilities.

Other options include investing in an ongoing business through joint venture agreements or carrying on a business through a representative office or through distribution, agency or franchise agreements.

Key formalities for incorporating a company or setting up a branch

Incorporating an SA or SL requires, among other things, a public deed of incorporation to be notarised (which includes the company's articles of association). The deed must be filed with the Commercial Registry.

Branches are set up by notarising the parent company's resolutions approving the creation of a branch and appointing a representative. The deed, duly apostilled, must be filed with the Commercial Registry, together with a copy of the parent company's articles of association. If any of these documents is not in Spanish, a sworn translation is required.

The net amount of the company's share capital must be transferred to a bank account in the Spanish company's name and a bank certificate evidencing receipt of the funds must be attached to the public deed of incorporation. The same applies to branches, in relation to the amount of working capital (*dotación*) allocated to the branch (if any).

Both Spanish companies and branches must obtain a Spanish tax identity number ("**Tax ID Number**").

Compliance with other formalities may also be required such as applying for a name certificate, registration for VAT, etc.

Key formalities for purchasing a shelf company

Shelf companies (generally SLs) are companies that are already registered with the Commercial Registry and have a Tax ID Number. They are usually incorporated by specialist corporate services providers with the minimum share capital required by law, have standard articles of association and no previous activity.

Generally speaking, the acquisition is made by means of a public deed of transfer of the entire share capital of the shelf company. The transfer must be recorded in the company's register of members.

Simultaneously with acquiring the shelf company, the investor would commonly pass the relevant corporate resolutions to change the company's name, its registered office and governing body. Such resolutions must be notarised and filed with the Commercial Registry. These changes must also be notified to the tax authorities.

Any foreign investment restrictions?

As a general rule, there are no restrictions on foreign investment in Spain.

However, Spanish law sets forth certain restrictions regarding investment by non-EU-based investors in certain key sectors (e.g. energy, gas, aviation, telecommunications and certain utilities). Generally, these require a non-EU investor to obtain an authorisation for an acquisition of shares providing a significant influence in such companies (the thresholds which trigger the need for authorisations vary in each case).

In addition, foreign investments and divestments in Spain must be reported to the Foreign Investments Registry at the Ministry of Economy and Competitiveness. As a general rule, these filings are merely informative and can be made within one month after the investment is made.

However, as an exception: (i) foreign investments made from tax havens must be declared six months in advance (still for information purposes); and (ii) certain foreign investments must be authorised in advance, namely those in connection with (a) activities directly related to national defence or (b) real estate assets acquired by non-EU nationals for diplomatic purposes.

Corporate governance and ongoing obligations

A company's management can be entrusted to (i) a sole director, (ii) two (or more in SLs) directors, acting jointly, (iii) two or more directors, acting separately or (iv) a board of directors (made up of a minimum of three members), acting collectively. Directors are subject to certain duties, such as duty of care and secrecy, and must act in the best interests of the company.

Branches do not have directors, but a representative must be appointed.

Spanish companies must comply with corporate formalities, such as keeping a register of members (in SLs and SAs with registered shares) and minutes book, holding annual general shareholders' meetings, etc. Branches are not subject to these obligations.

Companies must approve their annual financial statements duly audited, if applicable, within six months of the end of the fiscal year. Financial statements must be filed with the Commercial Registry within one month after approval. Branches are not obliged to approve their own annual accounts, if they file their head office's financial statements with the Commercial Registry, provided that such head office is incorporated in an EU country.

Any amendment to the company's articles of association or to the branch's information must be filed with the Commercial Registry.

Tax highlights

The incorporation of a Spanish company or branch is exempt from capital duty.

Acquisitions of shares in a Spanish company are, in principle, VAT exempt; however, fees paid to the corporate services provider may be subject to VAT, depending on the VAT status of the purchaser.

Spanish companies must pay Spanish corporate income tax, being the general tax rate of 25%. The taxable base is based on the accounting result, adjusted as per tax specifications listed under the corporate income tax law. Non-resident companies operating through a branch in Spain are subject to Spanish non-resident income tax, on the worldwide income attributable to the branch, being the general tax rate of 25%.

Companies' dividend payments and upstreamed branch profits may be exempt from withholding tax in Spain if the investor is an EU resident company (other than tax-haven residents). Otherwise, repatriation of profits would be taxed in Spain at a rate of 19%, unless otherwise set out under an applicable tax treaty.

Both Spanish companies and branches are generally subject to local taxes (business activity tax, land tax, etc.) and must comply with formal tax obligations.

Employment highlights

Both Spanish companies and branches must be registered with the Spanish labour and social security authorities before hiring any employees or opening work centres in Spain. The commencement of activities at the workplace must be notified to the labour authorities. Labour inspection visiting books (*libros de visitas*) for each workplace must, as a general rule, be duly legalised by the relevant provincial labour authorities. An occupational risk prevention plan must be attached.

Employers must protect the health and safety of their employees and insure against liability for occupational accident or disease sustained by employees.

All employees must be registered with the social security system and any employment contracts must be communicated to the Employment Public Service.

Termination needs to be formally notified to the employee, stating the grounds leading to the termination. Employees are protected against unfair dismissal, being entitled at the employer's decision to either (i) being reinstated at the company or (ii) receive the statutory compensation for unfair dismissal. Companies tend to pay the unfair dismissal severance.

There are relatively few statutory consultation obligations. These mainly arise in the case of collective redundancies or collective substantial modifications of employment conditions.

Issues that surprise foreign investors

- Non-Spanish resident legal entities making an investment in Spain or appointed as a director of a Spanish entity must apply for a Tax ID Number.
- In addition, non-Spanish resident individuals appointed as directors, regardless of whether they are EU citizens, have to obtain a Spanish foreigner identity number (N.I.E.).
- Tax representatives designated by branches are jointly and severally liable for paying taxes owed by the branch.
- When incorporating or acquiring shares in a company, founders/buyers are required to disclose to the notary their "beneficial owner" (ie. person who ultimately owns or controls, directly or indirectly, 25% or more of its share capital or voting rights). In the case that no individual can be qualified as a beneficial owner, the identity of the directors of the founder/shareholder should be disclosed together with copies of their passport.

Sweden

How to start a business

Operating through a company: The most commonly used are limited liability companies: private limited companies (Sw. *privat aktiebolag* or "**AB**") and, to a lesser extent, public limited companies (Sw. *publikt aktiebolag* or "**AB (publ)**").

An AB (publ) is required if the company will be listed or trade on the stock exchange or on alternative market places. The AB is subject to lower share capital requirements (SEK 50,000 compared to SEK 500,000 for an AB (publ)) and has a more flexible legal framework.

A company may be incorporated from scratch or acquired "off the shelf" (quicker and generally less costly than incorporating a company).

Setting up a branch: Branches are not separate legal entities but merely an extension of the head office, which is responsible for all its branch's obligations and liabilities.

Other options include establishing a partnership, investing in an ongoing business through joint venture agreements or carrying on business through distribution, agency or franchise agreements.

Key formalities for incorporating a company or setting up a branch

Incorporating an AB or AB (publ) requires a registration application to be filed with the Swedish Companies Registration Office (the "**SCRO**"). The application shall include, *inter alia*, a memorandum of association, the articles of association and a subscription list.

Branches are set up by applying for registration and appointing a managing director provided with an authority to represent the head office. The application shall be filed with the SCRO and must include certain documents such as the head office's articles of association. The head office also needs to prepare and submit certain financial statements to the SCRO. A translation is required if any of the financial statements are not in Swedish.

Both Swedish companies and branches will be provided with a Swedish corporate identification number ("**CIN**") and will need to be registered for tax and VAT and as an employer (if applicable) with the Swedish Tax Agency.

Key formalities for purchasing a shelf company

Shelf companies (generally ABs) are companies that are already incorporated and registered with the SCRO and have a CIN. They are usually incorporated by specialised shelf company providers with the minimum share capital required by law, have standard articles of association and no previous activity.

Generally, to acquire a shelf company, the purchaser will open a new bank account for the shelf company, deposit the share capital in the account (usually SEK 50,000) and sign the share purchase agreement.

Simultaneously, a general shareholders' meeting would be held to pass the relevant corporate resolutions to change the company's articles of association and elect new board members. Such resolutions need to be registered with the SCRO, a process of approximately two weeks.

The same day as the share purchase agreement is signed and the share capital is deposited, the shelf company provider will issue a general power of attorney for the purchaser. The general power of attorney is valid until the proposed changes and resolutions have been registered with the SCRO, ensuring the purchaser instant authority over the company.

Any foreign investment restrictions?

As a general rule, there are no restrictions on overseas investment in Sweden and foreign companies may establish a business in Sweden following the same rules and procedures as domestic establishers. However, restrictions apply to certain businesses such as the production of military equipment.

A branch, being an extension of a foreign company, is subject to certain restrictions regarding special permits and/or procedures. These regulations affect both EU/EEA-based and non-EU/EEA-based investors and apply to, *inter alia*, companies within the credit securities and insurance sectors and to foreign alternative investment funds managers.

Corporate governance and ongoing obligations

The company's management is entrusted to a board of directors (the "**Board**"), acting collectively. The Board may appoint a managing director to be responsible for the day-to-day management of the company (only mandatory for ABs (publ)). The Board and the managing director are subject to fiduciary duties and must act in the best interests of the company.

A branch is obliged to have a managing director provided with an authority to represent the head office.

A Swedish company must comply with corporate formalities, such as keeping a shareholders' register and holding annual general shareholders' meetings. A Swedish branch is not subject to these obligations.

A Swedish company must file annual financial statements and an auditor's report with the SCRO within seven months of the end of the fiscal year. Branches with a head office which are comparable to limited companies or domiciled outside the EEA must prepare and approve annual financial statements and file them with the SCRO. Other branches are only obliged to file their head office's annual financial statements with the SCRO.

Any amendment to the company's articles of association or to the branch's information must be filed with the SCRO.

Tax highlights

Acquisitions of shares in a Swedish company are, in principle, not subject to VAT. However, fees paid to the corporate services provider may be subject to VAT depending on the VAT status of the purchaser.

Swedish companies must pay Swedish corporate income tax at a rate of 22% on the amount of the net income. Non-resident companies operating through a branch in Sweden are also subject to Swedish corporate income tax at a rate of 22% on the worldwide income attributable to the branch.

Dividend payments beneficially owned by non-residents are liable to a 30% non-resident withholding tax, unless it is possible to reduce the rate of tax payable in accordance with the provisions of the relevant double taxation treaty.

Both Swedish companies and branches are generally obliged to comply with formal tax obligations.

Employment highlights

Swedish companies and branches need to register for tax and are liable to pay social security contributions. Moreover, Swedish companies and branches are obliged to comply with Swedish mandatory rules and requirements regarding employment for all work that is carried out in Sweden, such as keeping an "employee register" (Sw. *personalliggare*) in certain types of business, e.g. the construction industry.

It should be noted that since the branch is not a separate legal entity, the head office will be deemed to be the formal employing entity and ultimately incur liability for all and any employment-related obligations which are imposed on the Swedish branch. Swedish employment law applies to employees in Sweden irrespective of the jurisdiction of the head office.

Issues that surprise foreign investors

> The managing director of a limited liability company or a branch needs to be domiciled within the EEA. It is possible to apply for an exemption with the SCRO.

> Sweden has no requirement as regards a board member's need to be a Swedish resident, but at least half of the board members need to be resident within the EEA.

> In Sweden there are no formal thin capitalisation rules for tax purposes, but Swedish companies are subject to corporate law rules which require them to maintain the level of shareholder equity (calculated on a specific basis for this purpose) corresponding to at least 50% of their registered share capital. To continue the company's business where more than half of the registered share capital has been spent may result in personal liability for the members of the board and shareholders.

Thailand

How to start a business

Operating through a company: A company has separate legal personality from its owners, i.e. shareholders and directors. It may be private or public. Companies which raise capital by issuing shares to the public have to be public companies, which are subject to stricter regulation. Using a company also means that owners' liability is limited to their shareholdings. A company may be incorporated from scratch or acquired "off the shelf".

Partnerships: A limited liability partnership has some of the same features as a company, for example, limited liability for owners, but also some important differences, for example, it does not have share capital. The other type is an ordinary partnership where liability of owners is not limited.

Setting up a branch: A branch is not considered an entity or a company in itself, but the operation of an overseas legal entity in Thailand. It has no separate personality from its overseas "parent" so it cannot enter into contracts in its own name.

Other options include carrying on a business through contractual agreements, such as distributorship, agency, franchising, etc.

Key formalities for incorporating a company or setting up a branch

A company comes into existence at the time its certification of incorporation is issued.

Applying for incorporation requires the submission of an application form and supporting documents, the memorandum and the articles of association (the constitutional document of a company) and payment of a fee calculated from registered capital.

There are other restrictions and requirements such as a minimum of three individuals as founders and reservation of name which could be adopted by a company. Different companies may not have names which are too similar. Certain words, which carry implications of a particular function or authority, may require the prior approval of government or the appropriate professional body before they are used in a company name.

Establishing a branch in Thailand requires approval from the Ministry of Commerce in advance. This is due to foreign investment restrictions. This requires the submission of, among other things, an application form, the constitutional documents of the overseas parent, along with a certified Thai translation and payment of a fee calculated from the capital of the applicant.

Key formalities for purchasing a shelf company

There are no statutory formalities on purchasing a company in Thailand. However, foreigners who are looking to buy a company in Thailand will be subject to foreign investment restrictions, as well as business licensing requirements and foreign or single shareholding restrictions which depend on the business sector, such as banking, insurance, securities, etc.

The process of company acquisition usually involves certain steps to complete share transfer, as well as changes of directors or authorised signatories or, if necessary, changes to the articles of association of the company, which will need to be made with the company registrar and the Ministry of Commerce.

Any foreign investment restrictions?

Business activities carried out by foreigners are restricted under the Foreign Business Act, the application of which applies regardless of forms of entity (company, branch, representative office, etc.). However, there are exemptions for certain business activities where licences or approvals could be obtained prior to commencement of such activities.

There are certain restrictions on exchange control or currency regulations imposed by the Bank of Thailand on maintenance of Thai Baht by non-residents in Thailand.

Corporate governance and ongoing obligations

A private company is required to have at least one director, whereas a public company is required to have at least five directors and half of the directors shall reside in Thailand.

Directors owe certain statutory duties to the company, including a duty to promote the success of the company for the benefit of the shareholders as a whole.

A company is obliged to keep books and records of its business; for example, a list of shareholders, accounting books and records.

Filings must also be made, among other things: (i) if a director is appointed or retires; (ii) if changes are made to its constitutional documents; and (iii) when certain resolutions of shareholders are passed.

If public companies are listed on the Stock Exchange of Thailand, they will be subject to more strict rules.

Tax highlights

Generally, Thai resident companies are subject to corporate income tax at a rate of 20% on worldwide income and capital gains, subject to certain exemptions. The rate may be reduced depending on the type of company and/or type of income.

A Thai branch of a foreign company is subject to tax at the rate of 10% of the profit remitted offshore.

It is worth noting the rate above may be reduced or exempted by a double taxation treaty available to certain countries.

Employment highlights

As soon as a business engages an employee it must make an annual contribution to the Workmen Compensation Fund, the rate of which depends on the type of business and ranges between 0.2-1.0% of the employee's annual salary, and a monthly contribution to the Social Security Fund calculated from the employee's monthly salary (but not exceeding a capped amount prescribed by the Ministry of Labour).

An employer with 10 or more employees must establish and register work rules providing work conditions such as working days, holidays, overtime payments, termination, etc. Employees must be paid at least the national minimum wage.

Employees enjoy a range of statutory protections relating to, among other things, dismissal, and pay and leave rights in relation to holiday, sickness and childbirth.

Statutory protections on the transfer of a business as a going concern preserve employees' rights and protect them from dismissal.

Also, a work permit must be obtained for any foreigner working in Thailand whether he or she is employed by a locally incorporated company or by a branch of a foreign company.

Issues that surprise foreign investors

Foreign ownership of land is restricted under the Land Code. In order for foreigners to own land for certain purposes allowed by the Land Code, approval from the Ministry of Interior will be required. For this purpose, foreigners include natural persons and juristic persons, e.g. a Thai incorporated company owning more than 49% of the registered capital or having a majority of foreign shareholders.

Linklaters operates in Thailand through Linklaters (Thailand) Ltd, an affiliate of Linklaters LLP.

United Arab Emirates (UAE) (excluding free zones)

How to start a business

Operating through a company: The most common types of company are limited liability companies ("**LLCs**") and public joint stock company ("**PJSCs**"). LLCs are private companies (similar to a partnership) and are commonly used by foreign investors investing in the UAE. PJSCs may offer shares to the public and list shares on an exchange. They are subject to stricter regulation. LLCs and PJSCs have separate legal personality from their directors and members. Members' liability is limited to their shareholdings.

Setting up a branch: A branch is not a company in itself, but the operation of an overseas legal entity in the UAE. It has no separate personality from its overseas "parent" so it cannot enter into contracts in its own name.

Setting up a representative office: A foreign company can establish a representative office in the UAE, but its activities are limited to marketing and/or promoting its foreign parent company products and services. It cannot earn profits within the UAE and must appoint a local services agent.

Other options include joint ventures or carrying on a business through distribution, agency or franchise agreements.

Key formalities for incorporating a company or setting up a branch

The incorporation of a UAE LLC or PJSC involves the following steps:

> prepare constitutional documents (based on standard forms) which must be in Arabic/dual language and notarised by a notary public;

> apply for approval to incorporate and for commercial licence to the authority in the relevant Emirate;

> for a PJSC, apply for approval to incorporate to the Securities and Commodities Authority (SCA); and

> once the certificate of incorporation and commercial licence are issued, register the company in the Commercial Register maintained by the Dubai Department for Economic Development (DED) and the local Chamber of Commerce.

There are restrictions on the name which may be adopted by a company. Establishing a branch in the UAE requires the branch to be licensed and registered with the Ministry of Economy, which may impose a moratorium on the issue of new licences from time to time. Branches are subject to the provisions of the UAE company's law regime. A branch is required to appoint a local services agent to deal with administrative issues, who must be a UAE national.

Key formalities for purchasing a shelf company

There is no concept of a shelf company in the UAE. It is not possible to purchase a company which is already incorporated, registered and licensed but which has not yet traded.

The process for acquiring shares in an existing UAE LLC is time-consuming and highly procedural. Foreign investment restrictions, shareholder pre-emption rights and government bureaucracy may limit the ability to freely transfer shares. Approval is required from the relevant Emirate's DED and the Ministry of Economy, and some documents must be drafted in Arabic/dual language, executed in front of a notary and may need to be legalised if they relate to foreign entities. The transfer must then be registered at the DED in which the company is incorporated.

Any foreign investment restrictions?

UAE law contains restrictions that favour state nationals in the pursuit of commercial activities and protect strategic sectors from foreign investment.

LLCs and PJSCs must have not less than 51% of their share capital owned by UAE nationals (subject to certain exceptions, including companies incorporated in free zones in the UAE). Often described as the "51/49 rule", this rule effectively prevents foreign investors from owning more than 49% of companies incorporated onshore in the UAE (outside the free zones). The UAE Cabinet may grant an exemption from foreign investment restrictions, but this is rare. Transfers of shares breaching this rule are invalid and the company will be subject to a fine.

Ownership restrictions may be greater in certain circumstances and sectors (e.g. insurance, real estate, oil, electricity, water and gas, the operation of commercial agencies and banks/financial institutions). Further restrictions may be contained in a company's articles of association.

Measures may be taken to mitigate the effect of the 51/49 rule, in practice, and allow collateral means of control.

There are no exchange control or currency regulations.

Corporate governance and ongoing obligations

The board of directors of a PJSC, or the managers of an LLC, are responsible for the governance of the company. The details of the governance structure are determined by the constitutional documents.

A PJSC must have a minimum of three and maximum of 11 directors. The maximum term is three years (may be renewed by re-election). An LLC must have a minimum of one manager (no maximum) and their term is determined by the memorandum of association. If the company has more than seven members, they may appoint a supervisory board (minimum of three members) to oversee the managers.

Directors and managers owe certain statutory duties to the company, including to preserve the company's rights, to extend such care as a diligent person, to act within the scope of the company's objectives and within powers, not to engage in fraud, abuse their power, violate law or the company's constitution or mismanage the company.

A company is obliged to keep books and records of its business; for example, a register of members. Filings must also be made with the Registrar of Companies; for example, if changes are made to its constitutional documents and when certain resolutions of members are passed.

Further and, in some cases, more strict rules apply to publicly listed companies and specific types of UAE companies, including government-related entities.

Tax highlights

There is generally no income tax, corporation tax, stamp tax, business profit tax or capital gains tax in the UAE.

However, in practice, some entities pay tax on their net profits, including oil, gas and petrochemical companies, hotels and branch offices of foreign banks in the UAE. The UAE does not levy withholding tax on payments of interest by a UAE borrower or on dividends.

The UAE Ministry of Finance has announced that the UAE is preparing to implement VAT in 2018. We understand that VAT will be charged on supplies of most goods and services, subject to certain exemptions.

The UAE Ministry of Finance proposed a federal corporate tax in its 2014 annual report, but details of any proposed tax are not publicly available and no implementation date has been set.

Employment highlights

Employees must obtain a residency visa and a work permit in order to work lawfully in the UAE. They must register with the labour department. UAE labour laws address employee wages (there is no minimum wage), working hours, leave, safety and protection, medical and social care, codes of discipline, termination of employment contracts, end of service benefits, compensation for occupational diseases, labour inspections and penalties.

There are no transfer regulations in the UAE regulating employment rights on the transfer of a business as a going concern. A "transfer" of employees is essentially a termination of employment with the seller and new employment with the purchaser.

Termination benefits and entitlements crystallise on termination. One of the benefits to which employees are entitled is an end of service gratuity, which is payable upon termination of an employment relationship in the UAE, provided that the employee meets the conditions under UAE law. In addition, employees could potentially claim up to three months, compensation for arbitrary dismissal. The statutory notice period is either one calendar month, or the contractual notice period, whichever is greater. There is no statutory requirement to consult but best practice is to share information.

There are no redundancy provisions under UAE law.

Issues that surprise foreign investors

> The law of the UAE, as an emerging market, is evolving; it is not comprehensive or always straightforward to apply in the context of international commercial transactions. Market practice may differ depending on the circumstances of any given transaction and the entities involved (particularly where government or government-related entities are parties to the transaction). UAE laws and regulations may come into effect without being published, there exists no general system of judicial precedent whereby the decisions of a court in one case have any binding authority in respect of another case and there is no full and reliable reporting of court judgments. As a result, there is a lack of transparency which can make understanding the applicable law challenging.

> Enforcing contracts in the UAE can be challenging. The choice of forum which will give an investor the best chance of successful enforcement depends on the nature of the transaction and the parties involved. This is a developing area of law and market practice is evolving. It is difficult to enforce foreign court judgments in the UAE courts. It is generally easier to enforce foreign arbitral awards in the UAE, but the UAE courts can be unpredictable in their approach and are not bound by precedent, so some uncertainty remains. Special rules may apply to government-related entities, such as regarding approvals and immunity.

United Kingdom (UK)

How to start a business

Operating through a company: Companies are either private or public. Companies which raise capital by public offerings of shares have to be public companies, which are subject to stricter regulation. Using a company also means that members' liability is limited to the nominal value of their shares (in relation to a company limited by shares).

A company may be established by applying for a certificate of incorporation or acquired "off the shelf".

Limited liability partnership: A limited liability partnership has some of the same features as a company (limited liability for members) but also some important differences (it does not have share capital). An LLP also has some features of a common law partnership.

Setting up a branch: A branch is not a company in itself, but the operation of an overseas legal entity in the UK. It has no separate personality from its overseas "parent" so it cannot enter into contracts in its own name.

Alternative methods of establishing a business presence include partnerships, joint ventures or carrying on a business through distribution, agency or franchise agreements.

Key formalities for incorporating a company or setting up a branch

Applying for incorporation is quick, simple and inexpensive. However, adopting the articles of association (the constitution of the company) may require legal advice depending on the complexity of the ownership structure of the company, etc.

There are extensive restrictions on the name which may be adopted by a company. Different companies may not have names which are too similar. Certain words, which carry implications of a particular function or authority, may require the prior approval of government or the appropriate professional body before they are used in a company name.

Establishing a branch in the UK requires the branch to be registered as a UK establishment with the Registrar of Companies within one month of its opening. This requires the submission of (i) an application form, (ii) a fee of £20, (iii) the constitutional documents of the overseas parent, along with a certified English translation (if the original documents are in a language other than English) and (iv) in some circumstances, the accounts of the overseas parent company.

Key formalities for purchasing a shelf company

Shelf companies are companies which have been incorporated and registered with the Registrar of Companies but which have not yet traded. These may be purchased from company formation agents or large law firms.

On acquisition of the shelf company, certain steps will need to be taken and a number of filings will need to be made to the Registrar of Companies to effect, among other things, the transfer of shares, the resignation and appointment of officers, the change of registered office and, if necessary, changes to the articles of association.

Purchasing a shelf company used to be quicker than incorporating a company. However, since the introduction of the electronic filing system at Companies House, the incorporation of a company can take place on the same day on which an application is made.

Any foreign investment restrictions?

There are no general restrictions on foreign ownership of businesses in the UK, although the Secretary of State has the, very rarely used, power to intervene in certain transactions in certain limited circumstances (for example, where there are national security issues).

There are no exchange control or currency regulations.

Corporate governance and ongoing obligations

A private company is required to have at least one director and a public company at least two. Directors owe certain statutory duties to the company, including a duty to promote the success of the company for the benefit of the members as a whole.

A company is obliged to keep books and records of its business, for example, a register of members. A company must circulate its annual accounts to members and submit these to the Registrar of Companies within nine months of its year-end date.

Filings must also be made with the Registrar of Companies: (i) if a director is appointed or retires; (ii) if changes are made to its constitutional documents; and (iii) when certain resolutions of members are passed.

Companies are also required to file a confirmation statement every year with the Registrar of Companies, stating that there have been no changes to information that the Registrar has on record, or that all relevant changes have already been notified.

Further and, in some cases, stricter rules apply to public companies.

Tax highlights

On a transfer of shares in a company incorporated in the UK or which has its share register in the UK, a 0.5% tax charge (stamp duty or stamp duty reserve tax) will normally arise.

UK resident companies are subject to UK corporation tax at a rate of 20% on worldwide income and capital gains (subject to an optional exemption for overseas branches). The rate is scheduled to fall to 19% with effect from 1 April 2017 and 18% with effect from 1 April 2020.

UK permanent establishments of non-UK resident companies are also subject to UK corporation tax at the same rate on (broadly and subject to the terms of any treaty) the income attributable to the permanent establishment and on capital gains made on assets used in the permanent establishment's trade and situated in the UK.

The UK does not levy withholding tax on dividends (save in very limited circumstances).

The UK levies withholding tax at a rate of 20% on interest (subject to domestic and treaty exemptions).

Employment highlights

As soon as a business engages employees it must have employers' liability insurance which provides at least £5 million of cover. The business must also register as an employer with the UK's tax authority and pay employees' tax under the "pay as you earn" system, as well as employers' and employees' national insurance contributions.

Within two months of the start of employment, an employer must give its employees a written statement of the main terms of their employment.

Employees must be paid at least the national minimum wage (currently £6.95 per hour for those aged 21+) and most eligible workers must be enrolled into a pension scheme by their employer, who is required to make minimum mandatory contributions into the scheme.

Employees enjoy a range of statutory protections relating to, among other things, dismissal, and pay and leave rights in relation to holiday, sickness, pregnancy, adoption and childbirth.

Statutory protections on the transfer of a business as a going concern preserve employees' pre-transfer terms of employment and protect them from dismissal.

Issues that surprise foreign investors

> Companies and LLPs must maintain a publicly available register of persons having significant control ("**PSCs**") over them. A PSC includes someone who, among other things: (i) holds 25% or more of the company's shares or voting rights; (ii) can appoint or remove directors holding a majority of the votes that can be cast at a board meeting; or (iii) has the right to exercise, or actually exercises, significant influence or control over the company.

> There is a corporate offence in the UK of failing to prevent bribery. A company or partnership that was incorporated and/or carries on business in the UK can be guilty of the offence if: (i) a person associated with it commits a bribery offence; and (ii) there are no adequate procedures in place designed to prevent bribery.

> Commercial organisations which: (i) carry on all or part of a business in the UK; (ii) supply goods or services; and (iii) meet a minimum turnover threshold of £36m must publish a "slavery and human trafficking" statement each financial year. This must state what has been done to ensure that there is no modern slavery in their supply chain or organisation.

United States (U.S.)

How to start a business

In the U.S., corporate law is primarily governed by state law (the law of the state where the company was incorporated) rather than by U.S. federal law.

Delaware is the most utilised state for business law, with more than 50% of all U.S. publicly traded companies and more than 60% of the Fortune 500 incorporated there. The Delaware legislature is perceived as being business friendly and the judiciary has a very sophisticated understanding of business law.

Subsidiaries within a group are most likely to be private corporations or private limited liability companies ("**LLCs**"). Non-U.S. companies are generally better off forming a subsidiary or LLC rather than using a branch to establish a U.S. presence as a branch office can subject the company to liability in the U.S. without the protection provided by the separate form of a subsidiary or LLC.

Key formalities for incorporating a company or setting up a branch

Forming a corporation or LLC in the U.S. is a simple and inexpensive process in Delaware and other U.S. states. The process typically involves payment of fees (usually no more than a few hundred dollars) and filing a certificate of incorporation/certificate of formation or similar document with the state's Secretary of State. There are no minimum capital requirements for forming a corporation. However, inadequate capitalisation could be a basis for a plaintiff to argue for "piercing the corporate veil" to reach the parent company (see "Issues that surprise foreign investors" for further details).

In order to do business through a branch in Delaware, a company must file with the Delaware Secretary of State: (i) a certificate from its home jurisdiction evidencing its corporate existence; and (ii) a statement from an authorised officer setting out, among other things, a statement of its assets and liability and a description of the business it proposes to conduct in Delaware.

A non-U.S. company may also domesticate itself as a corporation in Delaware by filing a certificate of incorporation and certificate of corporate domestication with the Delaware Secretary of State. The company would then be treated as a Delaware corporation.

Key formalities for purchasing a shelf company

A company may also purchase a shell corporation (essentially, an off the shelf company) that has already been established, but it will likely be easier and less costly to form a new corporation or LLC. Purchasing an already established company also comes with the risk of assuming historical liabilities.

To acquire an already existing company, a buyer will usually enter into a share purchase agreement with the target or structure a merger between the target and a merger subsidiary of the buyer. In the case of a share sale, if the stock being sold constitutes all or substantially all of the target's assets, target stockholder approval is required. In the case of a merger, target shareholder approval is required and buyer shareholder approval may be required depending on the form of merger.

Any foreign investment restrictions?

Generally, non-U.S. companies may establish a business in the U.S. following the same rules and procedures as domestic companies. Delaware does not limit the number of non-U.S. shareholders of a corporation or require management or board members to be U.S. citizens or residents, though the corporation must have a Delaware registered agent (which can be hired at minimal cost).

However:

> The Committee on Foreign Investment in the U.S. may review and order divestment where a transaction threatens to impair the national security of the U.S.;

> Federal law places restrictions on non-U.S. ownership of companies in certain sectors (e.g. aviation, telecoms, utilities); and

> Federal sanctions may restrict ownership of U.S. assets by certain persons (e.g. Cuban nationals) in certain circumstances.

Corporate governance and ongoing obligations

In general, Delaware law is permissive and flexible. Corporations require formal governance but more flexible alternative entities exist. Companies that choose to go public, however, will have to comply with the significant corporate governance and disclosure requirements imposed by the U.S. Securities and Exchange Commission and the U.S. stock exchanges.

Delaware corporations must file an annual franchise tax report annually and pay an annual franchise tax. It is an opaque system – very little other disclosure is required for private companies. For example, private Delaware corporations are not required to disclose the identities of their directors or shareholders or to publish accounts.

Directors of a corporation owe fiduciary duties to the corporation and its stockholders. Directors owe their duties to the company and shareholders as a whole, even when they are also directors of another company within the group, or appointed by a shareholder. In the case of a wholly owned subsidiary, however, the directors of the subsidiary are only obliged to manage the affairs of the subsidiary in the best interests of the parent and its shareholders. Fiduciary duties can be almost entirely disclaimed in a LLC or limited partnership.

Tax highlights

Corporations are generally taxed on their income at the corporate level, while LLCs can elect to be treated the same or as pass-through entities where the owners are taxed on the LLC's income (regardless of whether distributed) but the LLC is not taxed. A wholly owned LLC can also elect to be disregarded entirely for federal income tax purposes.

A non-U.S. stockholder of a Delaware corporation not otherwise subject to U.S. federal or Delaware income taxation would not be subject to U.S. federal or Delaware income taxation merely by reason of ownership of stock in a Delaware corporation. A corporation will file its own tax return and report its own income.

A non-U.S. member of a Delaware LLC, by reason of ownership of its membership interest in the LLC, will generally be subject to U.S. federal income taxation if the LLC elects pass-through status and conducts a trade or business in the U.S. and may be subject to Delaware income taxation if the LLC conducts trade or business activities within Delaware.

In most cases, branch activities will create a taxable presence in the U.S. Thus, as a general rule, branches engaged in any part of the sales function (including direct sales, commission sales or after-sale support) will be subject to U.S. tax.

Employment highlights

A buyer has no statutory obligation to consult with, or seek approval from, a target's employees regarding employment terms or conditions, unless the employees are represented by a union.

Executives or managers often receive accelerated or increased pay or benefits on or after a change of control, which can result in significant liabilities and a loss of a tax deduction for such payments.

U.S. companies often adopt or amend severance or employee retention plans before a sale to protect employees post-closing, particularly key employees and sometimes in a generous manner.

A buyer (and certain of its affiliates) of a company will become jointly liable for certain unfunded pension benefits arising from any U.S. defined benefit plans.

A company typically continues to be bound by any union contract covering its employees after a change of control, but a buyer of a company's assets is not bound (and may avoid recognizing the union if fewer than half of the employees it hires were represented by the union). A collective bargaining agreement may restrict the buyer's ability to terminate employees, change or terminate benefit plans, close facilities or otherwise change the employees' terms and conditions of employment.

Issues that surprise foreign investors

In general, U.S. state corporate law respects corporate form and claims against a subsidiary corporation should not reach the parent company. However, many plaintiffs will sue both the subsidiary and the parent and argue for "piercing the corporate veil".

The normal exercise of control by the parent over a subsidiary is generally not sufficient to pierce the corporate veil. Plaintiffs typically must show that the parent has complete control over the subsidiary such that the subsidiary has no will or existence of its own.

A parent company can minimize the risk that a court will disregard corporate form by:

> complying with corporate formalities;

> maintaining separation between the parent and the subsidiary, including separate boards, separate management (paid by the subsidiary) and separate bank accounts;

> adequately capitalizing the subsidiary appropriate to its business; and

> documenting the arm's length nature of any material transactions between the parent and subsidiary.

Vietnam

How to start a business

Operating through a company: There are three main enterprise forms: a single member limited liability company, a multi-member limited liability company and a shareholding/joint stock company. Each offers investors limited liability to the extent of the capital contributed. Of the three forms, only a shareholding/joint stock company can issue shares and be listed.

Representative office: A representative office may be established to engage in certain (non-profit making) business activities. Representative offices are not separate legal entities and are often utilised for marketing purposes.

Other options to establish a business presence include public private partnerships, branches and business co-operation contracts.

Key formalities for incorporating a company or setting up a branch

The establishment of a foreign invested enterprise, whether wholly foreign-owned or a joint venture with Vietnamese partners, must be approved by the authorities.

The foreign invested enterprise must first have an investment project which will require approval through the form of an Investment Registration Certificate ("**IRC**"). Certain types of project require "in-principle approval" from relevant heads of government prior to issuance of the IRC.

Once the IRC is issued, an Enterprise Registration Certificate ("**ERC**") must be obtained for establishment of the new enterprise to implement the project. In addition, each company established in Vietnam must have a company constitution called a "charter", equivalent to by-laws or articles of association.

Key formalities for purchasing a shelf company

In Vietnam there is no concept of an "off the shelf" company.

The acquisition of an existing enterprise may be executed by purchasing existing shares/capital contributions or by contributing additional equity. Equity acquisitions are more common in Vietnam than asset acquisitions.

Additionally, if the foreign investor is seeking to acquire a stake in certain regulated industries conducting conditional business lines, or is seeking to acquire more than a 51% interest in the company, prior approval of the authorities is now required (termed "M&A approval").

Any foreign investment restrictions?

There are certain sectors in which investment is prohibited (such as projects detrimental to national defence) for both foreign and domestic investors.

There are a number of sectors in which foreign investment is conditional, which may, in addition to requiring approval from the relevant authority, be subject to foreign ownership caps.

An ownership cap in a conditional business line is identifiable in international treaties of which Vietnam is a member (e.g. WTO Commitments) or domestic legislation. If no limit is set for a conditional business line under an international treaty or domestic legislation, a standard cap of 49% will apply.

Until recently, a blanket cap of 49% applied to foreign investment in public and listed companies. However, it is now possible for this cap to be exceeded following registration of the higher threshold with the State Securities Commission. The upper permissible limit will be determined by the business lines of the relevant company, with 100% foreign ownership being permitted in companies operating solely in non-conditional sectors.

Corporate governance and ongoing obligations

Generally, a Vietnamese company has three layers of governance which vary depending on the company type.

The three layers include: (i) the company chairman or members' council for a single-member limited liability company, a members' council for a multi-member limited liability company and the general meeting of shareholders and board of management for a shareholding/joint stock company. These positions are the highest authority which implement the rights and obligations of the company; (ii) director or general director, who is appointed to carry out the day-to-day business activities of the company; and (iii) inspectors who oversee the actions of the governance bodies in (i) and (ii) above.

A company must also appoint legal representative(s) to represent the company in its transactions. A company may have more than one legal representative. At least one of the legal representatives must reside in Vietnam.

A Vietnamese company must retain certain corporate and accounting documents at its headquarters. Changes to the company and its investment project must be notified to, or registered with, the relevant authorities.

Stricter ongoing obligations apply to listed companies.

Tax highlights

Tax is levied on all income, including income from overseas transactions of a Vietnamese resident company. Corporate Income Tax ("**CIT**") is levied on any enterprise carrying on a trade in Vietnam. The standard rate is 20% and higher rates (between 32% and 50%) apply to enterprises operating in petroleum, gas and other natural resources sectors.

Transfers of securities by a foreign entity are subject to CIT at 0.1% of the total sales proceeds and gains derived by a resident entity from the transfer of securities are taxed at 20%. Please note that the Vietnamese tax authorities are seeking to tax gains made on offshore M&A transactions where the entity being transferred operates businesses in Vietnam through onshore subsidiaries, although the legal basis for this is unclear.

Value added tax ("**VAT**") is levied on goods and services used for manufacturing, business and consumption in Vietnam. The standard VAT rate in Vietnam is 10%.

Specialist tax advice should be sought before conducting transactions in Vietnam.

Employment highlights

Foreign entities are freely permitted to employ Vietnamese workers. Generally, an employer is permitted to employ foreign employees for positions as managers, executives, experts and technicians, where Vietnamese workers cannot satisfy relevant requirements. Each foreign employee must have a work permit to work in Vietnam, except in limited circumstances, approval of which will be granted upon satisfaction that there is a need for such foreign employee.

Both employee and employer are required to contribute to compulsory insurances, including social insurance, health insurance and unemployment insurance.

Vietnam has a stringent employment law regime to protect employees and their rights and it is important that companies strictly follow the mandated procedures in dealing with employees.

Issues that surprise foreign investors

> The law of Vietnam is constantly developing and at times can be very vague. Therefore, implementation of the law may be different in practice compared to what is stipulated in legal instruments and inconsistencies of interpretation of the law between the various local authorities are very common.

> Under Vietnam's Constitution, all land is collectively the property of the people as a whole. As such, no one is permitted to "own" land in the sense of holding indefeasible title. The right to use land includes leasing from the state or by transfer from an existing land user.

> Vietnam has a very strict foreign exchange control regime. No transactions, payments, advertisements and quotations, by residents and non-residents, can be denominated or conducted in a foreign currency. Foreign investors are permitted to transfer revenue and disbursements via direct investment capital accounts and indirect investment capital accounts, which will depend on the nature of the investment.

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