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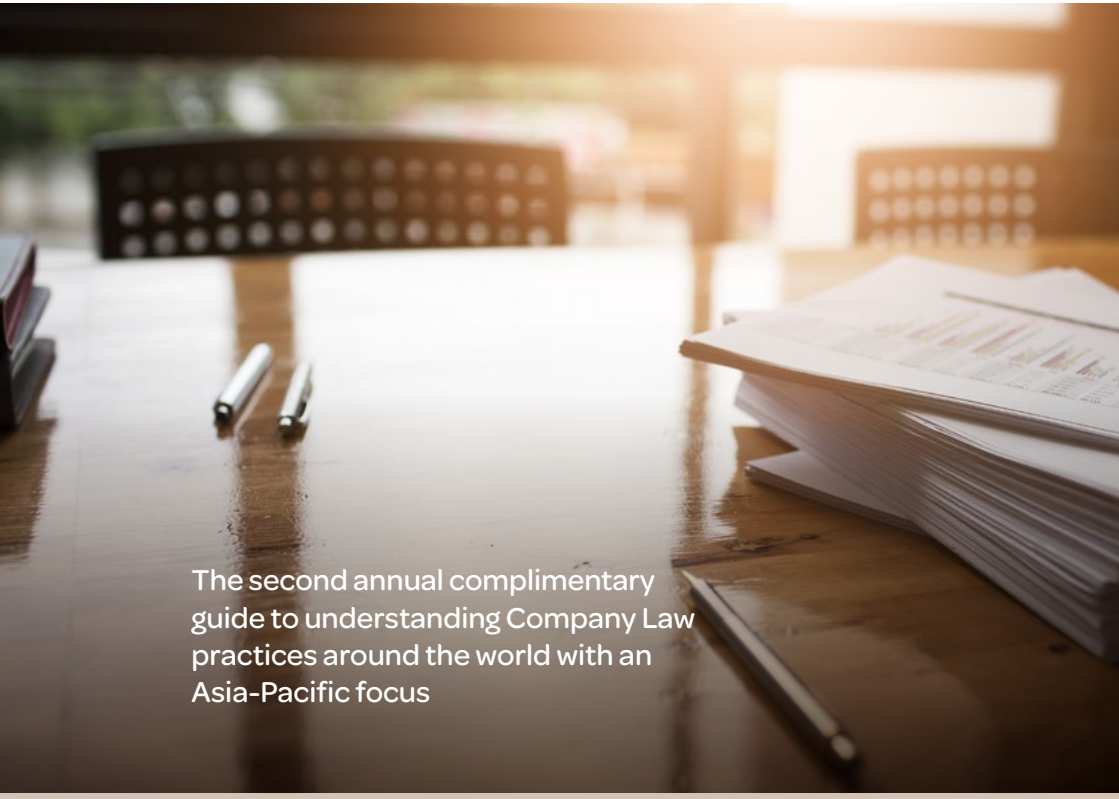

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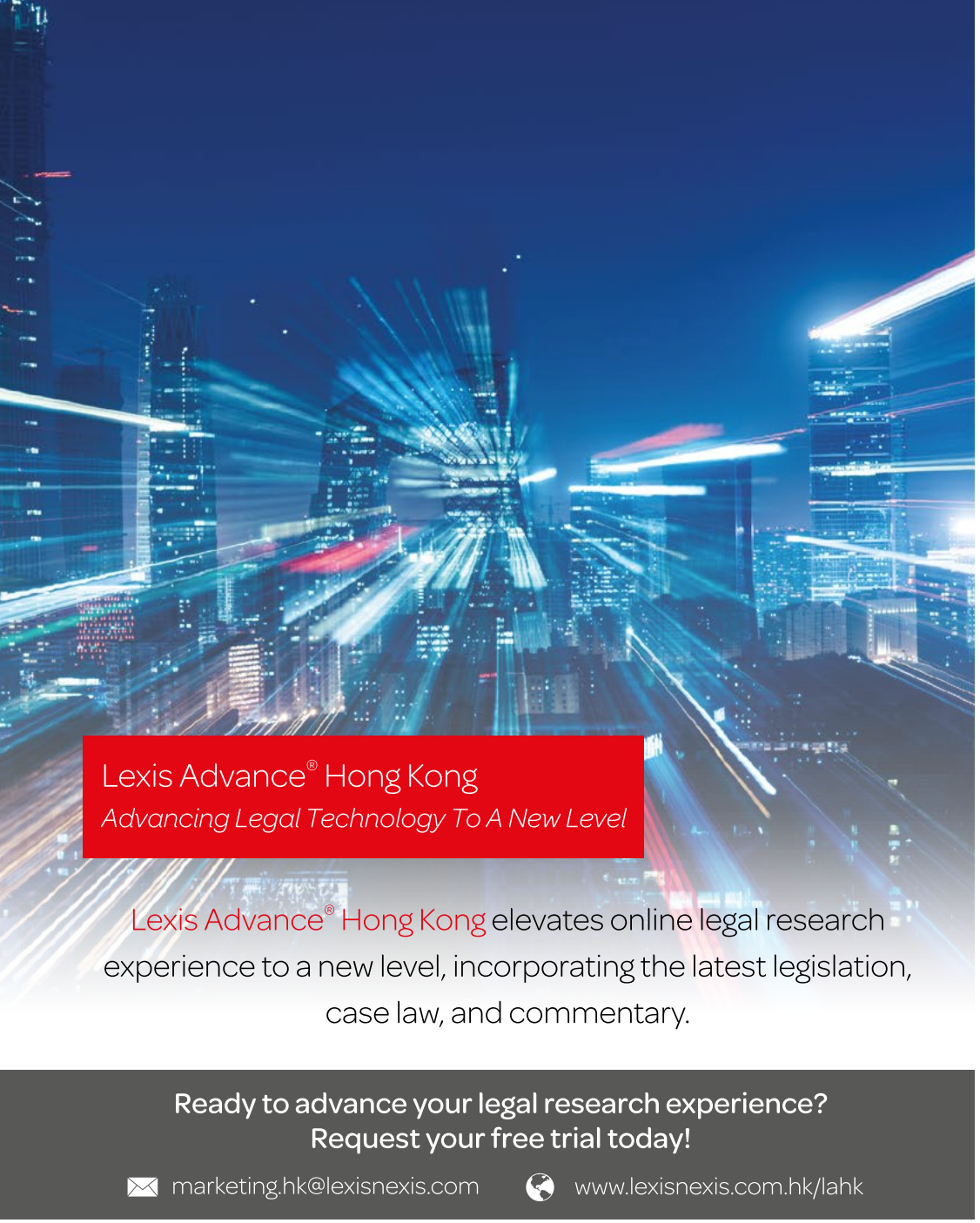
LexisNexis® Company Law Guide 2018–2019



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Jurisdictional Q&As

Jurisdictional Q&As

Jurisdiction: Bangladesh
Firm: The Legal Circle
Authors: Masud Khan, N.M. Eftakharul Alam Bhuiya, Ahnaf Chowdhury, Jarif Ahmed and Nauriin Ahmed

1. What is the general situation for foreign companies in your jurisdiction?

In evaluating the general situation for foreign companies and investors in Bangladesh, it is appropriate to review:

a. the key laws and regulations and the government agencies and regulators that play a key role in the regulatory framework that governs foreign companies and investors; and

b. the various legal forms or options available to foreign companies and investors under such regulatory framework, and the relative advantages and disadvantages of each of such legal forms or options.

The key laws and regulations that govern foreign companies and investors are:

a. the Foreign Exchange Regulations Act 1947, as amended by the Foreign Exchange Regulation (Amendment) Act 2015 ('FERA'), and the regulations promulgated thereunder by the Bangladesh Bank ('BB'), the central bank of Bangladesh, which regulations are compiled by the BB in the Guidelines for Foreign Exchange Transactions Volume 1 & Volume 2 (2009), and updated by BB's circulars issued from time to time (collectively, the 'FX Guidelines'); and

b. the Companies Act 1994 of Bangladesh (Act No. XVIII of 1994) ('CA 1994').

The key Bangladeshi government agencies or regulatory bodies that impact or regulate foreign companies and investors are:

a. the Bangladesh Investment Development Authority ('BIDA'), formerly known as the Board of Investment, which facilitates foreign investment by advising foreign investors and assisting them with utilities, land acquisition, etc.;

b. BB, Bangladesh's central bank, which regulates the outward repatriation of capital and capital gains; and

c. the Registrar of Joint Stock Companies and Firms ('RJSC'), which registers both foreign companies establishing a place of business in Bangladesh and foreign-owned locally incorporated companies.

The general situation of foreign companies and investors in Bangladesh concerning the challenges faced by them and/or the advantages provided to them in Bangladesh is determined by the legal form in which a foreign company or investor chooses to establish a place of business in Bangladesh:

a. foreign companies incorporated outside of Bangladesh registering (a) with BIDA as a Liaison Office or Branch Office, with a notification to BB within 30 days of the BIDA notification, plus (ii) with RJSC as a foreign company under the CA 1994 ss 378 and 379: in addition to not having a separate legal personality, such foreign companies face a number of challenges:

   i. such registration is for a specific period and must be renewed upon expiry; and

   ii. their activities are strictly restricted. Specifically, if a foreign company registers itself with BIDA as a Liaison Office, it may engage only in marketing and other non-revenue generating activities, which are to be funded only

by inward remittances sent in by the foreign office (i.e. a Liaison Office is a cost centre prohibited from engaging in any commercial or other revenue generating activities). If registered as a Branch Office, a foreign company may engage solely in the activities necessary to execute its work under a project agreement or other contract as specified in the application with BIDA. If so specified in its application to BIDA, a foreign company may fund its Branch Office from local revenues earned from its specified contract and, with prior approval of BIDA and BB, repatriate Branch Office profits to the foreign office.

b. foreign companies or investors registering with the RJSC a locally incorporated foreign wholly-owned or partially owned/joint venture company limited by shares (a 'foreign-owned company') under the CA 1994 ss 5 and 6. If such foreign owned company is set up as an industrial venture, it may register with BIDA to take advantage of BIDA's foreign investment advisory and facilitation services.

Regarding inward remittances of foreign exchange by foreign investors, under the FERA s 13(1)(s) and Chapter 9, paragraph 1 of the FX Guidelines, foreign investors are free to invest in a foreign-owned company in Bangladesh, provided that such investments are brought in and recorded in an Authorised Dealer ('AD') bank. No permission of BB is needed to set up such companies if the foreign investors use their own funds. If funding of such foreign-owned companies is by foreign loans, as per Chapter 15 of the FX Guidelines, such foreign loans must be:

a. registered with, and the interest payments thereunder approved by BIDA; and

b. funded from institutional lenders, except for loans with a term of 12 months or less, which may be provided by the foreign investor/shareholder. Except where a foreign-owned company needs to register with BIDA for work permits for foreign employees (in which event, the minimum foreign investment into the share capital of such company is required to be at least US$ 50,000), foreign investment into such companies is not subject to a minimum amount.

Regarding outward remittances of foreign investment by foreign-owned companies to their foreign shareholders, under the FERA s 5(1) and Chapter 10(31)(a) of the FX Guidelines, foreign-owned companies may remit via their AD bank dividends to their foreign shareholders by applying to their AD bank in the prescribed form. Such outward remittance payments of dividends may be made freely without any prior approval of BB.

Regarding an exit by a foreign investor by disposal of shares in a foreign-owned company, under the FERA s 13(1)(d) and Chapter 9, paragraph 3(B) of FX Guidelines (as amended by BB Circular 32 of 31 August 2014):

a. if the shares are in a public limited company listed on either the Dhaka Stock Exchange ('DSE') or the Chittagong Stock Exchange ('CSE'), the capital and capital gains from the disposal of shares may be remitted outward to the foreign investor freely and without any prior approval of BB, subject to the remitted amount not exceeding the market price of such shares;

b. if the shares are unlisted shares of a public limited company or are in a private limited company, and are sold to a resident of Bangladesh, then prior approval of BB is required for the outward remittance of the capital and capital gains, subject to such remittance amount being equal to or less than the 'fair market value' of the shares as certified by a licensed merchant bank or chartered accountant (whose certificate is to be submitted with the application made to BB for such prior approval). If the shares in such foreign-owned company are sold to a non-resident, then under a general exemption specified in Chapter 14 of the FX Guidelines, such sale may be consummated without BB's prior approval.

Regarding the registration requirements under the CA 1994, a foreign-owned company is registered with the RJSC in substantially the same manner as a wholly Bangladeshi-owned company. The incorporation procedure commences by obtaining 'Name Clearance' from the RJSC for the name of the proposed company. The procedure is complete upon the issuance of a Certificate of Incorporation by the RJSC. The incorporation procedure for foreign-owned companies does not involve anything significantly different from that of locally owned companies, except for the requirement under Chapter 9, paragraph 2(b) of the FX Guidelines that foreign exchange brought into an AD bank must be first encashed in a proposed company account prior to the issuance of shares. Accordingly, unlike a wholly Bangladeshi owned company, a foreign-owned company must open a proposed company bank account in Bangladesh under the proposed company's name by submitting the Name Clearance Certificate obtained from the RJSC to the bank. Prior to filing incorporation documents with the RJSC, the foreign investor/shareholder must:

a. remit the applicable share capital amount in foreign exchange into such account; and

b. thereafter obtain from the AD bank an encashment certificate evidencing the conversion of such share capital funds in foreign exchange into Bangladesh Taka. At incorporation, the encashment certificate must be filed with the RJSC along with the new company's memorandum and articles of association and other prescribed RJSC forms.

2. What are the key laws and regulations that govern company law in your jurisdiction?

The primary statute that governs companies in Bangladesh is the CA 1994. It consists of 404 sections divided into 11 parts which cover, among others, a company's constitution and incorporation, share capital, registration, liability of directors, management and administration (including all procedures for administering matters of the board of directors and shareholders), and winding-up.

The CA 1994 also contains 12 schedules of regulations and forms which include, among others, templates of memorandum and articles of association, requirements of annual financial statements etc. The CA 1994 Schedule I sets out regulations that apply to the management of a company limited by shares which can be adopted by a company in its articles of association, including some mandatory regulations which cannot be excluded by the articles of association.

The Companies Rules 2009 (No. 7309G) ('CR 2009') is also an integral piece of legislation that governs company law in Bangladesh. The CR 2009 contains Forms relevant to different aspects and stages in the running of a company and in company law proceedings, which include, among others, petition for reduction of capital, notice to creditors, affidavit by sureties, notice of dividend, and notice of appointment of liquidator.

The Securities and Exchange Ordinance, 1969, the Securities and Exchange Rules 1987 and the Securities and Exchange Commission Act 1993 ('SECA 1993') are of particular importance to issuers of securities that are listed on either of the two stock exchanges of Bangladesh: the DSE and the CSE. These laws regulate the activities of issuers and set out the penalties for violations.

The Bangladesh Securities and Exchange Commission ('BSEC'), which regulates capital markets in Bangladesh, also issues various rules,

orders, notifications and directives from time to time which have the effect of law and regulate the activities of companies.

Other laws and regulations that impact company law, specifically in regards to the personal liability of a company's directors, are the Bankruptcy Act of 1997, the Money Laundering Prevention Act 2009 and Negotiable Instruments Act 1881.

3. What are the most common types of companies in your jurisdiction?

Private companies limited by shares ('private limited companies') and public companies limited by shares ('public limited companies') are the most common types of companies formed in Bangladesh. The CA 1994 s 2(q) defines a private company as one which by its articles restricts the right to transfer its shares, if any, prohibits any invitation to the public to subscribe for its shares or debenture, if any, and limits the number of its members to 50 not including persons who are in its employment. The CA 1994 s 2(r) defines a public company as a company which is not a private company. In addition, an association not for profit under the CA 1994 s 28 and a company limited by guarantee under the CA 1994 s 29 may be formed to engage in not-for-profit activities.

4. How long does it take to set up a company in your jurisdiction?

Provided that the memorandum and articles of association have been drafted beforehand and are ready for filing with the RJSC and an encashment certificate has been received from the AD bank in the name of the proposed company (where it is a fully or partly foreign-owned company), usually it takes approximately 10–15 working days to incorporate a company in Bangladesh, starting from the Name Clearance application to the issuance of a Certificate of Incorporation.

There is no official method to fast-track the incorporation of a company. However, for foreign-owned companies registering with BIDA as industrial ventures, Bangladesh is in the process of passing legislation to set up a one-stop service centre at BIDA, under which BIDA would assist with the incorporation of foreign-owned companies by ensuring the completion of registration with RJSC within 48 hours of filing.

5. What are the main registration requirements for companies in your jurisdiction? What are the fees?

The registration of companies commences with the application for Name Clearance to the RJSC and obtaining a Name Clearance Certificate from the RJSC. After obtaining a Name Clearance Certificate, a company with a proposed foreign shareholder must open a bank account in the name of the proposed entity and remit the initial share capital (paid-up capital) to the said account and obtain an encashment certificate issued by the bank.

The following documents have to be submitted to the RJSC to process the incorporation of the entity:

a. memorandum and articles of association
b. encashment certificate (for foreign-owned companies);
c. Name Clearance Certificate;
d. Tax Identification Number (TIN) Certificate;
e. Treasury Challan;
f. Form I (Declaration on registration of company);
g. Form VI (Notice of situation of registered office and of any change therein);
h. Form IX (Consent of directors to act);
i. Form X (List of persons consenting to be directors); and
j. Form XII (Particulars of Directors, Managers, Managing Agents and of any change).

Additional identification documents for the foreign shareholder and/or the nominee director (where the foreign shareholder is a corporate shareholder) are also required by the RJSC to complete the incorporation.

The fees for the incorporation of a company are calculated (in part) on the basis of its authorised share capital. For example, a company with an authorised share capital of Taka 50 million would incur the following charges:

a. registration fee: Taka 76,250;
b. registration filing fee: Taka 2,400;
c. stamp fee for the memorandum and articles of association: Taka 9,150;
d. fee for certified copies of the memorandum of association, Form XII and Digital Certificate of Incorporation: Taka 2,220.

The registration costs are subject to change, and it is very likely that additional administrative costs may have to be incurred to complete the incorporation process.

Other important registrations for a company include:

a. value added tax ('VAT') registration under the VAT Act 1991;
b. depending on the location of the office or place of business, a trade licence from the local government authority (union parishad/pourashava/city corporation office) for the company's specific type of trade or business;
c. depending on the nature and size of the business and its premises, building fire licences, specific clearances from relevant ministries of the government and/or licences which involve the handling of particular substances and commodities etc.

The fees for these registrations vary depending on the location of the office or place of business as well as the company's share capital.

6. What are the main post-registration reporting requirements for companies in your jurisdiction?

The main post-registration reporting requirements for companies in Bangladesh are listed below. The documents are filed with the RJSC in its prescribed forms and/or in the forms set out in the CA 1994 or CR 2009, as applicable:

a. Form VII (Statutory Report): within a period of not less than one month and not more than six months from the date at which the company is entitled to commence business, every company limited by shares and every company limited by guarantee and having a share capital must hold a general meeting of the members of the company, which is defined as a statutory meeting under the CA 1994. The board of directors is required to prepare a report which is referred to as a statutory report and must forward the report to every member of the company at least 21 days before the day on which the statutory meeting is to be held;
b. Form VIII (Special Resolution/Extraordinary Resolution): a copy of every special and extraordinary resolution must be printed or typewritten and duly certified under the signature of an officer of the company and filed with the RJSC within 15 days from its passing;
c. Schedule X (Annual Summary of Share Capital and List of Shareholders, Annual Summary of Directors): under the CA 1994 s 36(1), a company must file with the RJSC an annual summary of share capital and list of shareholders within 18 months of its incorporation and annually thereafter. A private company must submit with the annual return a certificate signed by a director or other officer of the company that the company has not issued any invitation to the public to subscribe for any shares or debentures of the company;

d. Form XLI (Notice of Alteration in the Address of the Registered Principal Office of the Company): notice of any change in the registered address of a company must be given within 21 (twenty-one) days after the change to the RJSC;

e. Balance sheet and profit and loss account: under the CA 1994 s 190, a company must file with the RJSC copies of its balance sheet and profit and loss account within 30 days from the date on which the balance sheet and the profit and loss account are laid before its annual general meeting.

The above is not an exhaustive list. Other reporting requirements are triggered in different situations such as a transfer of shares, return of allotment, changes to the board of directors. Also, public listed companies have certain additional reporting obligations due to their corporate governance obligations imposed by the BSEC.

As per the CA 1994, it is not mandatory for a company in Bangladesh to have a company secretary.

7. Are there any controlling factors or restrictions on foreign companies in your jurisdiction?

See question 1 in relation to foreign exchange regulations applicable to foreign-owned companies.

Furthermore, the Industrial Policy 2016 lists a total of 17 of industries designated as 'controlled industries':

a. fishing in the deep sea;

b. banks/financial institutions in the private sector;

c. insurance companies in the private sector;

d. generation, supply and distribution of power in the private sector;

e. exploration, extraction and supply of natural gas/oil;

f. exploration, extraction and supply of coal;

g. exploration, extraction and supply of other mineral resources;

h. large-scale infrastructure projects (e.g. flyovers, elevated expressways, monorails, economic zones, inland container depots/container freight stations);

i. crude oil refineries (recycling/refining of lube oil used as fuel);

j. medium and large industries using natural gas/condescend and other minerals as raw materials;

k. telecommunications services (mobile/cellular phone services and landlines);

l. satellite channels;

m. cargo/passenger aviation;

n. sea-bound ship transport;

o. ea-ports/deep sea-ports;

p. VoIP/IP telephone; and

q. industries using heavy minerals accumulated from the beach.

In these sectors, the government reserves the right to fix the equity ratio for foreign investors/shareholders to local investors/shareholders. The Government has the right to expand or amend the list as it sees fit. Enterprises in these controlled sectors cannot be registered with the BIDA without prior approval from the relevant ministries of the government.

In addition to the broader restriction stated by above, in some cases, sector-specific legislation also imposes a maximum ceiling for a foreign stake in the licensee entities for some of these controlled industries. Examples include certain services in the telecommunications sector such as licences granted for International Gateway (IGW), Interconnection Exchange (ICX) and VoIP Service Provider (VSP).

The government of Bangladesh in the Industrial Policy, 2016 has also listed certain sectors as 'reserved sectors' where foreign investment is restricted for the purpose of national security or other reasons:

a. arms and ammunition and other military equipment and machinery;

b. nuclear power;

c. security printing and minting; and

d. forestation and mechanised extraction within the boundary of a reserved forest.

8. What is the typical structure of directors (or family management structure) and liability issues or companies in your jurisdiction?

Directors, other than directors nominated by corporate shareholders, must own qualifying shares, the number of which can be specified in the articles of association. Directors nominated by corporate shareholders are not required to own qualifying shares. Directors must execute a Form IX: Consent of Director (in a prescribed format, as set forth in the Schedules to CA 1994). This executed Form IX must be filed with the RJSC for the directorship to become effective. Furthermore, a Form XII: Particulars of Directors, Managers and Managing Agents (in a prescribed format, as set forth in the Schedules to CA 1994) must be executed by the Managing Director and filed with the RJSC. For subsequent appointment of directors (post-incorporation), directors must be appointed at a general meeting of the shareholders, provided, however, that casual vacancies on the board can be filled pursuant to a meeting of the existing board of directors. The CA 1994 allows non-resident and/or foreign individuals to be appointed as directors of private limited companies.

Under the CA 1994, companies may be formed with the liability of shareholders limited by shares or limited by guarantee (a limited company), or with the liability of shareholders unlimited (an unlimited company). The CA 1994 s 5(a) defines a company limited by shares as 'a company limited by shares, that is to say, a company having the liability of its member limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them'. The limited liability of a company limited by shares is further emphasised in the CA 1994 s 235(iv), dealing with the liability of contributories of past and present members on the winding-up of a company: 'in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect to which he is liable as a present or past member'.

9. What is the minimum number of directors and shareholders required to set up a company in your jurisdiction? Are there any requirements that a director must be a natural person?

As per the CA 1994 ss 2(q) and 90(1), private limited companies in Bangladesh are required to have a minimum of two directors and two shareholders and a maximum of 50 shareholders. Under the CA 1994 s 90(1), public limited companies and private limited companies which are subsidiaries of public limited companies are required to have at least three directors and a minimum of seven shareholders.

Section 90(3) of the CA 1994 expressly states that a director must be a natural person.

10. What are the requirements on how shares are offered in your jurisdiction?

Private Limited Companies

Shares may be offered at three different stages:

a. at the time of incorporation: shares may be offered to members at incorporation pursuant to the memorandum and articles of association. The shares of a private limited company cannot be offered to members of the public;

b. transfer of existing shares: shares may be offered to new shareholders by transferring one or more of the shares held by the existing shareholders in the manner provided in the company's articles of association. Under the CA 1994 per Reg 18, Sch 1, an instrument of

transfer of shares (namely, Form 117) must be executed by both the transferor and the transferee. The transferor remains the holder of the share until the name of the transferee is entered in the register of members. Furthermore, an affidavit must also be executed by the transferor confirming the said transfer and duly notarised before a recognised Notary Public of Bangladesh;

c. return of allotment: under the CA 1994 s 151, where a company having a share capital makes any allotment of its shares, it is required to file a duly completed Form XV with the RJSC.

Public Limited Companies

Shares may be offered to members of the public pursuant to:

a. a prospectus registered with the RJSC under the CA 1994 s 38; or

b. a statement in lieu of a prospectus registered with the RJSC under the CA 1994 s 141.

If the public limited company is not already listed on a stock exchange in Bangladesh, an application must be made to the BSEC to make an initial public offering (IPO) of the company's shares. The company would have to comply with the BSEC regulations on making an IPO and the applicable listing regulations of the respective stock exchange.

11. What are the key laws and regulations on employment in your jurisdiction that companies should be aware of? Are there any aspects of employment law that are heavily regulated?

The primary statute that governs employment and labour matters in Bangladesh is the Labour Act 2006 ('LA 2006'). The Labour Rules, 2015 ('LR 2015') was enacted pursuant to the LA 2006 s 351. It sets out in more detail the matters covered in the LA 2006 and provides greater clarity and specificity on certain aspects of the LA 2006. The LA 2006 and LR 2015 must be read together for an accurate and comprehensive understanding of the labour law regime.

An important point to note regarding the application of the LA 2006 and LR 2015 is that the provisions of both LA 2006 and LR 2015 are applicable to employees who fall within the definition of a 'worker' as defined in the LA 2006. The LA 2006 s 2(65), as amended in 2013, defines 'worker' as including all employees except for those engaged in a managerial, administrative [or supervisory] capacity'. The Bangladesh High Court has defined 'worker' broadly by holding that a manager etc. may be deemed a non-worker only if he or she has the power to make hiring and/or firing decisions over employees under his or her management.

Any employee who falls outside the ambit of the term 'worker' is a 'non-worker'. The terms of employment of a non-worker are governed solely by the contract of employment between the non-worker and the employer.

In addition, the Contract Act of 1872 s 27 may be referred to in that it renders void restrictive covenants that seek to restrain employees from seeking employment with a competing employer after their employment has ended with the current employer.

Furthermore, companies operating in an export processing zone are subject to the Bangladesh Export Processing Zones Authority Act 1980 and the rules and regulations of the Bangladesh Export Processing Zones Authority.

12. What is the nature of the corporate governance regime in effect in your jurisdiction? What agencies or government bodies regulate corporate governance?

The SEC by notification dated 7 August 2012 issued certain corporate governance conditions and guidelines on public listed companies ("Guideline"). The Guideline imposes conditions regarding board size, appointment of Independent Directors, Director's reporting obligation to the shareholders, audit committee, reporting obligations of the audit committee, external/statutory auditors, duties of chief financial officer and chief executive officer and reporting and compliance obligation of the Guidelines.

In addition to the above the corporate legal framework in Bangladesh consists of various statutes, namely, CA 1994, Securities and Exchange Commission Ordinance, 1969, SECA 1993, Bangladesh Bank Order, 1972, Bank Companies Act 1991, Financial Institutions Act 1993, Bankruptcy Act 1997, and the Foreign Exchange Regulation Act 1947, which impose certain corporate governance obligations as well. Corporate governance in Bangladesh is mainly regulated by RJSC, BSEC and BB.

13. Does establishing a company in your jurisdiction grant any kind of residency rights? Are there any conditions that in order to receive these residency rights (if applicable) one must partner or establish a joint venture with a local (e.g. a citizen of your jurisdiction)?

In establishing a foreign-owned company in Bangladesh, a foreign investor is not automatically granted residency rights. However, a prospective foreign investor may obtain a multiple-entry three-year investor visa by applying for such investor visa with BIDA. Such investor visa allows for entry into and short-term stay in Bangladesh for the visa holder, but does not allow for such investor visa holder to work and earn a salary in Bangladesh. If a foreign investor wishes to reside in Bangladesh as an employee of the investee foreign-owned company, then subject to a minimum amount of foreign capital and number of local employees, she/he may be eligible for and be granted a work permit to work/reside in and earn a salary in Bangladesh.

A foreign national may become citizen of Bangladesh by investing a minimum of US$ 500,000 in Bangladesh or by transferring US$ 1,000,000 to any recognized financial institution (non-repatriable). Also, a foreign national can become a permanent resident by investing a minimum of US$ 75,000 (non-repatriable).

14. When is a company subject to tax in your jurisdiction? What are the main taxes that may apply to companies in your jurisdiction?

In Bangladesh, as per the ITO 1984 s 75, it is mandatory for all companies incorporated in Bangladesh to obtain an e-TIN (Electronic Tax Identification Number) from the National Board of Revenue ('NBR') and to file a tax return on the later date of six months from the end of the accounting year or 15 July of the particular year. Such filing may be accompanied by an audited financial statement, computation of total income with a supporting schedule and other supporting documents. The filing date can be extended upon application for up to two months at first occasion and can be further extended for another two months.

The main taxes that may apply to companies in Bangladesh are corporate taxes and VAT. At present, the rate of corporate tax of a non-listed company is 35% of a company's total income in a year. The rate of VAT usually depends on the respective HS Code (an internationally standardised system of names and numbers to classify traded products) of the products and/or services provided by the company. However, the most common rate of VAT in Bangladesh is 15%.

15. How does the competition law in your jurisdiction regulate companies?

The Competition Act 2012 ('Comp Act') was promulgated to monitor the market and protect the end consumers of products and services. It mandates the creation of the Bangladesh Competition Commission ('BCC') which is vested with the power of overseeing the market and taking necessary measures against unscrupulous business practices and organisations.

The Comp Act s 16 restricts organisations and groups from abusing their dominant position. 'Dominant position' is defined as a position of strength which is enjoyed by an organisation in the relevant market by creating a monopoly situation. However, the Comp Act did not specify the precise limit beyond which an act would be treated as anti-competitive. Also, the Comp Act remains silent on the issues which the BCC must take into account in order to determine a relevant market.

It is to be noted that although the BCC was established under the Comp Act it has not become effective yet, for many practical reasons, in respect of overseeing market practices and implementing the provisions of the Comp Act.

16. What are the main intellectual property rights companies should be aware of in your jurisdiction?

The main intellectual property rights companies should be aware of in Bangladesh are trademarks, patents and copyrights. Intellectual property such as industrial design does not play a significant part, and very few cases have reached the Supreme Court of Bangladesh or have been reported.

In Bangladesh, an applicant can apply for trademark or patent registration at the Department of Patent, Design and Trademark under the Ministry of Industries.

An application for copyright registration is to be submitted at the Copyright Office under the Ministry of Cultural Affairs.

It takes around two years to register a trademark or a patent and around 4–6 months to register a copyright, provided that there is no objection from the registrar or any opposing party.

Bangladesh is a member of the international treaty, Paris Convention for the Protection of Industrial Property, along with 176 other countries. Bangladesh is also a member of the international treaty, Berne Convention, along with 172 other countries. As per the Berne Convention, if a copyright work is registered in one member country, it will have protection in all member countries of the Berne Convention.

17. Does your jurisdiction have laws or regulations that govern data privacy?

Bangladesh does not have any specific law that governs personal information or data privacy. However, the following statues may be noted in relation to their regulation of data privacy:

a. the Information and Communication Technology Act 2006 provides relief against computer hacking and unauthorised access of data;

b. the Right to Information Act 2006 prohibits disclosure of any information which would harm an individual's privacy or personal life;

c. the LA 2006 imposes criminal sanctions on employees by way of penalty for wrongful disclosure of an employer's confidential information or trade secrets;

d. the Constitution of Bangladesh provides protection of privacy in general terms: the right to the privacy of one's correspondence and other means of communication is declared as a fundamental right of a citizen of Bangladesh.

Additionally, BB issued a guideline in 2015 to ensure information, communication and technology security in the financial sector.

18. Are there any incentives to attract foreign companies to your jurisdiction?

See question 1 in regards to the repatriation of dividends and capital/capital gains to foreign shareholders of a foreign-owned company.

There are also tax incentives for foreign companies, as provided for in the ITO 1984 ss 44–47. For instance, under the ITO 1984 ss 46A, 46B and 46C, there are tax exemptions for the business of industrial undertaking and of physical infrastructure facilities for a number of years as stated in the respective provisions. Moreover, under the ITO 1984 paragraph 33 of Part A of the Sixth Sch, as amended by Bangladesh Income Tax Paripatra (Circular) 2015 and Finance Act 2016, there is a tax exemption on any income derived from the business of software development information technology, information technology enabled services and nationwide telecommunication transmission network up to 30 June 2024.

Moreover, double taxation can be avoided in most cases as Bangladesh benefits from many bilateral investment agreements with other countries.

19. What is the law on corporate insolvency in your jurisdiction?

The primary statues on corporate insolvency in Bangladesh are the Bankruptcy Act 1997 and the CA 1994 ss 234–344.

20. Have there been any recent proposals for reforms or regulatory changes that will impact company law in your jurisdiction?

The CA 1994 has been considered for amendment for a number of years. In this regard, the Ministry of Commerce has published the draft Companies Act 2013 for comments, but it has not yet been implemented and there is no confirmation as to when this bill will be passed as an Act. We will have to wait and see what changes this Act will bring and the impact it will have in Bangladesh.

21. Are there any features regarding company law in your jurisdiction or in Asia that you wish to highlight?

In Bangladesh, a minimum of two shareholders are required to incorporate a company, whereas in many countries, a single shareholder can incorporate a company and is free to hold 100% of the shares of the company. Furthermore, Bangladesh law does not provide for any pass-through companies such as LLCs as is available in certain jurisdictions. Finally, the following provisions of the CA 1994 may be noted:

a. section 106 provides that a shareholder-director may be removed only at a duly called extraordinary general meeting, having a valid quorum and upon the affirmative vote of three-quarters of the shareholders present at such meeting. This provision does not apply to nominee directors appointed by corporate shareholders, who as per a provision that should be inserted in the articles of association may be appointed and removed at the sole discretion of the appointing shareholder; and

b. section 85(1) contains provisions as to meetings and votes which are to have effect notwithstanding any provision in the articles of association, and section 85(2) contains provisions which are to have effect in so far as the articles of association do not make provision in that behalf.

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CAMPOS MELLO ADVOGADOS
IN COOPERATION WITH DLA PIPER

1. What is the general situation for foreign companies in your jurisdiction? (For example, common presence, difficulty to setup, restrictive system, open and welcoming jurisdiction?)

As one of the largest economies in the world, Brazil is a well-known destination for foreign investors. The overall stability of the market, combined with a growing domestic demand for infrastructure, goods and services, provide foreign companies interested in doing business in Brazil with strong and diverse investment opportunities.

Commonly referred to as an open jurisdiction, Brazil welcomes foreign investment. As such, there are no general restrictions on foreign ownership, except in certain specific sectors (for further details regarding such restrictions, please refer to section 7 below).

As in many other jurisdictions, foreign companies wishing to invest in Brazil may choose from a range of entry options the one that is most suitable to the intended business model (which should be assessed on a case-by-case basis). Although indirect entry options are available (e.g. execution of agreements with sales agents and distributors), foreign investors usually prefer to establish a direct and permanent presence by means of a subsidiary.

2. What are the key laws and regulations that govern company law in your jurisdiction?

The Brazilian system is based on the civil law tradition and, as such, relies on codified sets of laws to regulate several legal fields. With respect to company law, the relevant provisions are found essentially in the following statutes and regulations:

2.1 Brazilian Civil Code

Implemented by Federal Law No. 10,406 of January 10, 2002, as amended ("Brazilian Civil Code"), the Brazilian Civil Code sets out specific guidelines regarding various types of business organizations, including private limited liability companies and non-profit legal entities (associations, foundations and cooperatives).

2.2 Corporations Law

Federal Law No. 6,404 of December 15, 1976, as amended ("Corporations Law"), applies specifically to legal entities incorporated in the form of stock corporations and regulates the formation, organization and dissolution processes related to such entities. The Corporations Law may also be applied in a subsidiary manner to limited liability companies, if the shareholders so decide in the relevant articles of association.

2.3 Specific Regulations

1. Rules Enacted by Brazilian Securities and Exchange Commission ("CVM")

Publicly-held corporations are also subject to specific regulations issued by the CVM.

2. Rules Enacted by the Brazilian Stock Exchange (BM&F Bovespa)

The BM&F Bovespa has created differentiated listing segments, with rules setting out corporate governance practices and transparency requirements in addition to those already

established under Brazilian corporate legislation. The adherence to the listing segments better advertises the company's efforts to improve its relationship with its investors and increases the potential for asset value appreciation. This adherence is voluntary and must be approved by the BM&F Bovespa.

3. What are the most common types of companies in your jurisdiction?

Brazilian law provides for several corporate forms, of which the most important and widely used are:

a. limited liability companies ("Limitada" or "Ltda."); and

b. stock corporations ("Sociedade Anonima" or "S.A.").

Corporations and limited liability companies afford equal protection to their equity holders by limiting their liability to the capital stock they subscribed. Therefore, corporations and limited liability companies always entail limited liability as a general rule.

3.1 Limitada

Limited liability companies are governed by the Brazilian Civil Code. In case of omissions and depending on the language of the company's articles of association, the rules under the Brazilian Civil Code relating to limited liability companies may be supplemented by the rules in the Brazilian Civil Code relating to the sociedade simples (a corporate type also established by the Brazilian Civil Code) or by the Corporations Law.

The limited liability company structure is usually recommended for companies that envisage a simple governance structure. The legislation grants these types of companies more freedom to organize their internal structure and decision-making process, as well as a lower grade of transparency and disclosure obligations. That is why these corporate entities are mostly used in wholly owned companies.

3.2 Sociedade Anonima

Corporations are governed by the Corporations Law, which provides a more sophisticated legal regime for corporate activities, management and shareholders' relations, corporate governance structures, decision-making processes, transparency and disclosure obligations, and conflict resolution procedures. This corporate entity is more appropriate for a co-owned equity structure, such as joint ventures, as well as for the participation of various kinds of stakeholders, such as financing entities or holders of debt instruments.

A corporation can be held either publicly or privately. As a general rule, a publicly held corporation has its securities traded on the stock exchange and/or on the over-the-counter market. A publicly-held corporation, as well as each public placement of securities made by it, must be registered with the CVM.

3.3 Other corporate forms

In addition to corporations and limited liability companies, another type of limited liability company named "EIRELI" was recently regulated by the Brazilian Civil Code and is worth mentioning. Please refer to item 3.3.1 below.

Other company forms have not been accepted in practice, especially because most of them provide for unlimited shareholder liability.

3.3.1 EIRELI

The EIRELI is a type of limited liability company which is incorporated by only one individual or legal entity (a national or foreigner), in the capacity of sole-owner of the totality of the company's corporate capital. In general, the same rules governing the Limitada also apply to the EIRELI, with the following exceptions:

a. the corporate capital of the EIRELI shall be equivalent to at least one hundred minimum wages; and

b. each individual or legal entity can incorporate only one EIRELI.

Considering that the EIRELI was only recently introduced in the Brazilian legal framework, its structure is not consolidated in practice and is still being verified and tested by registry authorities and courts. For this reason, we will focus on the following sections on the analysis of Limitada and S.A.

4. How long does it take to set up a company in your jurisdiction? (For example, it could be as fast as X amount of time, average setup time and then as slow as Y amount of time based on your experience – are there any mechanisms to fast track setup?)

The process for setting up a company in Brazil involves the following main steps:

a. For both Limitada and S.A.: granting of powers-of-attorney for representation of the foreign shareholder(s) in Brazil (under Brazilian law all foreign investors (entities or individuals) must indicate an individual resident in Brazil as their representative for both corporate and tax purposes); provide a copy of shareholder(s)' articles of incorporation or equivalent instrument (statement/affidavit), as well as a copy of the passport of shareholder(s)' legal representative. As a general rule, such documents must go through applicable notarization and apostille proceedings;

b. For both Limitada and S.A.: registration of the foreign shareholder(s) with the Brazilian Federal Revenue;

c. Only for S.A.: deposit, in cash, of 10% of the company's corporate capital in an interim bank account opened on behalf of the Brazilian company in Banco do Brasil S.A;

d. For both Limitada and S.A.: preparing, filing and registering the Brazilian company incorporation acts (articles of association or by-laws, as the case may be) with the Board of Trade and obtaining the enrolment of the Brazilian company with the Brazilian Federal Revenue;

e. For both Limitada and S.A.: registration of the foreign shareholder(s) and the Brazilian company with the Brazilian Central Bank, so as to enable the inflow and outflow of funds among such persons (such as equity contributions and payment of profits and dividends);

f. Only for S.A.: publication of the Brazilian company incorporation acts in the press and registration of a copy of such publication with the Board of Trade;

g. Only for S.A.: opening of the Brazilian company's shares and corporate books, as required by the Corporations Law;

h. For both Limitada and S.A.: indication to the Brazilian Federal Revenue of the Brazilian company's and shareholders' ultimate beneficiaries, defined as the individual(s) who ultimately hold(s) a significant control or influence over the entity(ies); and

i. For both Limitada and S.A.: Brazilian entities must also obtain additional enrolments with tax, social security and regulatory authorities at federal, state, and municipal levels (for further details, please refer to section 5 below).

The Brazilian company is considered legally existing upon completion of item (d) above, which usually takes between 30 to 90 days, depending on the efficiency of the foreign shareholder(s) to provide the necessary documents and information to incorporate the company, as well as of the government bodies in charge of analyzing the application documents.

5. What are the main registration requirements for companies in your jurisdiction? What are the fees?

After registration of the company with the Board of Trade, additional forms must be filed with tax, social security and regulatory authorities at federal, state, and municipal levels, vis-à-vis the location, business type, and

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Among her clients are Brazilian and foreign companies in the sectors of retail, technology, food and beverage and industrial goods and services.

activities to be conducted by the company. The main registrations requirements are:

a. enrolment with Brazilian Federal Revenue (CNPJ);

b. enrolment with State and Municipal tax authorities, if so required according to the specific activities conducted by the company;

c. registration before the National Social Security Institute (INSS);

d. registration before the Severance Pay Fund (FGTS);

e. obtainment of the operating license with the Municipality; and

f. obtainment of the necessary permits to operate the company according to its corporate purpose, which may include, for example, environmental licenses and/or specific authorizations from regulatory agencies.

Costs and fees vary according to each registration and/or government body involved, but they usually refer to governmental fees and expenses incurred with public notaries, translators, attorneys, brokers and external paralegals.

6. What are the main post-registration reporting requirements for companies in your jurisdiction? (For example, annual reporting requirements: what to file, to whom, is a company secretary required?)

The main post-registration reporting requirements for companies in Brazil are as follows:

Annual meeting

An annual meeting of shareholders must be held within four months following the end of each corporate year to:

a. Limitadas: (i) review management accounts and deliberate on the balance sheet and the economic result; and (ii) deliberate on managers election, as the case may be; and

b. S.A.s: (i) review management accounts and examine, discuss and vote on the financial statements; (ii) decide on the uses to which the net profits of the corporate year should be put and on the distribution of dividends; and (iii) elect the officers and the members of the audit committee, if any.

S.As must have their financial statements audited by an auditor registered before the CVM and published in a commercial newspaper and in the Official Gazette, for purposes of registering the annual resolution with the Board of Trade. Limited liability companies considered as "large entities" for the purposes of Law No. 11.638/2007 may also be required to prepare their financial statements in accordance with the Corporations Law, and have such financial statements audited by an external auditor and published.

Reporting to Brazilian Central Bank

All direct foreign investments must be registered in the Electronic Declaratory Registry for Foreign Direct Investments (RDE-IED) of the Brazilian Central Bank, through a specific online system named SISBACEN.

In addition, Brazilian companies with direct foreign investment must comply with the following reporting requirements to the Brazilian Central Bank:

a. On a quarterly basis:

   i. Brazilian companies with direct foreign investment that have net worth or total assets equal or higher than BRL 250,000,000.00 (two hundred and fifty million), must submit information regarding their financial statements to the Brazilian Central Bank, through the SISBACEN.

b. On an annual basis:

   i. Brazilian companies that do not meet the criteria indicated in (a.i) above must inform their updated corporate structure to the Brazilian Central Bank on an annual basis; and

   ii. A foreign capital annual census must be completed by Brazilian companies receiving foreign investment whenever they have, on the preceding year (i) direct foreign investment (in equity) in any amount, and, simultaneously, net equity equal to, or greater than, US$ 100,000,000.00 (one hundred million); or (ii) outstanding balance of short-term foreign accounts receivable (i.e., due within 360 days) equal to, or greater than, US$ 10,000,000.00 (ten million).

c. Every five years:

   i. a foreign capital five-year census must be completed by Brazilian companies receiving foreign investment whenever they have, on the preceding reference year (i) direct foreign investment (in equity) in any amount; or (ii) outstanding balance of short-term foreign accounts receivable (i.e. due within 360 days) equal to, or greater than, US$ 1,000,000.00 (one million).

Additional reports

Periodic filings regarding the compliance with tax and labor obligations are also required, depending on the business type and activities conducted by the company.

7. Are there any controlling factors or restrictions on foreign companies in your jurisdiction?

Brazil is an open jurisdiction for foreign investment. As such, there are no general restrictions on foreign ownership, except in certain specific sectors.

The Brazilian Federal Constitution provides for the following limitations:

a. Foreign equity ownership of Brazilian journalistic and broadcasting companies is limited to 30%;

b. Foreign equity ownership of aviation companies is limited to 20%; and

c. Nuclear power can only be exploited by the Brazilian government.

8. What is the typical structure of directors (or family management structure) and liability issues for companies in your jurisdiction?

The typical management structure of Brazilian companies varies according to the type of business entity incorporated.

8.1. Limitada

The Brazilian Civil Code does not establish a formal management structure for limited liability companies. Similarly, the existence of a board in a limited liability company, although possible, is not expressly provided for, since the board is only regulated by the Corporations Law.

The Limitada's management is carried out by one or more officers (or managers) resident in Brazil, who may be, but do not have to be, shareholders. Their appointment is made by the shareholders, who may attribute a specific designation to them. The managers' functions and responsibilities are set out in the applicable legislation and the company's articles of association.

8.2. Sociedade Anonima

Under the Corporations Law, the management powers are vested in the company's officers and the board of directors, or only the officers. The existence of a board of directors is mandatory only for publicly held companies, companies with authorized capital and mixed capital companies (that is, companies whose corporate capital is held both by private parties and the state, being the latter, as a general rule, its majority shareholder).

Officers and board members are jointly referred to as managers under the Corporations Law. In general, management structure, composition, functions and responsibilities are determined by the Corporations Law and the company's bylaws.

The board of directors is generally responsible for the strategic direction of the company. The board is a deliberative body only and does not have executive functions. The board members do not have specific titles. However, the board must have a chairman, chosen from among the board members.

The board of executive officers is incumbent upon the corporation's representation before third parties and the performance of all acts necessary for the exercise of the corporation's activities. Although officers are not required to have a specific designation, it is common for companies to designate their officers in the bylaws (for example, as chief executive officer (CEO) and chief financial officer (CFO)). An exception is made for publicly held companies that are required to have an investors' relations officer with specific functions.

A corporation must have at least two officers and, if there is a board, three directors. Generally, up to one-third of the board members can also serve as officers. Directors may be nationals or foreigners, resident in Brazil or abroad. Officers must be Brazilian residents (nationals or foreigners).

9. What is the minimum number of directors and shareholders required to set up a company in your jurisdiction? Are there any requirements that a director must be a natural person?

9.1 Minimum number of Shareholders

As a general rule, Limitadas and S.As must be incorporated and held by, at least, two shareholders, who can be individuals or legal entities, whether residents in Brazil or not.

The incorporation and ownership by a single shareholder is allowed for S.A.s, provided that such shareholder is a Brazilian company.

9.2 Minimum number of Directors

Please refer to question 8 above.

10. What are the requirements on how shares are offered in your jurisdiction?

10.1. Limitada

a. General structure: The corporate capital of Limitadas is divided into quotas, which must have an assigned par value. Company's subscribed capital and ownership of quotas must be duly reflected in the articles of association;

b. Transferring quotas: quotaholders may transfer their quotas to third parties, subject to the approval of other quotaholders representing 75% of the company's corporate capital. Any transfer of quotas is subject to the execution of an amendment to the Company's articles of association;

c. Issuing new quotas: quotaholders of Limitadas have a preemptive right to subscribe new quotas of the company proportionally to their respective participation in the company's corporate capital. New quotas may only be issued if the company's original corporate capital has been fully paid up; and

d. Public offer: Limitadas are not allowed to make public offerings.

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Gallo practices in different areas of law, with special emphasis in corporate, mergers and acquisitions, listed companies and corporate governance, foreign investment, energy and infrastructure.

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10.2. Sociedade Anonima

a. General structure: the corporate capital of a S.A. is divided into shares, which may be common or preferred (divided or not into different classes), depending on the rights and requirements associated with them. Non-voting preferred shares are limited to 50% of the company's corporate capital. All shares are nominative and registered in the appropriate corporate book and may be issued with or without par value. The bylaws must state the corporation's subscribed capital and at least 10% of the capital must be paid upon the company's incorporation;

b. Transferring shares: unless otherwise specified in the company's bylaws or shareholders agreement, in principle there are no restrictions to the transfer of shares (publicly-held corporations are subject to specific regulation of the CVM). Such transfer is deemed to be valid upon its registration in the company's share registry and share transfer books;

c. Issuing new shares: shareholders also have a preemptive right to subscribe new shares of the company. New shares may only be issued if at least 3/4 of the company's original corporate capital has been paid up; and

d. Public offer: publicly-held corporations are allowed to make public offerings, which are subject to the requirements of specific regulation.

Corporate capital of both Limitada and S.A. must be stated in national currency (Brazilian Reais) and may be paid in cash, credit and/or any type of asset that is susceptible of a monetary assessment. Contributions in kind must be based on an appraisal report, which must indicate the criteria, comparative data and valuation methods used to sustain its conclusions.

11. What are the key laws and regulations on employment in your jurisdiction that companies should be aware of? Are there any aspects of employment law that are heavily regulated?

The Federal Constitution and the Consolidation of Labor Laws ("CLT"), established by Decree-Law 5.452 of May 1st, 1943, as amended, are the key laws regulating labor matters and workers' fundamental rights in Brazil.

Because of the strict and protective legal framework, parties in the employment relationship (i.e., employer and employee) have limited freedom to negotiate the applicable terms and conditions. Among the rights granted by labor laws to workers, and which cannot be changed by mutual agreement of the parties, we highlight the following:

a. minimum wage (which is annually updated);

b. "13th salary", corresponding to one time the monthly salary and paid by the end of the year;

c. a work period of up to 8 hours per day and 44 hours per week;

d. overtime compensation;

e. vacations/annual leave of 30 consecutive days, which can be divided in up to three blocks during the year;

f. "vacation bonus", corresponding to 1/3 of the monthly salary and paid when the employee leaves on vacation;

g. public transportation voucher; and

h. maternity and paternity leave.

Collective bargaining agreements negotiated by employers' associations with employee´s unions may also affect the employment agreement by establishing specific rights and conditions to a certain category of workers, all of which must be observed by the employers.

12. What is the nature of the corporate governance regime in effect in your jurisdiction? What agencies or government bodies regulate corporate governance?

The corporate governance regime in Brazil is mainly established by the following statutes and regulations:

a. The Brazilian Civil Code;

b. the Corporations Law;

c. the regulations issued by CVM, which are applicable to publicly-held companies; and

d. the regulations issued by the São Paulo Stock Exchange (BM&F Bovespa), which has differentiated listing segments with specific corporate governance and transparency requirements in addition to those given by the Corporations Law and by CVM. The most popular listing segment is called Novo Mercado, which has the highest level of corporate governance requirements.

Although not mandatory, the provisions contained in the Brazilian Corporate Governance Code are also taken into account by several companies in Brazil.

13. Does establishing a company in your jurisdiction grant any kind of residency rights? Are there any conditions that in order to receive these residency rights (if applicable) one must partner or establish a joint venture with a local (e.g. a citizen of your jurisdiction)?

Foreign investors may obtain residency rights by establishing a company in Brazil. There is no specific requirement to partner or establish a joint venture with Brazilian nationals in order to obtain such residency rights.

Residence permits may be obtained for foreigners acting as managers, officers or executives of Brazilian companies, provided that the company presents evidence of (a) investment in the Brazilian company of an amount equal to or higher than BRL 600,000.00 (six hundred thousand) per manager, officer or executive requesting the residence permit; or (b) investment in the Brazilian company of an amount equal to or higher than BRL 150,000.00 (one hundred and fifty thousand) per manager, officer or executive, in addition to the creation of at least ten new jobs in the period of two years following the incorporation of the Brazilian company or entry of the manager, officer of executive.

Residence permits may be obtained for foreigners investing in Brazilian companies, provided that they present evidence of investment of (a) an amount equal to or higher than BRL 500,000.00, (five hundred thousand) for business in general; and (b) an amount equal to or higher than BRL 150,000.00 (one hundred and fifty thousand) for business related to innovation and research with a scientific or technologic character.

14. When is a company subject to tax in your jurisdiction? What are the main taxes that may apply to companies in your jurisdiction?

The Brazilian tax system is governed by the Federal Constitution and by the National Tax Code (CTN), which was implemented by Federal Law No. 5.172 of October 25, 1966, as amended. Industry or product-specific tax regimes may also apply.

Competence to tax is divided between federal, state and municipal authorities and encompasses taxes, improvement fees, contributions, fees and compulsory loans. The most common taxes applicable to companies in Brazil are the following:

a. Corporate Income Tax (IRPJ): Brazilian legal entities are taxed on their worldwide income and capital gains, regardless of their origin. Different methods of taxation may be applied depending on the company's annual income;

b. Social Contribution on Net Income (CSLL): a social contribution with the purpose of funding the social security system;

c. Tax on Manufactured Products (IPI): applies to the sale and import of manufactured goods;

d. Tax on Financial Transactions (IOF): applies to several types of financial transactions such as (i) intercompany loans; (ii) exchange and insurance transactions; and (iii) securities or gold transactions.

e. Economic Intervention Contribution (CIDE): applies to payments made in connection with license agreements, acquisition of know-how and agreements involving cross-border transfer of technology;

f. Social Security Financing Contribution (PIS/COFINS): applies to company's operating revenues. Two different methods may be used: cumulative and non-cumulative methods;

g. Import Duty (II): due upon customs clearance of imported products; and

h. Export Duty (IE): applies to the export of certain listed goods.

i. Tax on Distribution of Goods and Services (ICMS): state value-added tax on sales, communication and transportation services; and

j. Tax on Services (ISS): applies to payments made in connection with the rendering certain services.

15. How does the competition law in your jurisdiction regulate companies?

Federal Law No. 12,529 of November 30, 2011, as amended, sets forth the main rules and principles governing the antitrust system in Brazil ("Brazilian Antitrust Law"). Responsibility for enforcing the Brazilian Antitrust Law rests with the Administrative Council for Economic Defense (CADE), a governmental agency in charge of analyzing mergers and anticompetitive/monopolistic behavior.

Pre-merger analysis

The Brazilian Antitrust Law establishes that a pre-merger review shall be conducted by CADE in relation to any corporate transaction meeting certain thresholds.

CADE's clearance must be attained prior to the closing of the transaction. Failure to comply with this provision may entail severe consequences, including: (a) gun jumping fines between BRL 60,000.00 (sixty thousand and BRL 60,000,000.00 (sixty million); (b) the initiation of an Administrative Proceeding against the undertakings; and (c) the deal can be declared null and void.

Anticompetitive behavior

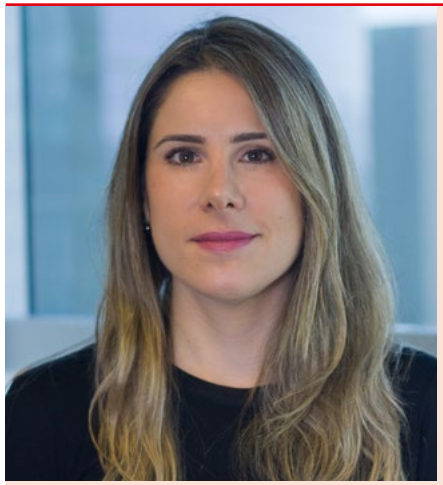
According to the Brazilian Antitrust Law, an anticompetitive behavior is characterized as an act able to (a) limit, falsify or in any way restrain competition; (b) control a relevant market of certain products or services; (c) increase profits on a discretionary basis; or (d) exert market power in an abusive way.

In case of breach, companies may face fines ranging from 0.1% up to 20% of gross revenues in the year preceding the initiation of the proceeding. Individuals engaged in the practice may be liable to fines ranging from 1% up to 20% of the one applied against the company and criminal prosecution.

16. What are the main intellectual property rights companies should be aware of in your jurisdiction?

Intellectual property rights in Brazil are regulated by Federal Law No. 9.276 of May 14, 1996, as amended, and by international treaties such as the Paris Convention for the Protection of Industrial Property. The Brazilian Industrial Property Institute (INPI) is the national authority in charge of registering intellectual property rights and supervising the enforcement of the applicable rules.

The following intellectual property rights are protected by the Brazilian legal framework:



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Before joining Campos Mello Advogados, Rafaella was an associate in TozziniFreire Advogados, being part of the Corporate and Oil & Gas practice in Rio de Janeiro.

Rafaella has also worked for Telecom Italia Group in the Corporate and Tax Area of TIM Brasil, controlling shareholder of TIM Participações S.A., a company listed on Bovespa and NYSE and in the Corporate, Foreign Investment and Commercial Contracts practice group of Castro Barros Sobral, Gomes Advogados.

a. Trademarks: can be obtained by individuals or legal entities (national or foreign) with the purpose of distinguishing certain products or services related to their business activities, according to the Nice International Classification System;

b. Patents: are granted to inventions meeting the requirements of novelty, presence of an inventive step and industrial applicability;

c. Utility models: are granted to parts of inventions capable of industrial use, with a new shape or layout and which have an inventive act involved; and

d. Industrial designs: can be obtained by individuals or legal entities (national or foreign) with the purpose of protecting the external ornamental shape of an object or the set of lines and colors applied to a product.

Copyrights are also protected by the Brazilian legislation without the need to obtain any specific registration, under the terms of Federal Law No. 9.610 of February 19, 1998, as amended.

17. Does your jurisdiction have laws or regulations that govern data privacy?

Although still not subject to specific regulation in Brazil, data privacy has been significantly discussed by scholars and practitioners over the past years. While a specific regulation is not approved, the protection of data privacy

is conferred by the general principles and provisions of the Federal Constitution, which establishes that:

a. intimacy, private life, honor and image of persons are inviolable; and

b. correspondence and telegraphic, data and telephone communications are deemed confidential.

Data privacy is also generally regulated by the Brazilian Civil Code and by laws and regulations that address particular types of relationships (e.g. Consumer Protection Code and labor laws), particular sectors (e.g. financial institutions, health industry, telecommunications, etc.), and particular professional activities (e.g. medicine and law).

Federal Law No. 12.965 of April 23, 2014 (the "Brazilian Internet Act"), and its regulating Decree No. 8.771 of May 11, 2016, establishes general principles, rights and obligations for the use of the Internet, and introduced provisions concerning the storage, use, treatment and disclosure of data collected on-line. Also, the Decree has brought first legal definition of personal data. There are also laws on the collection, treatment and safeguarding of documents and information, which have privacy implications (e.g. Tax Code, concerning tax secrecy).

18. Are there any incentives to attract foreign companies to your jurisdiction?

Brazil has established a variety of tax incentives to attract national and foreign investment to less developed sectors of the economy (e.g. infrastructure and technology, as detailed below) and locations (notably the North and Northeast regions, where specific development agencies were created).

Among such tax incentives, governmental authorities may grant tax credits, tariff reductions or exemptions and subsidized credit from governmental banks, especially the National Bank for Economic and Social Development (BNDES).

Special tax regimes can also be negotiated and granted on a case-by-case basis, to establish specific conditions for the operation of the company in each location and the expansion of its business activities in certain markets.

On the infrastructure and technology sectors, for example, foreign investors may benefit from several incentives, such as:

a. REIDI – Special Regime of Incentives for the Development of Infrastructure;

b. REPORTO – Special Tax Regime for Modernization and Expansion of the Port Structure;

c. REPENEC – Special Incentive Regime for Infrastructure Development of the Oil Industry in the North, Northeast and Midwest Regions;

d. Exemption of the Tax on Financial Transactions (IOF) on the financing of road and rail infrastructure projects; and

e. REPES – Special Tax Regime for Information Technology Export Companies.

Besides the tax benefits mentioned above, it is also noteworthy:

a. distributions paid by a Brazilian legal entity to its shareholders are treated as tax-free dividends;

b. Depending on the corporate income tax regime adopted by the company, net operating losses generated in a given period/year can be used to offset up to 30% of the taxable income accrued on the subsequent period/year; and

c. recognition of gains or losses in reorganizations can be deferred and goodwill can be amortized, provided that certain thresholds are met.

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Throughout her professional career, Adriana worked for full service law firms and was part of the legal team of NovaAgri, a full subsidiary of the Toyota Tsusho Group in the agribusiness sector.

19. What is the law on corporate insolvency in your jurisdiction?

Corporate insolvency is regulated in Brazil by Federal Law No. 11.101 of February 9, 2005 ("Brazilian Bankruptcy and Restructuring Law"), which establishes the legal framework for judicial recovery, extrajudicial recovery and bankruptcy.

The main objective of judicial or extrajudicial recovery is to enable the reorganization of the company while maintaining the production source and protecting employees and creditors. A judicial recovery may be requested by debtors facing financial difficulties if the following requirements are met:

a. debtor has been conducting its activities for more than two years;

b. debtor has not been declared insolvent or, in case debtor has been declared insolvent, the responsibilities arising out of the lawsuit are ceased;

c. debtor has not been subject to judicial recovery in the past five years;

d. debtor has not been subject to special judicial recovery in the past five years; and

e. debtor and any of its managers and shareholders has not been convicted of any crimes set forth in the Brazilian Bankruptcy and Restructuring Law.

The same requirements apply to debtors wanting to propose and negotiate an extrajudicial recovery plan with its creditors.

Companies that do not meet the requirements of the judicial recovery must request their own forced liquidation a bankruptcy court. Upon acceptance of the liquidation request, the debtor is removed from its activities with the purpose of preserving and optimizing the productive use of assets and productive resources, including intangible asset. Forced liquidation may also be requested by creditors upon fulfilment of additional requirements.

20. Have there been any recent proposals for reforms or regulatory changes that will impact company law in your jurisdiction?

Important changes to the Brazilian labor legislation were recently approved by the Congress, in an attempt to modernize and adapt the legal framework to the constant evolution of the labor market. By introducing less restrictive rules, such changes are expected to have a positive impact on the development of the business environment and on the creation of new jobs.

21. Are there any features regarding company law in your jurisdiction or in Asia that you wish to highlight?

Investment opportunities in Brazil keep rising every day. Largely driven by the need to develop certain sectors of the economy and absorb international technology and know-how, the Brazilian government continues to welcome investors with a fertile soil to conduct business and a receptive legal framework (including from a company law standpoint). The growth potential of the domestic market and the appetite for consumption of an emerging middle class also contribute to attract foreign companies wishing to internationalize the offer of new products and services in different segments of the economy.

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1. What is the general situation for foreign companies in your jurisdiction? (For example, common presence, difficulty to setup, restrictive system, open and welcoming jurisdiction?)

The Republic of Cyprus ('Cyprus') is an established financial centre and thriving business hub, with a vast array of investment opportunities in key growth sectors of the economy. The island's ideal strategic location, advanced infrastructure and high quality of life are key reasons to relocate and live on the island but are also at the heart of an investor's choice to invest in Cyprus. The island is an ideal investment gateway to the European Union ('EU'), as well as a portal for investment outside the EU, particularly into the Middle East, India and China. As a member of the wider EU and Eurozone community, Cyprus ensures safety and stability for investors, while also offering them market access to more than 500 million EU citizens. The local infrastructure is ideally suited for business people who need to get things done. Thanks to its modern road network, extensive port facilities and two new international airports, travel and transport in and beyond Cyprus is fast, efficient and cost-effective.

The competitive advantages of Cyprus as an international financial centre are significantly enriched by a secure and straightforward legal and regulatory framework, based on English common law principles. Offering foreign businesses a familiar and reliable framework within which to operate, Cyprus' legal system is also fully compliant with the EU, the Financial Action Task Force on Money Laundering (FATF), OECD, FATCA, the Financial Stability Forum laws and regulations and EU AML directives.

Further, Cyprus maintains a stable and attractive tax regime, which offers a wide range of incentives and advantages for both legal and natural persons. This tax regime is fully compliant with EU, OECD and international laws and regulations. Providing access to an extensive network of more than 60 Double Tax Treaties, and maintaining a corporate tax rate of 12.5%, one of the lowest in the EU, Cyprus offers international investors and domestic businesses confidence to invest, grow and prosper.

Cyprus is generally considered a very welcoming and easy-to-do-business jurisdiction. This translates into straightforward and efficient processes that are clearly set out at the legislative, regulatory and executive levels but also in terms of actual practice. According to the Doing Business Report 2017, Cyprus is ranked 45th worldwide with an overall score of 72.65%, an improvement in the business environment within the economy from 2016. In the individual topics ordinal rankings, Cyprus has improved its position from 2016 in the areas of Starting a Business (53rd), Getting Electricity (63rd) and Paying Taxes (34th). At the same time, it has retained the same position as in 2016 in the areas of Trading across Borders (45th), Enforcing Contracts (139th) and Resolving Insolvency (16th), while it has lost ground in the areas of Dealing with Construction Permits (125th), Registering Property (91st), Getting Credit (62nd) and Protecting Minority Investors (27th). When comparing with the EU countries, Cyprus is above average in the areas of Starting a Business, Protecting Minority Investors, Paying Taxes, and Resolving Insolvency.

2. What are the key laws and regulations that govern company law in your jurisdiction?

Cyprus companies are regulated by the Companies Act (Cap 113) ('CA'). The CA emanates from the equivalent English Companies Act of 1948, and it has been in force in Cyprus for over half a century, defining and setting the rules and parameters of the law governing Cyprus-incorporated companies and acting as the backbone to a vibrant commercial hub in Cyprus. The CA has developed in the years through various legislative amendments effected periodically (including laws aimed at harmonisation with EU directives in the field of company law). Nevertheless, its principles have remained intact and have greatly assisted in achieving certainty of law. The CA is sufficiently detailed and covers almost all aspects of company regulation, from the formation of a company until its dissolution.

Apart from the CA, Cyprus has recently regulated the business of provision of administration services to private companies. The relevant provisions are found in The Law Regulating Companies Providing Administrative Services and Related Matters of 2012.

3. What are the most common types of companies in your jurisdiction?

The most common type of company in Cyprus is the private limited liability company, which is almost invariably formed to be limited by shares. Once the company is formed, it acquires separately legal personality and can transact independently from its shareholders or officials (directors or secretary). Consequently, the liability of the shareholders is limited up to the amount payable for the allotment of the shares and in the event that for any reason the company enters into financial problems, the shareholders of the company are not obliged to fund the company or contribute towards its obligations. In essence, by the time that a shareholder has fully paid the shares that such shareholder has acquired in a company, the shareholder shall have no personal liability whatsoever in relation to the dealings of the company. The concept of limited liability, an essential feature of a private limited company, serves as a powerful incentive for entrepreneurs to form companies aiming to control business risk.

4. How long does it take to set up a company in your jurisdiction? (For example, it could be as fast as X amount of time, average setup time and then as slow as Y amount of time based on your experience – are there any mechanisms to fast track setup?)

A Cyprus company can be set up within 2–3 business days under the fast-track process, which is almost invariably used in practice. The standard process will obviously take longer; however, it is never used because the fast-track process ensures that the amount of time necessary for set-up is minimum, and the additional cost for using this fast-track process is negligible compared with the standard process. The Department of the Registrar of Companies and Official Receiver (the 'DRCOR') is the government body responsible for the registration of companies in Cyprus. It has recently updated its software system, and registrations can now be submitted online. Further steps are currently processed in order to further integrate services and make them available online as well as towards simplifying the registration procedures.

5. What are the main registration requirements for companies in your jurisdiction? What are the fees?

Setting up a company in Cyprus is quite fast, straightforward and simple. Firstly, companies should submit an application of approval of company name to the DRCOR. This can be undertaken either directly by the applicants themselves or through a lawyer or service provider. As a matter of good practice, Cyprus law firms and providers of administration services typically maintain a number of pre-approved names, which are offered to clients if speed is of the essence and the founders are indifferent to the actual name of the company. This means that the applicant can have an approved company name immediately.

Secondly, the founders will need to retain a law firm to undertake the preparation of the relevant documents. According to the Cyprus law, only lawyers licensed by the Cyprus Bar Association are allowed to prepare and sign the constitutional document of the company as well as the HE1 form, which confirms that they have done so. The founders are usually asked to:

a. submit to the law firm a brief description of the main objects of the company, unless the standard Memorandum and Articles of Association are to be used;

b. resolve and advise on the amount of nominal share capital and how this shall be divided;

c. provide the details and supporting documentation in relation to the founders (shareholders) and officials (directors and secretary) of the company as well as documents that will meet 'know your client' and anti-money laundering regulations in relation to those persons; and

d. advise the proposed registered address of the company.

On the basis of this information, certain forms are completed and submitted to the DRCOR. Once the application package has been submitted to the DRCOR and the applicable fees have been paid, a process is set in motion, which in the absence of any problems results in the incorporation of the company, the issue of its certificate of incorporation and of a certified copy of its Memorandum and Articles of Association.

The relevant statutory papers can be lodged either online or by hand at the DRCOR. If all the statutory documents were properly prepared and signed by the company officials and shareholders, the registration certificate can be obtained within 2–3 business days. As a matter of law, the registration certificate constitutes proof of incorporation.

6. What are the main post-registration reporting requirements for companies in your jurisdiction? (For example, annual reporting requirements: what to file, to whom, is a company secretary required?)

There are important post-incorporation requirements for Cyprus companies.

Firstly, all companies must register with the Tax Department in order to obtain a tax identification number. Also, in certain circumstances, there is also the requirement to register with the VAT Department and obtain a VAT registration number.

If the company employs personnel, it is liable to register with the Social Insurance Services and pay contributions to the relevant funds set up for employees, such as social insurance, annual holiday with pay, redundancy, human resource development and social cohesion fund. The amount paid by the employer is confined to a certain percentage of the salary of the employee. Employers pay their contributions (including the employees' share) monthly in arrears, within one month from the end of each contribution month. The application form for the registration of employers can be submitted electronically or by hand or by mail to a District Social Insurance Office or Citizens Service Centre.

Thirdly, directors are obliged to arrange for the keeping of financial accounts and the preparation of annual financial statements, which need to depict a fair and accurate picture of the company. The annual financial statements of a Cyprus company must be filed with the annual return (HE32 form) with the DRCOR at least 18 months after the registration of the company and, following that, once a year. The annual financial statements must adhere to the international standards of financial reporting. The annual return also includes information about the registered office of the company, register of

shareholders and bond holders, debts to current and former officials of the company and other information.

Also, the DRCOR should be notified of every structural change/alteration in a Cyprus company, such as change of the registered office, resignation and appointment of directors/secretaries, increase and decrease of share capital.

7. Are there any controlling factors or restrictions on foreign companies in your jurisdiction?

Foreign companies can enter into transactions related to the Cyprus jurisdiction without any restriction, except in relation to:

a. specific businesses which require licensing anyway, such as banking, insurance and investment advice; and

b. the purchase of immovable property, which requires a separate licence to be issued by the Ministry of Interior.

If the foreign company wishes to establish a place of business within Cyprus (without incorporating a Cyprus company to do so), then it has the obligation to establish a branch or representative office in Cyprus and register itself with the DRCOR as an overseas company within one month from the date of such establishment. This does not amount to the creation of a new legal entity, and it is still the foreign company that transacts in Cyprus through the branch or the representative office.

Foreign companies will need to submit a written report which includes information on the name and legal form of the overseas company, the name of the branch (if it is going to be different from the name of the overseas company), the registered office and address of the overseas company as well as its business address, the purpose and objects of the overseas company, the location where the basic information about the company has been filed, the amount of the capital subscribed (where applicable), the law of the state governing the company and other information. Also, it needs to submit its constitutional documents and information about its shareholders and directors and, further, it needs to nominate at least one person resident in Cyprus, who shall be authorised to accept on behalf of the company any notices required to be served to it.

8. What is the typical structure of directors (or family management structure) and liability issues for companies in your jurisdiction?

Typically, the management of a Cyprus company is conducted by its board of directors, which may exercise all such powers of the company as are required (either by the CA or by the Articles of Association of the company) to be exercised by the shareholders of the company. The Articles of Association of a Cyprus company may provide that certain transactions are reserved to the shareholders and may also regulate issues of quorum, majority and process in relation to the adoption of any resolution for such matters (usually described as Reserved Matters).

In relation to the liability of directors, Cyprus law did not codify the duties of directors, and the matter is still approached by reference to common law rules and equitable principles as they apply in relation to directors under English common law. Accordingly, directors are under a duty to act in the best interests of the company, exercise discretion and independent judgment, exercise power for proper purposes, avoid conflict of interest etc.

9. What is the minimum number of directors and shareholders required to set up a company in your jurisdiction? Are there any requirements that a director must be a natural person?

In private limited companies, there are no special rules on the minimum number of shareholders or officials. In fact, the single-member company is expressly envisaged by the CA and, accordingly, it is possible for a company to have a sole shareholder and director and secretary. The only limitations that apply in private limited companies relate to the secretary; section 172 of the CA provides that no company shall have:

a. as secretary to the company a corporation the sole director of which is a sole director of the company; or

b. as sole director of the company a corporation the sole director of which is secretary to the company.

The restrictions do not apply to a private limited liability company with one and only member.

10. What are the requirements on how shares are offered in your jurisdiction?

The issuance of additional shares in a private limited company requires the co-operation of both the shareholders and the board of directors. The shareholders have the power under the CA to resolve on the increase of the authorised share capital of the company. In this way, they control the issuance of further shares, in the sense that if there is no unissued share capital, there is little for the board of directors to do in this regard. If the authorised share capital of the company includes unissued shares, then the power to decide whether such new shares shall be issued is usually conferred to the board of directors.

The CA and often the Articles of Association contain provisions regarding pre-emption rights conferred to the existing shareholders and regulate the process under which new shares can be first offered to the existing shareholders before these are allotted to third parties. The Articles of Association also contain provisions which deal with the process of allotment of shares.

Whenever a limited company makes any allotment of its shares, it has the obligation to deliver to the DRCOR for registration a return of the allotments within one month thereafter. This return states the number and nominal amount of the shares comprised in the allotment, the names, addresses and descriptions of the allottees, and the amount, if any, paid or due and payable on each share. In the case of shares allotted as fully or partly paid up otherwise than in cash, it also includes the contract in writing constituting the title of the allottee to the allotment together with any contract of sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

11. What are the key laws and regulations on employment in your jurisdiction that companies should be aware of? Are there any aspects of employment law that are heavily regulated?

Employment law is substantially regulated in Cyprus, and there are many separate pieces of legislation which regulate specific matters in relation to issues pertaining to employment:

a. the law on the provision of information from the employer to the employee for the terms regulating the employment contract or employment relations: this law regulates the information that each employer is bound to deliver to the employee, either through the contract of employment or otherwise, once the employment relationship is constituted;

b. the law on equal remuneration of men and women, which regulates the circumstances under which remuneration should not differentiate on grounds of gender;

c. laws regulating maternity leave and the protection of pregnant employees as well as the parental leave and leave for reasons of force majeure law;

d. laws prohibiting employment of children and otherwise regulating the protection of vulnerable persons in the work environment, such as young persons;

e. the law on the termination of employment, which regulates issues of termination

notice and compensation as well as issues of redundancies;

f. special laws regulating collective dismissals or safeguarding employees' rights in the transfer of undertakings, businesses or parts thereof.

12. What is the nature of the corporate governance regime in effect in your jurisdiction? What agencies or government bodies regulate corporate governance?

Corporate governance regulations have been promulgated in relation to public companies (especially listed companies) as well as companies which are in the business of regulated activities, such as banking, insurance and investment advice. Private limited companies in Cyprus do not have substantial corporate governance obligations, and boards of directors are obliged to observe common law principles regarding directors' duties (see question 8).

13. Does establishing a company in your jurisdiction grant any kind of residency rights? Are there any conditions that in order to receive these residency rights (if applicable) one must partner or establish a joint venture with a local (e.g. a citizen of your jurisdiction)?

Other than EU citizens, there is a special procedure for a Cyprus company to be granted the right to employ in Cyprus a non-EU citizen. The relevant policy was initially promulgated in November 2006 by the Council of Ministers and regulates the issuance and renewal of residence and employment permits for personnel from third countries who are employed in companies of foreign interests that are registered in Cyprus. If the applicant is a Cyprus company which is owned by foreign interests, it needs to meet the eligibility requirements (over 50% foreign participation or overall participation in share capital not less than € 171,000) and, if met, it can apply for registration in order to be granted the right to employ non-EU citizens who can live and work in Cyprus. As a rule, the policy allows for up to five persons for senior management and 10 persons for middle management executives and other key personnel, subject to the discretion of the Civil Registry and Migration Department to grant additional licences if it is satisfied that the employment of a greater number is justified, depending on the circumstances of each company. There is no maximum number for the employment of third-country nationals as supporting stuff, provided that the necessary approvals from the Department of Labour have been obtained. There are also special procedures for family members. See also question 18.

14. When is a company subject to tax in your jurisdiction? What are the main taxes that may apply to companies in your jurisdiction?

A company is subject to tax in Cyprus if it is a tax resident of Cyprus, i.e. if it is managed and controlled in Cyprus. All Cyprus tax-resident companies are taxed on their income accrued or derived from all chargeable sources in Cyprus and abroad. A non-Cyprus tax-resident company is taxed on income accrued or derived from a business activity which is carried out through a permanent establishment in Cyprus and on certain income arising from sources in Cyprus.

All trading profits of a Cyprus company are taxed at a flat rate of 12.5%, following the deduction of related expenses wholly and exclusively incurred in the production of this income. Foreign exchange gains or losses will no longer affect the tax computation irrespective of the assets/liabilities creating these foreign exchange results or whether these are realised or unrealised.

Foreign dividends received by a Cyprus company are not subject to income tax and may also be exempt from Special Defence Contribution, if specific conditions are met, namely if the paying company does not engage more than 50%, directly or indirectly, in activities that lead to passive income (non-trading income), or the foreign tax burden on the income of the company paying the dividend is not substantially lower than the tax burden in Cyprus (a tax rate of 6.25% or more in the country paying the dividend satisfies this condition). No participation or holding threshold is required, and the Cyprus participation exemption regime can be described as one of the most generous amongt those available. This is witnessed by the fact that in virtually all the cases, foreign dividends are exempt from any taxation in Cyprus as the above-mentioned criteria are easy to satisfy.

As Cyprus' tax legislation clearly applies the separation of income and capital, capital gains are not included in the ordinary trading profits of a business but instead are taxed separately under the Capital Gains Tax Law. Capital gains tax is only imposed on the sale of immovable property situated in Cyprus as well as on the sale of shares in companies (other than quoted shares) in which the underlying asset is immovable property situated in Cyprus. Capital gains tax is imposed at a flat rate of 20% after allowing for indexation. What is critical for international businesses is that capital gains that arise from the disposal of immovable property held outside Cyprus, as well as shares in companies which may have as an underlying asset immovable property situated outside Cyprus, and shares of non-Cyprus companies are completely exempt from capital gains tax.

Cyprus imposes no withholding taxes on payments to non-tax resident persons (companies or individuals) in respect of dividends, interest and royalties used outside Cyprus, irrespective of whether the recipient of the payment resides in a treaty country or not. Further, Cyprus does not tax any gains or profits arising from the trading of a wide range of securities.

15. How does the competition law in your jurisdiction regulate companies?

The Commission for Protection of Competition ('CPC') has the exclusive responsibility for the harmonious operation of the market, within the rules of fair competition far from any anti-competitive distortions as means to boost economic growth and social welfare. The Protection of Competition Law 2008 and 2014 (the 'Competition Law'), in conjunction with the Control of Concentrations of Enterprises Law 83(I)/2014, set the rules and principles that are aimed at the maintenance of effective competition within the Cypriot market. The legislative framework introduces prohibitions against agreements or collusive conduct which distorts competition as well as against the abuse of dominant position of undertakings. At the same time, CPC is entrusted with certain duties with the ultimate aim of offering consumers higher-quality goods and services at competitive prices, increasing productivity and investments and establishing a climate favourable to research, innovation and technological progress. The Competition Law, inter alia, designates the CPC as the competition authority of Cyprus, responsible for the application of Regulation 1/2003, and of articles 101 and 102 of the Treaty on the Functioning of the European Union ('TFEU'), where necessary.

Pursuant to the Competition Law, the CPC has, among others, the exclusive authority to investigate and take decisions on the infringement of sections 3 and/or 6 of the Competition Law and of articles 101 and/or 102 of the TFEU and also decide on interim measures, impose terms and behaviour and/or structural remedies, according to the infringement, necessary to bring the infringement to an end, and conduct investigation in a specific sector of the economy or in specific types of agreements pursuant to section 32A of the Competition Law.

For every infringement of sections 3 and/or 6 of the Competition Law and of articles 101 and/or 102 of the TFEU, the CPC has the power to

impose an administrative fine, according to the gravity and duration of the infringement, not exceeding 10% of the combined annual revenue of the undertaking or not exceeding 10% of the revenue of every undertaking member of the association of undertakings, in the year within which the infringement took place or in the year which immediately preceded the infringement. In addition, it has several other ancillary powers, such as to require that the undertakings or association of undertakings to bring the infringement to an end within a set time period and avoid repetition in the future.

16. What are the main intellectual property rights companies should be aware of in your jurisdiction?

Cyprus maintains legislation which protects all general types of intellectual property rights, including trademarks, copyright and relative rights, patents, industrial designs and others. It is also a contracting party in several international multilateral treaties, such as the Berne Convention on the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, and the WIPO Convention.

In recent years, the Cyprus government has given emphasis on providing incentives to foreign intellectual property companies to invest in Cyprus. Under the new Cyprus IP Box, applicable as from 1 July 2016, Cyprus intellectual property companies can be taxed at an effective tax rate of 2.5% (or less) on qualifying profits earned from exploiting qualifying intellectual property. Non-qualifying incomes are taxable at an effective tax rate of 12.5% (or less).

17. Does your jurisdiction have laws or regulations that govern data privacy?

The EU Directive on data protection was implemented in Cyprus through the law on the Processing of Personal Data (Protection of the Individual) of 2001 (Law No. 138(I)/2001), as amended. An enterprise that processes data is required to notify the Commissioner in writing that a filing system is being set up or that processing is to take place. Information notified is kept in the Commissioner's Register of Filing Systems and Processing. There is no charge for notification.

The Commissioner's prior approval is required when data are to be transmitted to a country outside the EU/EEA (other than to a whitelisted country), or if two or more filing systems which contain sensitive data or from which data may be retrieved using common criteria are to be interconnected.

18. Are there any incentives to attract foreign companies to your jurisdiction?

As a part of its policies aimed to further encourage foreign direct investment and attract high net worth individuals to settle and do business in Cyprus, the Council of Ministers introduced in September 2016 the current 'Scheme for Naturalization of non-Cypriot investors by exception' (the 'Scheme') and thus established the new criteria and terms based on which non-Cypriot entrepreneurs or investors may acquire Cypriot citizenship.

On the basis of the Scheme, a non-Cypriot citizen who meets the economic criteria, either personally or through a company/companies in which he/she participates as a shareholder, in proportion to his/her holding percentage, or through investments done by his/her spouse or jointly with the spouse or even as a high-ranking senior manager of a company/companies that meets one of the economic criteria, may apply for the acquisition of Cypriot citizenship through naturalisation by exception. The criteria are as follows:

a. investment in real estate, land development and infrastructure projects: the applicant must have made an investment of at least € 2 million for the purchase or construction of buildings or for the construction of other land development projects (residential or commercial developments, developments in the tourism sector) or other infrastructure projects. Investment in land under development is included in this criterion, provided that an investment plan for the development of the purchased land will be included in the application. It is understood that investment in land that is situated in a building zone of zero development is excluded;

b. purchase or establishment or participation in Cypriot companies or businesses: the applicant should have made a purchase or should have participated in companies or organisations established and operating in Cyprus with an investment costs of at least € 2 million. The invested funds shall be channelled towards the financing of the investment objectives of these companies exclusively in Cyprus, based on a specific investment plan. Applications shall be evaluated to verify that the companies or organisations have proven physical presence in Cyprus, with significant activity and turnover and employ at least five Cypriots or citizens of EU member states. The minimum number of employees shall increase if more than one applicant invest simultaneously or almost simultaneously in the same business or company. In addition, the employees of the companies need to have legally and continuously resided in Cyprus during the five years preceding the application submission date;

c. investment in alternative investment funds ('AIFs') or financial assets of Cypriot companies or Cypriot organisations that are licensed by CySec: the applicant should have bought units of at least € 2 million from AIFs established in Cyprus, licensed and supervised by CySec, and the applicant's investments must be made exclusively in Cyprus, in investments that meet the criteria of the Scheme or in areas approved by the Minister of Finance. In order to confirm that the investments that meet the criteria of the current Scheme will be kept for at least three years, the manager or the auditor of the Fund shall inform in writing and on an annual basis the Ministries of Finance and Interior with reference to the value of the initial investment. The purchase of financial assets of Cypriot companies or organisations of at least € 2 million, such as bonds, bills and securities, issued with the approval of CySec, by companies that have proven physical presence and substantial economic activity in Cyprus, and have as a purpose the financing of the investment plans of these companies or organisations exclusively in Cyprus, based on an investment plan, falls under this criterion. The purchase by an AIF of units of other AIFs is not considered eligible;

d. combination of the aforementioned investments: the applicant may proceed with a combination of the above investments, provided that the total investment will amount up to at least € 2 million. Under this criterion, the applicant may purchase special Cyprus government bonds, up to € 500,000, which will be issued by the Public Debt Management Office of the Ministry of Finance, on condition that the investor will retain these bonds for a three-year period. The characteristics and the terms of these special bonds will be determined by the General and Special Issue Terms of the Government Bonds of Cyprus. Investments in government bonds through the secondary market are not considered eligible.

A high-ranking senior manager may also apply, provided that he/she receives such a remuneration that generates for Cyprus tax revenues of at least € 100,000 over a three-year period and provided that this tax has already been paid or prepaid.

The applicant should have made the necessary investments during the three years preceding the date of the application and must retain the said investments for a period of at least three years as from the date of the naturalisation.

Certain terms and conditions apply, e.g. the applicant must have a clean criminal record and his/her name must not be on the list of persons whose assets, within the boundaries of the EU, have been frozen as a result of sanctions.

19. What is the law on corporate insolvency in your jurisdiction?

Corporate insolvency in Cyprus is regulated by the CA. A company can be put into liquidation voluntarily or through compulsory measures initiated by the company's creditors, primarily if the company is insolvent. The process can take various routes, either through court proceedings or without. The voluntary liquidation of a solvent company does not present particular difficulties and is usually determined within a period of six months from the date the company enters into liquidation. There are also other forms of corporate insolvency that have recently been enacted in the Cyprus legislation, such as the concept of examinership, which assists a company in financial difficulties to enter into a restructuring plan, aiming to avoid its liquidation.

20. Have there been any recent proposals for reforms or regulatory changes that will impact company law in your jurisdiction?

There are no known upcoming changes or reforms in legislation that will affect company law.

21. Are there any features regarding company law in your jurisdiction or in Asia that you wish to highlight?

Please refer to the previous responses.

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SOLICITORS AND ADVOCATES

1. What is the general situation for foreign companies in your jurisdiction? (For example, common presence, difficulty to setup, restrictive system, open and welcoming jurisdiction)

Foreign companies generally enter into India by way of liaison office, branch office or wholly owned subsidiary or joint venture. Some of the features of each structure are as follows:

a. A foreign body corporate may open a liaison office in India:
   i. to represent the parent company/group companies in India;
   ii. to promote export/import from/to India;
   iii. to promote technical/financial collaborations between parent/group companies and companies in India; or
   iv. to act as a communication channel between the parent company and Indian companies.

However, liaison offices are not allowed to carry on any business or earn any income in India and all expenses are to be borne by remittances from abroad. The Reserve Bank of Indian grants permission for a period of three (3) years, which is eligible for renewal for a block of three (3) years.

From Income tax perspective, liaison office is a good option as there are no tax implications on a liaison office as there is no business activity undertaken by liaison office in India.

Reporting requirements: Liaison offices are required to file Annual Activity Certificate from the auditors with the Reserve Bank of India. Additionally, a liaison office is also required to file the financial statements with the Registrar of Companies on an annual basis.

Issues: It currently takes 6–8 months to set up a liasion office in India and approximately the same time to close its operations.

b. A foreign body corporate may open a branch office for the purpose of engaging in the activities in which its parent company is engaged. Such activities may include:
   i. Export or import of goods or rendering of professional or consultancy services;
   ii. To conduct research, in which the parent company is engaged;
   iii. Promoting technical and financial collaborations between Indian and parent overseas group company; or
   iv. To represent the parent company in India and acting as buying/ selling agent in India.

Under this structure, tax liability is relatively high in comparison to the wholly owned subsidiary of foreign companies in India.

Reporting requirements: Branch offices are required to file the Annual Activity Certificate from the auditors with the Reserve Bank of India and the financial statements with the Registrar of Companies on an annual basis.

Issues: It currently takes 6–8 months to set up a branch office in India and approximately the same time to close its operations.

c. A foreign company may enter into India by setting up wholly owned subsidiary or joint venture company in collaboration with Indian business house/company. Under this structure, overseas entities may

infuse foreign funds into these companies subject to the restrictions as imposed by the Reserve Bank of India. Tax liability and other company law related filings for wholly owned subsidiaries or joint ventures are at par with other Indian companies. Setting up a wholly owned subsidiary is relatively simpler in comparision to a liaison office or branch office and currently it takes approximately 2 to 4 weeks to incorporate a company depending on the availability of documents.

2. What are the key laws and regulations that govern company law in your jurisdiction?

Following are the governing laws for the companies:

a. The Companies Act, 2013 and Rules made thereunder for unlisted companies such as private companies, foreign companies, public companies, not-for profit companies;

b. The Securities and Exchange Board of India 1992 and the Securities Exchange Board of India (Listing Obligations and Disclosure Requirement) Regulations, 2009 for companies listed on a stock exchange in India;

c. The Foreign Exchange of Management Act, 1999 and Regulations made thereunder in case of a foreign subsidiary;

d. The Reserve Bank of India Act, 1934 and Regulations made thereunder in case the company is a non-banking financial company.

3. What are the most common types of companies in your jurisdiction?

Following are the most common types of companies:

a. a private limited company under the Companies Act, 2013 which can be incorporated with zero capital;

b. a not for profit company (as a private company limited by guarantee or having no share capital) under the Companies Act, 2013. This structure is used mostly to promote charitable objects, corporate social responsibility (CSR) related activities, etc; and

c. a public company under the Companies Act, 2013 which can be incorporated with zero capital.

4. How long does it take to set up a company in your jurisdiction? (For example, it could be as fast as X amount of time, average setup time and then as slow as Y amount of time based on your experience – are there any mechanisms to fast track setup?)

The time to register a company very much depends on the type of the company the applicant chooses. Below are listed the time frames to incorporate the following companies:

a. Private/ public limited company: Registration of a private/public limited company generally takes around 2–4 weeks depending on the completion and availability of documents.

b. Section 8 Company: Registration of a Section 8 company generally takes around 4–6 weeks to complete.

5. What are the main registration requirements for companies in your jurisdiction? What are the fees?

The registration requirements for companies are as under:

a. Registration under the Companies Act, 2013 to incorporate a company, requirements of which are as follows;

   i. Identification of (i) suitable name; (ii) location of the registered office; (iii) directors; and (iv) subscribers to the memorandum of association of the proposed company; and

   ii. Preparation of documents to be filed with the incorporation forms such as charter documents of the proposed company (i.e. memorandum of association and articles of association), declarations and affidavits in the prescribed form;

Fee schedule is as under:

One Person Company and small company	Other Companies
If nominal share capital is less than or equal to INR 10,00,000 – Nil	If nominal share capital exceeds INR 10,00,000, INR 2000 with the following additional fees: i. for every INR 10,000 of nominal share capital or part thereof after the first INR 10,00,000 and upto INR 50,00,000 – INR 200.
If nominal share capital exceeds INR 10,00,000, INR 2000 with the following additional fees: i. for every INR 10,000 of nominal share capital or part thereof after the first INR 10,00,000 and upto INR 50,00,000 – INR 200.	If nominal share capital exceeds INR 10,00,000, the fee of Rs 36,000 with the following additional fees: i. for every INR 10,000 of nominal share capital or part thereof after INR 10,00,000 upto Rs. 50,00,000 – INR 300; ii. for every INR 10,000 of nominal share capital or part thereof after INR 50,00,000 upto INR 1 crore – INR 100; and iii. for every Rs. 10,000 of nominal share capital or part thereof after INR 1 crore – INR 75.

b. Registration under the Income Tax Act, 1961 by procuring Permanent Account Number (at a fee of INR 105/–) and Tax Identification Number (at a fee of INR 65/–);

c. Registration under the Goods and Service Tax (mandatory in case business turnover exceeds INR 20,00,000/–). This registration is free of cost;

d. Registration under the Shops and Establishment Act of the State from where the company is operating its business and hired employees. The fee charged is provided under the relevant Shops and Establishment Act; and

e. Other registrations/licenses which may vary based on the nature of business, activities, location of the office, etc.

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6. What are the main post-registration reporting requirements for companies in your jurisdiction? (For example, annual reporting requirements: what to file, to whom, is a company secretary required?)

The post registration reporting requirements for companies are set out as under:

a. Filing of form AOC – 4 (for filing audited accounts) latest by October 30th of the relevant year and form MGT – 7 (Annual Return) latest by November 29th of the relevant year with the Registrar of Companies electronically on an annual basis;

b. Filing of Annual Return on foreign liabilities and assets with the Reserve Bank of India by July 15th of every year in case the company has foreign exposure;

c. Filing of Income tax return latest by September 30th of the year with the Income tax authorities electronically on an annual basis;

d. Filing of GST returns electronically on monthly or quarterly basis; and

e. Filing of various returns (quarterly/half-yearly/yearly) in case the company is a non-banking financial company such as NBS – 1, NBS – 2, Statutory Auditor's certificate, etc.

7. Are there any controlling factors or restrictions on foreign companies in your jurisdiction?

Indian subsidiaries (Foreign Companies) are governed by the regulations or provisions of following laws:

a. Companies Act, 2013 or Companies Act, 1956 (if applicable);

b. The Foreign Exchange Management Act, 1999; and

c. Reserve Bank of India, 1934.

Indian Subsidiaries can be incorporated as a company under the Companies Act, 2013, as a Joint Venture or a Wholly Owned Subsidiary or can be set up as a Liaison Office/ Representative Office/Project Office/Branch Office in India, which can undertake activities permitted under the Foreign Exchange Management (Establishment in India of Branch Office or Other Place of Business) Regulations, 2000 and the same will be governed by the provisions of the Foreign Exchange Management Act, 1999.

8. What is the typical structure of directors (or family management structure) and liability issues for companies in your jurisdiction?

The Companies Act, 2013 provides for the following categories of the directors:

a. Executive director (including managing director or whole time director);

b. Non-executive director; and

c. Independent director.

The Companies Act, 2013 also provides the list of officers who may be held liable (with fine or imprisonment or both) in case the company has contravened the provisions of the said Act. Apart from the Companies Act 2013, directors may also be held liable under the other legislations such as the Negotiable Instruments Act, 1881, Insolvency and Bankruptcy Code 2016, Securities Exchange Board of India Act, 1992, Foreign Exchange Management Act, 1999, Income Tax Act, 1961, The Payment of Gratuity Act, 1972, environmental laws, etc.

Non-executive directors (not being a promoter or key managerial personnel) and Independent directors may be held liable only in respect of such acts of omission which had occurred with their knowledge, consent or connivance or where they have not acted diligently. Companies are also liable to pay penalties along with the directors in default.

9. What is the minimum number of directors and shareholders required to set up a company in your jurisdiction? Are there any requirements that a director must be a natural person?

a. Minimum number of directors required for setting up a:

   i. Public company – three

   ii. Private company – two

   iii. One person company – one

Every company must have at least one director who stays in India for a total period of not less than one hundred and eighty-two days during the financial year.

The following class of companies must also appoint at least one woman director:

i. every listed company; or

ii. every other public company having paid-up share capital of one hundred crore rupees or more; or turnover of three hundred crore rupees or more.

Every listed public company is required to have at least one-third of the total number of directors as independent directors and following companies is required to have at least two directors as independent directors:

i. the Public Companies having paid up share capital of ten crore rupees or more; or

ii. the Public Companies having turnover of one hundred crore rupees or more; or

iii. the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees

b. Minimum number of shareholders required for setting up a:

   i. Public company – seven

   ii. Private company – two

   iii. One person company – one

10. What are the requirements on how shares are offered in your jurisdiction?

Shares may be offered in the following manner as provided under the Companies Act, 2013:

a. To the general public by issuing a prospectus in case the company is intending to list its securities on the stock exchange;

b. To the selected group of persons by issuing a private placement offer letter (generally opted by private companies to raise further funds); or

c. To the existing shareholders by issuing a letter of offer (rights issue).

11. What are the key laws and regulations on employment in your jurisdiction that companies should be aware of? Are there any aspects of employment law that are heavily regulated?

A company is generally required to comply with certain employment laws based on nature of activities, number of employees, type of products, etc. Following are some of the labour laws and regulations in India:

a. Industrial Disputes Act, 1947;

b. Industrial Employment (Standing Orders) Act, 1946;

c. Shops and Establishments Act, 1954;

d. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013;

e. Equal Remuneration Act, 1976;

f. Minimum Wages Act, 1948;

g. Payment of Bonus Act, 1965;

h. Payment of Wages Act, 1936;

i. Employee's Compensation Act, 1923;

j. Employees Provident Fund and Miscellaneous Provisions Act, 1952;

k. Employees State Insurance Act, 1948;

l. Maternity Benefit Act, 1961;

m. Payment of Gratuity Act,1972;

n. Apprentices Act, 1961;

o. Child and Adolescent Labour (Prohibition and Regulation) Act, 1986;

p. Contract Labour (Regulation and Abolition) Act, 1970;

q. Environment (Protection) Act, 1986; and

r. Rights of Persons with Disabilities Act, 2016;

In India, laws pertaining to social security benefits such as employees provident fund, gratuity, pension fund, employment termination related laws, and change in conditions of service of employees are the most critical aspects and hence highly regulated.

12. What is the nature of the corporate governance regime in effect in your jurisdiction? What agencies or government bodies regulate corporate governance?

Corporate governance is the system by which the interests of the stakeholders are protected. Basically, it is conducted for the benefit of the shareholders of the company. It refers to the accountability of the Board of directors towards the stakeholders. In India, the shareholders are considered the true owners of the company while the directors are considered as the trustees of the shareholders. The aim is to align the interests of the management with that of the stakeholders. The corporate governance mechanism in India is enumerated by the following government and regulatory bodies:

a. Ministry of Corporate Affairs (MCA): MCA regulates corporate affairs in India through the Companies Act, 2013 and other related Acts, rules etc. MCA formulates and governs various corporate laws in India. Few of the provisions under the Companies Act, 2013 which deals with corporate governance are as follows:

   i. Board of directors are required to lay down the annual financial statements at every annual general meeting of the company and it must give a true and fair view of the state of affairs of the company. The company is also required to file the annual audited financial statements with the concerned Registrar of Companies. Additionally, the Board's report shall also to be presented before the shareholders which includes the company's state of affairs, directors' responsibility statement, and particulars of loans, details about the policy on corporate social responsibility etc.

   ii. Independent Directors: Public listed companies and specified unlisted public companies are required to have minimum one-third of the total number of directors as independent directors and they shall have a duty to act in good faith and in the best interests of the shareholders.

   iii. Audit Committee: Public listed companies and specified unlisted public companies are required to constitute an audit committee which shall review and monitor auditor's performance, examine the financial statement and

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the auditor's report, evaluate internal financial controls etc.

iv. Stakeholders' Relationship Committee: Every company that consists of more than 1,000 shareholders, debenture holders, deposit holders and other security holders shall constitute a stakeholders' relationship committee. The chairman of the committee shall be a non-executive director. The main function of the committee is to resolve grievances of stakeholders. The grievances of the security holders of the company may include complaints related to transfer of shares, non-receipt of balance sheet, non-receipt of declared dividends, which shall be handled by this committee.

b. Securities and Exchange Board of India (SEBI): SEBI is another important body that oversees corporate governance of listed companies. As per the listing agreement entered between a listed company and the concerned stock exchange, disclosures are required to be made with respect to Corporate Governance. The same also enumerates the whistle blower policy wherein the company is required to have mechanism for reporting unethical behavior.

13. Does establishing a company in your jurisdiction grant any kind of residency rights? Are there any conditions that in order to receive these residency rights (if applicable) one must partner or establish a joint venture with a local (e.g. a citizen of your jurisdiction)?

A company incorporated in India by foreign shareholders shall be treated as an Indian company for all purposes including from the perspective of Companies Act or Income Tax Act. Further, a company is a separate legal entity irrespective of the nationalities of its stakeholders. A company holds its properties in its own name and not in its shareholders' names.

Further, please note that Foreign Direct Investment ("FDI") policy of the Government of India provides for various conditions for foreign ownership in Indian companies. 100% foreign direct investment is allowed in most of the sectors under automatic route without requiring any partnership with a local citizen or entity. In a few sectors, there is a cap on foreign ownership. In some cases prior government approval is required for foreign ownership beyond the specified threshold. The foreign companies would need to find local shareholders only in the sectors where 100% FDI is not permitted.

14. When is a company subject to tax in your jurisdiction? What are the main taxes that may apply to companies in your jurisdiction?

A company will be liable for the following taxes:

a. Income Tax – This tax shall be payable by the company when the company is having taxable income in a particular financial year.

b. Capital Gains Tax – The tax levied on any profit or gain that arises from the sale of a capital asset is known as capital gains tax and shall be payable as and when there is capital gain on sale of capital asset.

c. Dividend Distribution Tax (DDT) – This tax is payable by the company on the amount of dividend distributed to the shareholders of a company.

15. How does the Competition law in your jurisdiction regulate companies?

The Competition Act, 2002 ("Act") is the legislation that regulates competition law in India. Practices having appreciable adverse effect on competition are strictly prohibited under the aforesaid Act. The main objectives of the Act are to promote competition in the business environment, to protect the interest of consumers and also to ensure freedom of trade carried on in Indian markets. The idea of the aforesaid Act is to discourage anti-competitive practices in India. Anti-competitive agreements, abuse of dominant position, and mergers, amalgamations

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and acquisitions are prohibited if they cause appreciable adverse effect on competition. It eliminates practices having adverse effect on competition and promotes freedom of trade. The Competition Commission of India (CCI) has been established to oversee the implementation of the Act. The Act prohibits the following three practices:-

a. Anti Competitive Agreements: No enterprise is permitted to enter into any agreement that may have an appreciable adverse effect on the competition in India. Activities that may determine purchase/sale prices of goods, limits/controls production/supply of services, or activities that result in bid rigging are considered to be those that have an appreciable adverse effect on competition. Tie-in agreements, exclusive supply agreements, exclusive distribution agreements, refusal to deal, and resale price maintenance agreements are all prohibited under the Act.

b. Abuse of Dominant Position: Dominant position means a position of strength for an enterprise in the relevant market that allows it to operate independently in the competition market and affects its consumers/market in its own favor, imposition of unfair conditions on the purchase/sale of goods/services or the prices of goods/services. It does not include such conditions which may be necessary to meet the competition like putting limitations on the production/provision of goods/services or some scientific development relating to the goods/services etc.

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Rudra is a corporate-commercial lawyer with ten years of professional experience in assisting and advising domestic and foreign clients on their transactions relating to M&A (shares/business/asset), Private Equity, Joint Venture, Debt Restructuring and Real Estate (leasing and acquisitions), due diligence and documentation (drafting, review and negotiation). He assists reputed and well known organizations across various sectors like e-commerce, real estate, broadcasting, franchising, retail, food & beverages, telecom infrastructure, manufacturing, automobile parts, chemicals, edible oil etc. He regularly advice domestic and foreign clients on issue relating to general corporate law, foreign exchange, external commercial borrowing, foreign direct investment, employment, regulatory compliances etc. He is the associate editor for the book on "Drafting of Contracts – Templates with Drafting Notes" published by Bloomsbury Professionals.

c. Mergers, Amalgamations and Acquisitions: A combination that causes appreciable adverse effect on competition is void under the Act. Any enterprise/person entering into such a combination is required to give a notice to the CCI disclosing the details of the combination. If the CCI is of the view that the combination might cause an appreciable adverse effect on competition, it will direct the combination to not take effect. Where the CCI feels that certain modifications in the combination might prevent an appreciable adverse effect on the competition, it shall direct the enterprise/person to make such modifications. The enterprise/person may accept the modification or make amendments which will have to be approved by the CCI.

Further, the CCI has the power to make inquiries in case of certain agreements, abuse of dominant position or any combination being so formed. Additionally, the CCI has the power to impose penalties in case of any offence under the Act.

16. What are the main intellectual property rights companies should be aware of in your jurisdiction?

Amidst the increasing significance of the Intellectual capital and growth of the legal jurisprudence in the Intellectual Property regime, awareness of the Intellectual property rights which may be available to a company in the Indian jurisdiction is crucial.

Broadly, following kinds of Intellectual Property Rights exist in India:

Trade Marks

A trade mark is a 'mark' that may include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combinations of colours and is protected under the Trade Marks Act 1999.

Patents

A Patent is an invention relating to a product or a process that is new, involves an inventive step and is capable of industrial application. The provisions of the Patents Act 1970, govern patents.

Copyrights

The Copyright Act, 1957, protects artistic work which comprises of a dramatic, literary and musical work, sound recording and/or cinematographic films.

Industrial Designs

Industrial Designs are governed by the Industrial Designs Act, 2000, and protect a shape, configuration, surface pattern, colour, or line which improve the visual appearance of the design.

Geographical Indications

A Geographical Indication is an indication in the form of a name of sign used on goods that have a specific geographical origin and reputation and is protected under the Geographical Indications Act, 1999.

Layout Designs of Integrated Circuits

The semi-conductor for Integrated Circuits Layout Act, 2000, accords protection to the Semiconductor Integrated Circuits which are products having transistors and other circuitry elements formed inseparably on a semiconductor material.

Plant Varieties

The Protection of Plant Varieties and Farmer's Rights Act, 2001 provides for the development of new plant varieties and protection of farmers and breeders.

Data protection

Data protection refers to the set of privacy laws, policies and procedures that aim to minimise intrusion into one's privacy and are primarily governed by the Information Technology Act, 2000.

17. Does your jurisdiction have laws or regulations that govern data privacy?

Data privacy refers to the laws and legislations which are aimed at minimizing invasion of one's privacy caused by storage of data on a digital/electronic platform. There is no express legislation dealing with data privacy. However, the Information Technology Act, 2000 (hereinafter referred to as 'The Act') does focus on privacy of data in digital format and provides for compensation to the victim in the case of unauthorized access and leakage of sensitive personal information. The Act provides for punishment for damaging the computer system without permission of the owner/person in charge of the computer system, which includes *inter alia* downloading of information, installing a virus, tampering or manipulation of data etc. Further, the Act talks about offences such as tampering with the computer source documents, hacking a computer system, and publishing of obscene information in electronic form. The Act also mentions that network service providers will not be made liable for any contravention made without his knowledge.

18. Are there any incentives to attract foreign companies to your jurisdiction?

There is no specific incentive for foreign companies intending to set up business in India.

19. What is the law on corporate insolvency?

The Insolvency and Bankruptcy Code 2016 (hereinafter referred to as 'Code') is the main legislation on corporate insolvency in India. The Insolvency and Bankruptcy Board of India

is the regulatory body established under the Code. The object of the Code is to provide a resolution mechanism within the prescribed timeline and maximization of value of assets for the benefit of stakeholders. As per the Code, the corporate insolvency resolution process (hereinafter referred to as CIRP) can be initiated by a financial creditor (itself or with other financial creditors), an operational creditor or by the corporate debtor itself when a default is committed by a corporate debtor.

20. Have there been any recent proposals for reforms or regulatory changes that will impact company law in your jurisdiction?

There are certain amendments to the Companies Act, 2013 which are expected to be notified shortly. These amendments will further facilitate workings of the company.

21. Are there any features regarding company law in your jurisdiction or in Asia that you wish to highlight?

The Government of India has been trying constantly to introduce various changes in the corporate laws in India to create business friendly environment in India.

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BENOIT CHAMBERS

1. What is the general situation for foreign companies in your jurisdiction?

The Mauritian jurisdiction is relatively welcoming of foreign investors, and it is not difficult for a foreign company to set up a place of business or to carry on business in Mauritius.

A company incorporated outside Mauritius must be registered as a 'foreign company' with the Registrar of Companies ('ROC') if it has a place of business in Mauritius or is carrying on business in Mauritius. The foreign company would, in effect, be setting up a branch in Mauritius.

Examples of activities by a foreign company that will be deemed to carry on business in Mauritius include:

a. establishing or using a share transfer office or a share registration office in Mauritius; and

b. administering, managing or dealing with property in Mauritius as an agent, or personal representative, or trustee, whether through its employees or an agent or in any other manner.

However, a foreign company will not be deemed to carry on business in Mauritius merely because it does the following in Mauritius:

a. it is or becomes a party to a legal proceeding or settles a legal proceeding or a claim or dispute;

b. it holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs;

c. it maintains a bank account;

d. it effects a sale of property through an independent contractor;

e. it solicits or procures an order that becomes a binding contract only if the order is accepted outside Mauritius;

f. it creates evidence of a debt or creates a charge on property;

g. it secures or collects any of its debts or enforces its rights in relation to securities relating to those debts;

h. it conducts an isolated transaction that is completed within a period of 31 days, not being one of a number of similar transactions repeated from time to time; or

i. it invests its funds or holds property.

The foreign company must verify with the ROC whether its current name is available to companies for registration in Mauritius and, if so, it must reserve the name. The foreign company will subsequently be required to submit certain documents for the reservation of name, such as authenticated copies of its certificate of incorporation and its charter documents, a list of directors, the address of registered office in Mauritius, and a power of attorney that authorises at least two individuals residing in Mauritius to accept service of process and notices on behalf of the foreign company.

Alternatively, a foreign company may set up a wholly-owned subsidiary in Mauritius.

There are no restrictions on foreign ownership of companies in Mauritius, except for companies that own immovable properties in Mauritius. If a company owned by non-residents of Mauritius proposes to hold immovable property in Mauritius, the company will be subject

to the restrictions imposed by the Non-Citizens (Property Restrictions) Act. The prior approval of the Prime Minister's Office may be required depending on the nature of the immovable property.

2. What are the key laws and regulations that govern company law in your jurisdiction?

Key pieces of legislation include the Companies Act 2001 (the 'Companies Act'), the Insolvency Act 2009, the Protected Cell Companies Act 1999 and the Financial Reporting Act 2004.

The Financial Services Act 2007 will be applicable if a company proposes to apply for a Category 1 Global Business licence ('GBL1 licence') or a Category 2 Global Business licence ('GBL2 licence').

3. What are the most common types of companies in your jurisdiction?

The most common types of companies are:

a. private or public companies limited by shares;

b. private or public companies limited by guarantee;

c. private or public companies limited by shares and by guarantee;

d. limited life companies, having a maximum duration of 50 years from the date of its incorporation, or if the duration is extended, having a maximum duration not exceeding in aggregate 150 years from the date of its incorporation;

e. foreign companies; and

f. protected cell companies, which offer a legal segregation of cellular assets.

Companies may also apply for the issue of a GBL1 licence or a GBL2 licence. The main distinction between the two licences is that the holder of a GBL1 licence may be taxable in Mauritius, whilst the holder of a GBL2 licence is not taxable in Mauritius as it is held to conduct business outside of Mauritius.

The distinction arises as a GBL1 licence confers to its holder the advantage of benefitting from the tax incentives available pursuant to the various Double Taxation Agreements that Mauritius has concluded with 43 countries. Hence, the holder of a GBL1 licence may, depending on the nature of the taxable item, be taxed either in Mauritius or in the country with which Mauritius concluded a Double Taxation Agreement.

Moreover, although holders of a GBL1 licence are held to conduct business outside of Mauritius, it may have limited dealings and transactions with residents of Mauritius in the following manner:

i. opening and maintaining with a bank an account in Mauritius Rupees, the local currency, for the purpose of its day to day transactions arising from its ordinary operations in Mauritius;

ii. subject to the Non-Citizens (Property Restrictions) Act, leasing, holding, acquiring or disposing of an immovable property or any interest in immovable property situated in Mauritius;

iii. investing in any securities listed on a securities exchange licensed under the Securities Act 2005;

iv. opening and maintaining with a bank an account in foreign currency; holding any share, debenture, security or any interest in or otherwise dealing or transacting with a corporation holding a Global Business licence;

v. entering into a business relationship with a duly licensed management company, a law practitioner, legal consultant, law firm or qualified auditor in Mauritius; or

vi. employing staff resident in Mauritius.

In contrast, the authorised dealings of holders of a GBL2 licence in Mauritius are limited to the transactions described in paragraphs (iii), (iv), (v) and (vi) only.

4. How long does it take to set up a company in your jurisdiction?

The timeframe for incorporation a company in Mauritius depends on the structure set up by the promoter.

Assuming that all documents required by the relevant authorities are duly submitted and no further information is required, the average time for incorporating or registering a company, as the case may be, is as follows:

a. domestic companies: 3–4 days;

b. foreign companies: 1–2 weeks;

c. companies holding a GBL1 licence: 3–4

d. companies holding a GBL2 licence: 2–5 days

There are no fast-track mechanisms.

5. What are the main registration requirements for companies in your jurisdiction? What are the fees?

Incorporation of domestic companies

Applicants must complete the prescribed forms issued by the ROC regarding the details and consents of proposed shareholder(s), director(s) and company secretary.

If the company will be governed by a constitution (i.e. a charter document), a copy of the constitution with a certificate from a local law practitioner, legal consultant or law firm confirming that the constitution complies with the local laws must be submitted to the ROC.

In the case of a company limited by guarantee, a document signed by each person named as a member, or by an agent of that person authorised in writing, containing the consent of the member and stating a specified amount up to which the member undertakes to contribute to the assets of the company in the event of its winding-up must also be submitted.

One-off fees are payable for the incorporation process, and annual fees are payable at the end of every calendar year.

Type of company	Fees payable	
	Incorporation (US$)	Annual registration (US$)
Private company	Approx. 90	270
Public company	Approx. 410	410

Registration of foreign companies

Within **one month** after it establishes a place of business or commences to carry on business in Mauritius, a foreign company must file the following documents with the ROC:

a. a duly authenticated copy of the certificate of its incorporation or registration in its place of incorporation or origin or a document of similar effect;

b. a duly authenticated copy of its constitution, charter, statute or memorandum and articles or other instrument constituting or defining its constitution;

c. a list of its directors containing similar particulars with respect to directors as are, by the Companies Act, required to be contained in the register of the directors, managers and secretaries of a company;

d. where the list includes directors resident in Mauritius who are members of the local board of directors of the company, a memorandum duly executed by or on behalf of the foreign company stating the powers of the local directors;

e. a memorandum of appointment of power of attorney under the seal of the foreign company or executed on its behalf, in such manner is to be binding on the company, stating the names and addresses of two

or more persons resident in Mauritius (not including a company) authorized to accept on its behalf service of process and any notices required to be served on the company;

f. notice of the situation of its registered office in Mauritius and, unless the office is open and accessible to the public during ordinary business hours on each day, other than Saturdays and public holidays, the days and hours during which it is open and accessible to the public; and

g. a declaration made by the authorized agents of the company.

Type of company	Fees payable	
	Incorporation (US$)	Annual registration (US$)
Foreign company	Approx. 410	410

Incorporation and licensing of companies holding a GBL1 or GBL2 licence

Companies holding either a GBL1 licence or a GBL2 licence are regulated by both the ROC and the Financial Services Commission ('FSC').

Those companies are incorporated in the same manner as domestic companies and are, in addition, required to submit further documents to the Financial Services Commission for the issue of the relevant Global Business licence.

Whilst the incorporation pack is submitted to the ROC, the application pack for the issue of the relevant Global Business licence is submitted in parallel to the FSC.

Applications for a GBL1 licence or a GBL2 licence must be made through a management company to the FSC and will be of no effect unless certified by a law practitioner, legal consultant or law firm that it complies with the laws of Mauritius.

The prescribed application form is submitted together with:

a. a business plan of the proposed activities to be carried out by the applicant of a GBL1 licence, or a business outline of the proposed activities to be carried out by the applicant of a GBL2 licence;

b. the applicable processing fee;

c. the legal certificate setting out that, certified by a law practitioner, legal consultant or law firm, it complies with the laws of Mauritius as set out at (a) above;

d. supporting certified copies of customer due diligence documentation;

e. incorporation documents such as the constitution of the company (if any), incorporation forms and certificates as for a domestic company.

The company is thereafter deemed to be incorporated in Mauritius upon receipt of the certificate of incorporation from the ROC, and is duly licensed as a Global Business company upon the issue of the relevant licence from the FSC.

Particulars for GBL1 licencees	Applicable fees (US$)
Annual fees to FSC	1,750
Application processing fee to FSC	500
Annual fees to ROC	Approx. 410

Particulars for GBL2 licencees	Applicable fees (US$)
Annual fees to FSC	235
Application processing fee to FSC	100
Annual fees to ROC	65
Processing fee to ROC	65

GBL1 licences are issued where the FSC is satisfied that the applicant:

a. has at least 2 directors, resident in Mauritius, of sufficient calibre to exercise independence of mind and judgement;

b. maintains at all times its principal bank account in Mauritius;

c. keeps and maintains, at all times, its accounting records at its registered office in Mauritius;

d. prepares its statutory financial statements and causes or proposes to have such financial statements to be audited in Mauritius;

e. provides for meetings of directors to include at least 2 directors from Mauritius; and

f. complies with at least one of the following 'economic substance' criteria i.e:

g. it has office premises in Mauritius;

h. it employs on a full-time basis at administrative or technical level at least one person resident in Mauritius;

i. its constitution contains a clause whereby all disputes arising out of the constitution is resolved by arbitration in Mauritius;

j. it holds within the next 12 months, assets (excluding cash held in bank accounts or shares or interests in another corporation holding a GBL1 licence) which are worth at least USD 100,000 in Mauritius;

k. its shares are listed on a securities exchange licensed by the FSC; or

l. it has a yearly expenditure in Mauritius which can be reasonably expected from any similar corporation which is controlled and managed from Mauritius.

GBL2 licences are issued where the applicant is a private company and proposes to conduct a business activity other than:

a. banking;

b. financial services;

c. carrying out the business of holding or managing or otherwise dealing with a collective investment fund or scheme as a professional functionary;

d. providing of registered office facilities, nominee services, directorship services, secretarial services or other services for corporations; and

e. providing trusteeship services by way of business

6. What are the main post-registration reporting requirements for companies in your jurisdiction?

Domestic companies

A domestic company (i.e. a company not being a GBL1 or GBL 2 licence) that has a turnover above MUR 50 million must:

a. file a copy of its audited financial statements with the ROC within 28 days of the date on which the audited financial statements are signed;

b. file an annual return (which is a prescribed form containing certain corporate information of the company such as names of directors and shareholders) with the ROC within 28 days of the date of its annual meeting of shareholders. The annual meeting of shareholders of a company must

be held not later than six months after the balance sheet date of the company; and

c. forthwith following a transfer of shares of the company, file a certified copy of the instrument with the ROC.

A small private company is subject to less stringent reporting requirements as it may file a financial summary with the ROC instead of filing audited financial statements. A small private company is a company not holding a GBL licence, and whose turnover for the last accounting period does not exceed MUR 50 million.

Foreign companies

A foreign company registered in Mauritius must:

a. within 3 months of its annual meeting of shareholders, file with the ROC a copy of its balance sheet containing such particulars prescribed by the law of its place of incorporation or, where it is not required to prepare a balance sheet under such law, a balance sheet as required under Mauritius law; and

b. file financial statements complying with International Accounting Standards, which fairly show the assets employed in, and liabilities arising out of, and its profit or loss arising out of, its operations conducted in or from Mauritius.

A foreign company registered in Mauritius must, within one month of any of the following changes, file with the ROC the particulars of the change of:

a. the constitution, charter, statutes, memorandum or articles or other instrument filed;

b. the directors of the company;

c. the authorized agents or the address of an authorized agent;

d. the situation of the registered office in Mauritius or of the days or hours during which it is open and accessible to the public;

e. the address of the registered office in its place of incorporation or origin;

f. the name of the company;

g. the powers of any directors resident in Mauritius who are members of the local board of directors;

h. a notice of the amount from which, and to which, the foreign company's authorised share capital has increased; and

i. where a foreign company not having a share capital increases the number of its members beyond the registered number it shall, file a notice of the increase.

Global Business licencees

A GBL1 must file its audited financial statements with the ROC in the same manner as a domestic company. In addition, a GBL1 must its audited financial statements and auditors' report with the FSC within 6 months of the close of its financial year.

A GBL2 must file its annual financial summary with the FSC within 6 months of its balance sheet date.

7. Are there any controlling factors or restrictions on foreign companies in your jurisdiction?

Except for the restriction on foreign ownership of immovable properties in Mauritius, there are no particular restrictions or controlling factors on foreign companies in Mauritius.

8. What is the typical structure of directors (or family management structure) and liability issues for companies in your jurisdiction?

The business and affairs of a company are managed by, or under the direction or supervision of the board of directors. The Companies Act treats as a director various persons who exercise over the company the sort of influence and control that is normally associated with appointment to the board, namely:

a. de jure directors, that is to say, those who have been validly appointed to the office;

b. de facto directors, that is to say, directors who assume to act as directors without having been appointed validly or at all; and

c. shadow directors, that is a person in accordance with whose directions or instructions a person occupying the position of director or the board is required or accustomed to act.

It is common for the board of public and/or listed companies to delegate, to the extent permitted by the Companies Act, certain powers to committees of the board of directors (e.g. audit committee, investment committee, corporate governance committee). The board is not responsible for actions of a committee if:

a. the board believed on reasonable grounds at all times before the exercise of the power that the committee would exercise the power in conformity with the duties imposed on directors of the company by the Companies Act and the company's constitution; and

b. the board has monitored, by means of reasonable methods properly used, the exercise of the power by the committee.

Directors have a duty to act in accordance with the law, exercise their powers honestly in good faith in the best interests of the company and for the purpose which such powers have been expressly or implicitly conferred. A director has a duty to exercise such care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

To the extent that de facto directors or shadow directors exercise management powers (including the taking of decisions that are normally approved by the board, those directors would attract the same fiduciary duties as de jure directors.

9. What is the minimum number of directors and shareholders required to set up a company in your jurisdiction? Are there any requirements that a director must be a natural person?

All companies must have at least one shareholder.

A domestic company incorporated in Mauritius must have at least one director who is a natural person ordinarily resident in Mauritius.

However, GBL1 licencees must have at all times at least two directors who are natural persons and are ordinarily resident in Mauritius for fiscal residency issues.

Only a GBL2 licencee may have a corporate director, who need not be resident in Mauritius.

Foreign companies do not need to have any resident director, but must have at least two agents who are resident natural persons.

10. What are the requirements on how shares are offered in your jurisdiction?

Different classes of shares can be issued in a company, with different rights, privileges, limitations and conditions attached to them.

Issue of shares

The board of directors must determine the amount of the consideration for which the shares are to be issued and must ensure that such consideration is fair and reasonable to the company and to all existing shareholders.

The Companies Act caters for pre-emptive rights of shareholders upon the issue of new shares. Hence, where a company issues shares which rank equally with, or in priority to existing shares as to voting or distribution rights, those shares must first be offered to the holders of existing shares in a manner which would, if the offer were accepted, maintain the relative voting and distribution rights of those shareholders. However, those pre-emptive rights may be negated or altered if the company has a constitution.

Anjeev Hurry

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Read law at the London School of Economics and Political Science, and is a barrister of the Honourable Society of the Middle Temple, England. He has developed a good practice for banking and financing transactions, as well as an acumen for complex industrial, green field and real estate projects. Also, he regularly advises on issues relating to company law and insolvency, financial services, securities law and taxation. Anjeev is a registered insolvency practitioner who has diligently completed the winding-up of several companies.

Tania Li

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Read law at University of Kent, England and holds a Licence en droit from Université Paris I (Sorbonne), France. She is a barrister of the Honourable Society of Lincoln's Inn, England and of the Bar of Mauritius. Her areas of work include company law, financial services and securities law, banking and finance, and employment law.

Offers to the public

A person cannot make an offer of securities to the public unless:

a. the issuer is in existence at the time of the offer;

b. the offer is made in a prospectus which complies with the securities laws of Mauritius; and

c. FSC has registered the prospectus or has given a provisional registration to the prospectus.

The Securities (Public Offer) Rules 2007 sets out information that must be contained in the prospectus, such information being information that investors and their professional advisers would reasonably require, and reasonably expect to find there, for the purpose of making an informed assessment of the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities, and the rights and liabilities attached to those securities.

If the shares are listed on a securities exchange in Mauritius at the time of the issue, the prospectus must also comply with the requirements of the Listing Rules of the Stock Exchange of Mauritius (or the Rules for the Development Enterprise Market companies.

11. What are the key laws and regulations on employment in your jurisdiction that companies should be aware of? Are there any aspects of employment law that are heavily regulated?

The key legislation regulating employment in Mauritius is the Employment Rights Act 2008 ('Employment Rights Act'), the Employment Relations Act 2008 ('Employment Relations Act') and the Occupational Health and Safety Act 2005.

The Employment Rights Act tends to afford more protection to workers having a monthly salary not exceeding MUR 30,000. In practice, the sections relating to termination of employment tend to be relied upon more often.

The relevant sections pertaining to termination in the Employment Rights Act relate to payment of compensation upon termination of a contract, notice to be given before termination of employment and other such relevant issues.

In addition to the Employment Rights Act, employers in certain specific activity sectors (e.g. printing industry, textile industry) are regulated by Remuneration Orders which are regulations issued under the Employment Relations Act. Those Remuneration Orders modify the provisions of the Employment Rights Act and generally favour workers' rights. Workers' rights are also protected by trade unions, whose constitution and registration and administration regime is governed by the Employment Relations Act.

The Occupational Health and Safety Act heavily regulates health and safety at work, especially in relation to activities that involve risk of physical harm to workers or others (e.g. industrial or manufacturing activities).

As regards foreign companies, the Non-Citizen (Employment Restrictions) Act 1971 requires foreigners to have a valid work permit or occupation permit to work in Mauritius.

12. What is the nature of the corporate governance regime in effect in your jurisdiction? What agencies or government bodies regulate corporate governance?

A National Committee on Corporate Governance ('NCCG') has been set up under the Financial Reporting Act 2004. The NCCG has the function of, inter alia, issuing the Code of Corporate Governance and guidelines, and establishing a mechanism for the periodic re-assessment of the Code and guidelines.

The National Code of Corporate Governance 2016 was launched in February 2017. The Code is applicable as from the reporting year (financial period) ending 30 June 2018 and applies to entities referred to as 'Public Interest Entities' which include:

a. entities listed on the Stock Exchange of Mauritius;

b. financial institutions, other than cash dealers, regulated by the Bank of Mauritius;

c. financial institutions regulated by the FSC, from the following categories

   i. insurance companies, other than companies conducting external insurance business, licensed under the Insurance Act 2005; collective investment schemes and closed-end funds, registered as reporting issuers under the Securities Act 2005; CIS managers and custodians licensed under the Securities Act 2005; persons licensed to carry out leasing, credit finance, factoring and distributions of financial products to the extent that the services supplied are by retail; and

   ii. companies or groups of companies having, during two consecutive preceding years, at least two of the following:

   - an annual revenue exceeding MUR 200 million;
   - total assets value exceeding MUR 500 million; or
   - at least 50 employees.

The NCCG may consist of a chairperson and not more than 10 other members. Each of them is appointed by the Minister to whom corporate affairs have been assigned. Each member must have a wide experience or expertise in legal, financial, corporate and business matters.

13. Does establishing a company in your jurisdiction grant any kind of residency rights? Are there any conditions that in order to receive these residency rights (if applicable) one must partner or establish a joint venture with a local (e.g. a citizen of your jurisdiction)?

There is no automatic grant of residency when incorporating a company in Mauritius.

14. When is a company subject to tax in your jurisdiction? What are the main taxes that may apply to companies in your jurisdiction?

The main taxes applicable to companies are under the Income Tax Act 1995 and the Value Added Tax Act 1998. There is no capital gains tax in Mauritius.

A company is taxed in Mauritius if it is deemed to be a tax resident in Mauritius or when it derives income from Mauritius. Income is derived in Mauritius by a company where:

a. the income was derived from Mauritius, whether the company was resident in Mauritius or elsewhere; or

b. the income was derived at a time when the company was resident in Mauritius, whether the income was derived from Mauritius or elsewhere.

Income Tax Act 1995

Every company resident in Mauritius (i.e. every company which is incorporated in Mauritius or has its central management in Mauritius) is liable to pay income tax on its chargeable income at the rate of 15%.

Holders of GBL1 licences are tax resident in Mauritius and will be liable to tax in Mauritius at the rate of 15% on its net income. However, when calculating its tax liability, the GBL1 licencee will be entitled to a foreign tax credit on its foreign source income not derived from Mauritius. Such foreign tax credit is calculated as per the provisions of Income Tax (Foreign Tax Credit) Regulations 1996 (the 'Tax Regulations'). The Tax Regulations provide for a tax credit on the basis of submission of written evidence for such foreign tax paid. In cases where no written evidence is presented to the MRA, the GBL1 licencee will be entitled to a deemed tax credit of an amount equal to eighty percent (80%) of the Mauritius tax chargeable with respect to that income. After taking into account such availability of tax credit, the effective tax rate will be equivalent to three percent (3%).

Medina Torabally

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Read law at University Reading, England and completed her Bar Professional Training Course at City University London. She is a barrister of the Honourable Society of Gray's Inn and of the Bar of Mauritius. Her areas of work consist mostly of dispute resolution but also extends to financial services, company law and data protection.

Holders of GBL2 licences do not pay any income tax in Mauritius as they are deemed to conduct business outside of Mauritius and accordingly qualify as exempt persons under the Income Tax Act.

Value Added Tax Act 1988

If a company that is registered with the Mauritius Revenue Authority for VAT purposes makes a taxable supply, then the company must charge value added tax. The current rate of VAT is 15%.

Other taxes

In certain transactions, land transfer tax, registration duty or stamp duty may be applicable depending on the nature of the transaction.

15. How does the competition law in your jurisdiction regulate companies?

The Competition Act 2007 ('Competition Act') has been enacted to create the Competition Commission, to make better provisions for the regulation of competition and for matters incidental thereto and connected therewith.

The Competition Act creates and mandates the Competition Commission to conduct, as required, any hearings with interested persons or parties, determine whether a restrictive business practice is occurring or has occurred and determine such penalty or other remedy as it thinks fit to impose in response to an identified anti-competitive practice and what action an enterprise should take to ensure compliance with the penalty or remedy.

The Competition Act sets out in Part III provisions relating to restrictive business practices such as collusive agreements and bid rigging.

The Competition Act sets out the benchmark for monopolies in markets, especially in relation to the supply of goods or services of any description where:

a. 30% or more of those goods or services are supplied, or acquired on the market, by one enterprise; or

b. 70% or more of those goods or services are supplied, or acquired on the market, by three or fewer enterprises.

16. What are the main intellectual property rights companies should be aware of in your jurisdiction?

The laws of Mauritius protect copyright, patents, industrial designs, marks (i.e. trademarks, trade names, service marks, and collective marks), layout designs of integrated circuits, and geographical indications.

Mauritius is party to numerous conventions regarding intellectual property rights, including the Paris Convention for the Protection of Industrial Property and Berne Convention for the Protection of Literary and Artistic Works, and the Convention Establishing the World Intellectual Property Organization.

17. Does your jurisdiction have laws or regulations that govern data privacy?

The Data Protection Act 2017 ('Data Protection Act') repeals the Data Protection Act 2004 and further strengthens the control and personal autonomy of data subjects over their personal data, in line with current relevant international standards, and in view of the developments in the techniques used to capture, transmit, and manipulate, record or store data.

The Data Protection Act places emphasis on processing of data, obligations of data controllers, and rights of data subjects.

The Data Protection Act provides that Data Protection Act is applicable to a data controller:

a. who is established in Mauritius and processes data in the context of that establishment; and

b. who is not established in Mauritius but uses equipment in Mauritius for processing data, other than for the purpose of transit through Mauritius.

18. Are there any incentives to attract foreign companies to your jurisdiction?

There are no specific incentives to attract foreign companies to Mauritius.

However, in practice, foreign investors commonly utilise companies holding a GBL1 licence or GBL2 licence in light of the favourable tax regime.

19. What is the law on corporate insolvency in your jurisdiction?

The Insolvency Act 2009 ('Insolvency Act') governs the law relating to bankruptcy of individuals and insolvency of companies and the distribution of assets on insolvency and related matters. It provides for the mechanisms and regulatory framework for companies to go into administration, liquidation or winding-up and other relevant issues.

The Insolvency Act sets the legislative basis for the voluntary administration, receivership and liquidation of companies.

The Insolvency Act was prepared with the assistance of New Zealand insolvency law experts and follows broadly the regime applicable in New Zealand.

20. Have there been any recent proposals for reforms or regulatory changes that will impact company law in your jurisdiction?

There are currently no proposed reforms to the Companies Act.

21. Are there any features regarding company law in your jurisdiction or in Asia that you wish to highlight?

The Companies Act is based on New Zealand's Companies Act 1993. In turn, the latter was inspired by the English Companies Act. As a commonwealth country, Mauritius follows the principles of common law, and practitioners may refer to the case law of England and Australia for the purposes of interpretation of legislation or case law.

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IRFAN & IRFAN
ATTORNEYS-AT-LAW

1. What is the general situation for foreign companies in your jurisdiction? (For example, common presence, difficulty to setup, restrictive system, open and welcoming jurisdiction?

It is fairly easy and common for foreign companies to establish a place of business in Pakistan.

Generally, there is no need for a common presence, the only major requirement being that foreign companies need to obtain permission from the Board of Investment (BOI), Government of Pakistan. As long as this permission is obtained through the relevant forms and all procedural and legal obligations/ requirements of the Securities and Exchange Commission (SECP) are met there is no difficulty. The BOI (Karachi and Islamabad) has issued 551 permissions to foreign companies during the years 2007–2010.

2. What are the key laws and regulations that govern company law in your jurisdiction?

a. Companies Act 2017;
b. Companies (General Provisions and Forms) Rules 1985;
c. Single Member Companies Rules 2003;
d. Appointment of Legal Advisor Act 1974
e. The Limited Liability Partnership Act 2017 and Schedule filing fees.

3. What are the most common types of companies in your jurisdiction?

The following are the most common types of companies incorporated in Pakistan:

a. Private Companies;
b. Public Companies;
c. Public Listed Companies (Companies listed on the Stock Exchange);
d. Unlimited Companies; and
e. Companies Limited by Guarantee

4. How long does it take to set up a company in your jurisdiction? (For example, it could be as fast as X amount of time, average set up time and then as slow as Y amount of time based on your experience – are there any mechanisms to fast track setup?)

After the completion of the execution, and all procedures and legal requirements as ordained under the law, it takes up to ten to fifteen working days on average to set up a company.

5. What are the main registration requirements for companies in your jurisdiction? What is the fee?

All requirements for incorporation of a private limited company shall mutatis mutandis apply to a single member company.

The first step that is required to be taken to incorporate a company in Pakistan is to search for the availability of a proposed name for the company to be registered under the Companies Act 2017. This name is sought from the Registrar of companies by making the required application to obtain an availability certificate along with making the requisite payment of Rs. 200.

The second step is the filing of all required documents for registration of a private limited company with the Registrar of Companies:

a. A Copy of a National Identity Card or a Passport in case a person is a foreigner. This document has to be provided for each person who is a subscriber or witness to the Memorandum and Articles of Association of the company;

b. Four copies of the Memorandum and Articles of Association of the company duly signed by each subscriber in the presence of one witness, with identification of address of the witness;

c. Particulars of Chief Executive, subscribers, directors, secretary, chief accountant, auditors and legal adviser;

d. A copy of the original slip of the amount paid into the authorized Bank or a Bank Draft/ Pay Order drawn in favour of the Securities and Exchange Commission of Pakistan of the prescribed amount as the registration or filing fee;

e. Application for incorporation of the company;

f. A prescribed form in the case of single member company indicating two individuals to act as nominee director and alternate nominee director of a company. This has to be filed with the Registrar at the time of incorporation; and

g. A document indicating the authorisation of subscribers in favour of a person to be the representative or to look after the issues or problems that arise, if any, in the memorandum and articles of association. This individual can also file additional documents/information and collect from the Registrar, documents such as the certificate of incorporation etc.

The documents that are required for the registration of a 'not for profit' association/ company in Pakistan are the same as the documents required for a limited company as mentioned above. The additional documents that are required are as follows:

a. A licence issued by the Securities and Exchange Commission of Pakistan. In cases where there is a trade body, the licence is to be issued by the Ministry of Commerce. The application for obtaining the license shall be accompanied by the following:

   i. A draft of the Memorandum, Declaration and Articles of Association and;

   ii. A list of all the relevant promoters along with their bio-data, the names of the companies in which they hold office, their annual income, expenditure and a brief overview of work undertaken by each promoter.

The Securities and Exchange Commission of Pakistan provides an Incorporation Fee Calculator on its website which can be used to determine the portion of the registration fee based on the amount of nominal share capital. However, the fee determined by the Calculator does not include any additional applicable fees such as the name availability fee etc.

6. What are the main post-registration reporting requirements for companies in your jurisdiction? (For example, annual reporting requirements: what to file, to whom, is a company secretary required?

Private companies

a. The appointment of first directors is required to be notified to the registrar concerned on Form-29 within 14 days from the date of incorporation of the company. A director will hold office for a period of three years. An auditor is required to be appointed by the Board within 90 days of the date of incorporation of the company and thereafter in each Annual General Meeting;

b. The first election of directors is required to be held at the first Annual General Meeting (AGM) of the company and every three years thereafter;

c. The name of first Chief Executive shall be determined by the subscribers of the memorandum and his particulars are required to be submitted to the Registrar of SECP along with the documents for the incorporation of the company;

d. A single member company is also required to appoint a company secretary within fifteen days of incorporation and notify the same within 14 days. The decisions taken by the single member or sole director in the meeting of the director and member of a Single Member Company are required to be drawn up in writing and recorded in the minute book by the company secretary;

e. A company is required to notify the registered office of the company through submitting Form-21 within 28 days from the date of its incorporation;

f. The first Annual General Meeting (AGM) of the company is required to be held within sixteen months from the date of incorporation and subsequent Annual General Meetings (AGM) are required to be held once at least in every calendar year, and within a period of 120 days following the close of its financial year. In the AGM, the directors of the company have to present an audited balance sheet and profit and loss accounts in case of first accounts since the incorporation of the company and in any other case since the preceding account, made up to a date not earlier than the date of the meeting by more than 120 days;

g. In case the paid-up capital of the company increases, the company is required to offer new shares to the existing shareholders in proportion to the shares held by them. 'Form 3' has to be filed with the registrar within 45 days from the allotment of shares. Share certificates are to be offered, and;

h. Particulars of every mortgage or charge created by the company on its property or undertaking and every modification are required to be filed and registered with the registrar concerned within 30 days.

Public companies:

a. All requirements of private companies apply to public companies, although some of the required application forms are different. A listed company is also required to appoint a company secretary;

b. Companies are entitled to commence business after obtaining a commencement of business certificate from the registrar concerned. Listed companies are required to file list of members on floppy diskette to the Commission and the associations are also required to file it with the registrar concerned. A company is required to file a list and get the consent of directors, chief executives etc with the Registrar within fifteen days thereof;

c. A statutory meeting to be held within a period of 180 days from the date at which the company is entitled to commence business or within nine (9) months from the date of its incorporation whichever is earlier hold a general meeting of the members of the company to be called the 'statutory meeting'. The notice of statutory meeting is required to be sent to the members at least 21 days before the date fixed for the meeting along with a copy of statutory report. The directors shall cause a copy of the statutory report along with the report of the auditors as aforesaid to be delivered to the Registrar for registration forthwith after sending it to the members of the company. Every listed company is required to file three copies of the audited balance sheet and profit and loss accounts to the SECP, Stock Exchange and the Registrar at the time of sending the notice of AGM to the members.

d. Under the new arrangements, beneficial owners of listed companies are required to follow the provisions of the Securities Act 2015 for the filing of their beneficial ownership returns and reporting of tenderable gain. Returns containing beneficial ownership of listed securities and change therein

are to be filed with the Registrar concerned and the SECP in Form-31 and Form-32.

Foreign companies:

A Foreign Company incorporated outside Pakistan is required to file the following documents to the registrar concerned within 30 days from the establishment of its place of business in Pakistan:

a. A certified copy of the charter, statute or Memorandum and Articles of Association of the company accompanied by Form-38. The certification is to be given by:
   i. a public officer in the country where the company is incorporated to whose custody the original is committed or
   ii. a notary public of the country where the company is incorporated; or
   iii. an affidavit of a responsible officer of the company in the country where the company is incorporated.

The signature or seal of the person so certifying shall be authenticated by a Pakistani diplomatic consular or consulate officer. If the document is not in English, a duly certified translation in English or Urdu language is provided (Rule 23 of Companies (General Provisions and Forms) Rules, 1985;

a. Address of registered office or principal office of the company, in Form-39;
b. Particulars of directors, Chief Executive and secretary (if any) of the company, in Form-40;
c. Particulars of principal officer of the company in Pakistan, in Form-41;
d. Particulars of person(s) resident in Pakistan authorized to accept service on behalf of the foreign company, in Form-42 along with the certified copy of the appointment order, authority letter of board of directors' resolution and consent of the principle officer;
e. Address of principal place of business in Pakistan of the foreign company, in Form-43;
f. Permission letter from the Board of Investment with a specific validity period for opening and maintaining of a branch/ liaison office by a foreign company;
g. Any change or alteration in particulars stated in the documents and returns filed at the time of registration u/s 435 is required to be filed in Form-44 with the Registrar concerned within 30 days of such change or alteration.
h. A foreign company is required once a year to file with the Registrar concerned, annual accounts in respect of its operations within Pakistan as well as its global accounts together with the list of Pakistani members and debenture holders and of places of business of the company in Pakistan within a period of 45 days from the date of submission of such documents or returns to the public authority of the country of incorporation or within 180 days of the date up to which the relevant accounts are made up, whichever is earlier;
i. A foreign company is required to submit the renewal/extension of the permission to open/maintain a branch/liaison office from the Board of Investment on the expiry of the validity period of the permission, originally granted; and
j. A foreign company is required to give notice in Form-46 to the Registrar concerned at least 30 days before it intends to ceases to have a place of business in Pakistan and to publish a notice of such intention at least in two daily newspapers circulating in the Province or Provinces in which such place or places of business are situated.

Maria Farrukh Khan

Senior Partner, Irfan & Irfan

Maria Farrukh Khan graduated from Wellesley College with a major in Biochemistry and a minor in Spanish. She was a Commonwealth Scholar at the University of Cambridge from where she holds a BA/MA (Law Tripos). Maria was called to the Bar of England and Wales as a member of Lincoln's Inn and was a recipient of the Hardwicke Award. Her practice focuses on Corporate, Competition and Intellectual Property laws.

7. Are there any controlling factors or restrictions on foreign companies in your jurisdiction?

There are no restrictions or controlling factors although a pre-requisite of incorporating a foreign company in Pakistan is to obtain the due permission from the Board of Investment (BOI of the Government of Pakistan for a specific validity period for the purpose of opening and maintaining a branch office or liaison office in Pakistan. A copy of this letter has to be given to the registrar concerned of SECP at the time of the registration of the company. Furthermore, industry specific companies e.g. Insurance etc., have to obtain further approval/ permission from the relevant ministries such as the Ministry of Commerce etc.

8. What is the typical structure of directors (or family management structure) and liability issues for companies in your jurisdiction?

In a typical company, there are elected directors and nominee directors appointed to cater to the interests of creditors and stakeholders.

Section 180 of the Companies Act, 2017 states the Liabilities of directors and officers whereby 'Any provision, whether contained in the articles of a company or in any contract with a company or otherwise, for exempting any officer or auditor of the company, from, or indemnifying him against, any liability which by virtue of any law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the company, shall be void except as otherwise specified for:

a. Provisions of insurance undertaken by a company on behalf of such officers of the company; or
b. qualifying third party indemnity provisions undertaken by a company on behalf of such officers of the company: Provided that, notwithstanding anything contained in this section, a company may, in pursuance of any such provision as aforesaid, indemnify any such director, chief executive, officer against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted, or in connection with any application under section 493 in which relief is granted to him.'

9. What is the minimum number of directors and shareholders required to set up a company in your jurisdiction? Are there any requirements that a director must be a natural person?

a. Single Member Company: 1 Director;

b. Public Company: 3 Directors;

c. Public Listed Company: 7 Directors; and

d. Private Company: 2 Directors.

Yes, a director of a company has to be a natural person.

10. What are the requirements on how shares are offered in your jurisdiction?

A company can offer shares to any individual who it deems fit if it complies with the legal and procedural requirements. A company can have its own internal policies pertaining to this matter. The approval of the Board of Directors has to be sought in order to offer shares to any person. Partly paid shares are not allowed to be issued at all.

11. What are the key laws and regulations on employment in your jurisdiction that companies should be aware of? Are there any aspects of employment law that are heavily regulated?

a. The Industrial and Commercial Employment (Standing Order) Ordinance 1968 (applicable in ICT and Baluchistan);

b. The Industrial and Commercial Employment (Standing Order) Ordinance 1968 (adopted in 2012, applicable in Punjab);

c. The Khyber Pakhtunkhwa Industrial and Commercial Employment (Standing Order) Act, 2013;

d. The Sindh Terms of Employment (Standing Orders) Act, 2015

e. The Industrial Relations Act, 2012

f. The Punjab Industrial Relations Act, 2010

g. The Khyber Pakhtunkhwa Industrial Relations Act, 2010

h. The Balochistan Industrial Relations Act, 2010

i. The Sindh Industrial Relations Act, 2013

After the eighteenth Constitutional amendment in 2010, all provinces were given the power to regulate employment laws fully meaning that henceforth each province has different laws which are regulated differently according to the province.

12. What is the nature of the corporate governance regime in effect in your jurisdiction? What agencies or government bodies regulate corporate governance?

In cases of registered companies, the sole governing authority is the Securities and Exchange Commission of Pakistan (SECP) which believes that corporate governance is establishing a framework of company processes and attitudes that add value to the business, help build its reputation and ensure its long-term continuity and success. In light of this, the Securities and Exchange Commission of Pakistan (SECP) issued the Listed Companies (Code of Corporate Governance) Regulations 2017. Regardless of the nature of the company, the corporate governance regime needs to be followed by all companies in Pakistan in order to foster good governance at a national and international level in the corporate sector.

13. Does establishing a company in your jurisdiction grant any kind of residency rights? Are there any conditions that in order to receive these residency rights (if applicable) one must partner or establish a joint venture with a local (e.g. a citizen of your jurisdiction)?

The Punjab Board of Investment and Trade does state that the granting of Pakistani Citizenship to Foreign Nationals (Investors) is possible.

Hasan Irfan Khan

Senior Partner, Irfan & Irfan

Hasan Irfan Khan is a Senior Partner of Pakistan's leading and well known law firm Irfan & Irfan. Mr. Khan has over 2 decades of experience, is admitted to practice before the Supreme Court and represents large number of world renowned multinational companies in Pakistan for their legal matters.

Any person of a country recognized by Pakistan may obtain Pakistani Citizenship by investing a minimum of USD 0.75 million in tangible assets and USD 0.25 million (or equivalent in major foreign currency) in cash on a non-repatriable basis, and by fulfilling the conditions of the Pakistan Citizenship Law. Investment on a non-repatriable basis means that the amount is brought to Pakistan through normal banking channels, converted into Pakistan Rupees, and never remitted back. However, in practice this is highly uncommon. Usually citizenship is only granted through birth or marriage.

14. When is a company subject to tax in your jurisdiction? What are the main taxes that may apply to companies in your jurisdiction?

A resident company is taxed on its worldwide income. Non-resident companies operating in Pakistan through a branch are taxed on their Pakistan-source income, attributable to the branch, at rates applicable to a company.

In Pakistan a resident company in taxed on its worldwide income whereas a non-resident company that operates in Pakistan is taxed on the income that is generated from Pakistan. The federal corporate tax rates vary on the type of company for the taxable income. The tax rate for a banking company is 35%, a public company (a company listed on the stock exchange or where not less than 50% of the shares are held by the federal government or a public trust) is 29% and any other company is also 29% as of the year 2018. For a small-scale company, it can be 25%.

Super tax was introduced through Finance Act, 2015 whereby 4% of super tax was payable by banking companies and 3% by other companies if the income of the company was 500 million Pakistani rupees (PKR) or more. Super tax was payable only for tax years 2015 and 2016. Companies are also liable to pay Alternate Corporate Tax (ACT). No provincial or local taxes are payable in respect of income of companies.

15. How does the competition law in your jurisdiction regulate companies?

There is an independent, quasi-regulatory, quasi-judicial body that is exclusively mandated under the Competition Act 2010 to ensure that competitive forces run smoothly in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from monopolistic behaviour. The Competition Commission of Pakistan (Commission) sets

out enquiries, imposition of penalties, grants of leniency and other important aspects of law enforcement along with procedures relating to the review of mergers and acquisitions therefore prohibiting situations that tend to diminish, distort, or eliminate competition such as actions constituting an abuse of market dominance, competition restricting agreements, and deceptive marketing practices.

16. What are the main intellectual property rights companies should be aware of in your jurisdiction?

a. The Trade Marks Ordinance, 2001 (XIX of 2001);

b. The Copy Rights Ordinance, 1962 (XXXIV of 1962);

c. The Patents Ordinance, 2000 (LXI of 2000);

d. The Registered Designs Ordinance, 2000 (XLV of 2000) and

e. The Registered Layout Design of the Integrated Circuits Ordinance, 2000 (XLIX of 2000).

17. Does your jurisdiction have laws or regulations that govern data privacy?

The Constitution of Pakistan entails an inherent right to privacy (Article 14 of the Constitution of Pakistan 1973) which states that 'The freedom from unauthorized and unreasonable intrusion into the individuals' personal affairs". "The dignity of man and, subject to the law, the privacy of home, shall be inviolable'. It should be noted that in addition to Article 14, Article 8 (2) of the Constitution of Pakistan 1973, also protects the rights of all individuals including employees, 'Laws inconsistent with or in derogation of Fundamental Rights to be void. The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void……'. In addition to this, there is also a Prevention of Electronic Crimes Act 2016 which deals with privacy laws.

18. Are there any incentives to attract foreign companies to your jurisdiction?

The following incentives are usually available to foreign investors:

a. Tax concessions: every year there are a number of tax concessions that are offered to foreign investors. These vary yearly and from sector to sector;

b. Some countries have a double tax treaty with Pakistan which means that they are completely exempted from taxes and customs;

c. Many low interest loans are offered nationwide;

d. There are many research and development opportunities provided to foreign investors; and

There are laws protecting foreign investment in Pakistan and such investment is greatly welcomed and encouraged.

19. What is the law on corporate insolvency in your jurisdiction?

The following are the laws relating to Insolvency in Pakistan, however, the main legislation dealing with insolvency are the Companies Act, 2017 and the Provincial Insolvency Act, 1920:

a. Provincial Insolvency Act, 1920;

b. Insolvency (Karachi Division) Act, 1909 and

c. Provincial Insolvency Amendment Act, 2012.

In situations dealing with companies, the insolvency proceedings result in the liquidation of the company itself. If there is a pre-existing scheme/ agreement/settlement or compromise that is entered into between the company and its creditors, it becomes binding on both which may result in corporate rehabilitation which could include re-organization of the company. Insolvency of a company is the prerogative of the High Court. The matter is regulated by the High Court with the creditors, the liquidators, the company's administration and the Security & Exchange Commission being the main role players subject to the control of the Company Court i.e. High Court. Liquidation of insolvent business is commenced by moving a petition to the Company Court. The court appoints a liquidator to realise and sell the liquidation estate of the company and distribute the assets between the creditors. The liquidation process is managed by the liquidator who is appointed by the court. The passing of a winding up order operates as an automatic stay of all legal proceedings against the Company.

20. Have there been any recent proposals for reforms or regulatory changes that will impact company law in your jurisdiction?

The Companies Act has been updated and amended but the essence of it remains the same, with minor changes. The Corporate tax decreases by up to 1% every year and there have been proposals to eradicate the Super Tax applicable on Companies completely. The presence of at least one Female director mandatory in recent times and the maximum number of executive directors (including the Chief Executive Officer) has been changed from one-third of elected directors to one third of the Board of Directors.

21. Are there any features regarding company law in your jurisdiction or in Asia that you wish to highlight?

A private limited company under Pakistani Law is generally beneficial for foreign entrepreneurs as

a. It is a separate legal entity;

b. Has perpetual succession;

c. Can own, sell, hire or lease/license property;

d. Can sue and can be sued;

e. Has a common seal;

f. All members have limited liability and

g. All shares are freely transferable.

In addition to this, a private limited company in Pakistan enjoys the right and has the autonomy and independence to form its own policies subject to legal and regulatory requirements. Under the guidance and supervision of the board formed by foreign owners, professional management can be drawn to participate in running the day to day affairs of the company.

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1. What is the general situation for foreign companies in your jurisdiction? (For example, common presence, difficulty to setup, restrictive system, open and welcoming jurisdiction?)

Foreign companies in Ukraine may be viewed as either foreign investors making investments into the country, or as Ukrainian subsidiaries of foreign entities. Ukraine is generally an open and welcoming jurisdiction for setting up business; foreign companies are represented in different industries of the Ukrainian economy.

Foreign investors are generally treated equally with Ukrainian investors, including in terms of rights and obligations.

Overall, there are very few restrictions for foreign investors to do business in Ukraine.

2. What are the key laws and regulations that govern company law in your jurisdiction?

The key legislative acts governing company law in Ukraine are as follows:

a. the Law of Ukraine on Commercial Companies 1991;

b. the Law of Ukraine on Joint Stock Companies 2008;

c. the Law of Ukraine on Limited Liability Companies and Additional Liability Companies 2018, which will enter into force on 17 June 2018;

d. the Civil Code of Ukraine 2003;

e. the Commercial Code of Ukraine 2003;

f. the Law of Ukraine on State Registration of Legal Entities, Individual Entrepreneurs and Public Organisations 2015; and

g. Law of Ukraine on Holding Companies in Ukraine 2006.

3. What are the most common types of companies in your jurisdiction?

The law provides for the following types of companies in Ukraine:

a. limited liability company;

b. joint stock company;

c. private enterprise;

d. additional liability company;

e. general partnership; and

f. limited partnership.

The most common types of companies used for business setting up in Ukraine are the limited liability company (Ukr. – Tovarystvo z obmezhenoyu vidpovidalnistyu) ("LLC") and the joint stock company (Ukr. – Aktsionerne tovarystvo) ("JSC"), as they allow the benefit of limited liability for their participants (shareholders).

An LLC is the most common and easily administered form of legal entity used in Ukraine because its establishment and operation is significantly less burdensome and time-consuming as compared to a JSC.

At the same time, a JSC may be preferable if the company plans to attract financing by way of proposing newly issued shares at a premium without the need for all the shareholders to contribute into the capital proportionally to the

amount of their stake. This is because, unlike in an LLC (the capital increases in which are usually performed at a nominal value), shares of a JSC are generally placed at the market price.

Private enterprises are commonly used for businesses with insignificant amounts of transactions, and they do not have a proper legislative regulation, which makes them less attractive for foreign investors.

The remaining types of companies indicated above are usually set up only when this is explicitly required by law due to their general impracticality and additional liability to their participants.

A foreign company may also set up a representative office in Ukraine, which is an equivalent to a branch; however, a representative office does not have a separate legal personality and hence, the parent company will not have the benefit of limited liability for debts of the Ukrainian subsidiary.

4. How long does it take to set up a company in your jurisdiction? (For example, it could be as fast as X amount of time, average setup time and then as slow as Y amount of time based on your experience – are there any mechanisms to fast track setup?)

The registration of an LLC is quite easy and quick and can be completed within 1 (one) business day as of the moment of submission of all required documents with the State Register of Legal Entities, Private Entrepreneurs and Public Formations (the "State Register") or in certain exceptional cases take a couple of days longer.

General average time for an LLC becoming operating in Ukraine is up to 2–3 weeks, including:

a. preparation of documents for the company registration – 1–2 business days;

b. submission of the documents to the State Registrar – 1–2 business days;

c. registration of LLC as a value added tax (VAT) payer (if necessary) – 3–5 business days;

d. opening of bank accounts – 10–14 business days;

e. payment of equity – 1–2 business days.

The registration of a JSC is a longer process as compared to an LLC. Given the necessity of share issuance and registration of the share issue with the National Securities and Stock Market Commission ("NSSMC"), the whole process of JSC registration may take around 6 (six) months.

5. What are the main registration requirements for companies in your jurisdiction? What are the fees?

State registration of an LLC is free of charge. The recent updates in corporate legislation removed anti-chaining rules (where an LLC could not have a company as a sole participant, if such company is owned by a sole participant) and a restriction regarding the maximum number of participants in LLCs.

Notably, there is no requirement as to the minimum equity capital of an LLC.

Main registration requirements for a JSC are the following:

a. a company cannot be a sole shareholder of the JSC, if such a company is owned by a sole shareholder;

b. JSC cannot be entirely owned by shareholders – legal entities, the sole shareholder of which is one and the same person; and

c. the minimum amount of JSC's share capital shall be equal to 1,250 minimum wages envisaged by law (i.e., approx. EUR 125,000).

State registration of a JSC is free of charge. At the same time, fee for the registration of the share issue with the NSSMC constitutes 0.1% of the nominal value of all issued shares of the company but cannot exceed 50 minimum statutory costs of living which are currently equal to approx. EUR 2,788 in UAH equivalent.

For all companies undergoing the registration procedure, it is mandatory to disclose their ultimate beneficial owners ("UBO"), i.e., each individual who owns 25% or more of the company's equity capital or votes, or has a determining influence on the decision-making process.

All foreign documents submitted for the company registration in Ukraine shall be duly apostilled or legalised in the country of their issuance and accompanied with the Ukrainian translation certified by a notary. Once all documents are duly prepared, an authorised representative of the applicant may submit them to the state registrar. There is no need to make any filings or registrations with tax authorities following the state registration of a company, as tax authorities will be automatically notified thereof by the state registrar. At the same time, in case the company wishes to be registered as a VAT payer or in case of reaching certain thresholds in its activity envisaged by the legislation (which require the registration as a VAT payer), the company shall undergo relevant registration procedure with tax authorities.

6. What are the main post-registration reporting requirements for companies in your jurisdiction? (For example, annual reporting requirements: what to file, to whom, is a company secretary required?)

Apart from industry-specific reporting requirements (banks, financial institutions, JSCs) which must submit specific regular and occasional reports to the state regulatory authorities (such as the National Bank of Ukraine, NSSMC, National Financial Services Markets' Commission) and conduct a statutory audit, companies do not have any reporting obligations, unless registrable information is changed (e.g., the amount of equity capital is increased).

There are certain tax related reporting and filing requirements that companies must comply with:

a. quarterly (by companies whose annual turnover for the previous year exceeds UAH 20 million) or annual corporate tax filings with the Ukrainian tax authorities. The financial statements are filed to the tax authorities as an annex to the corporate tax return. Notably, the first reporting period for a newly established company is 1 (one) year;

b. filings with Ukrainian tax authorities as income tax agent of the company's employees (quarterly); filings with Ukrainian tax authorities as social security tax payer (monthly); also, the company should notify the tax authorities about the prospective employment in advance;

c. filings with Ukrainian tax authorities as a VAT payer (if the company is registered as a VAT payer). Such filing is done on a monthly or quarterly basis, as applicable;

d. filing of financial statements and other required reports depending on the type of the business activity and size of the business to the state statistics authorities (monthly, quarterly and annually).

7. Are there any controlling factors or restrictions on foreign companies in your jurisdiction?

In general, foreign and local investors are treated in Ukraine equally. The legislation stipulates that foreign investors may be restricted from certain types of business activity based on law in accordance with national security interests. Foreign investors should be aware of the following statutory restrictions:

a. restrictions applied to either foreign or domestic investors. Based on the Ukrainian legislation, certain types of business activity may be carried out only by state-owned enterprises (for example, issuance of banknotes, carrier rockets manufacturing, etc.);

b. certain specific restrictions (including industry-specific restrictions) applicable to foreign investors only. For example, foreign investors are not entitled to directly own agricultural land, and may only own land

designated for non-agricultural use; a foreign entity can own not more than 35% of shares in a news agency; residents of offshore jurisdictions (as defined by the Ukrainian Government) cannot own, directly or indirectly, broadcasting companies in Ukraine.

Foreign investors should also take due account of requirements of the Ukrainian competition law, in particular those obligations, under certain conditions, to obtain a merger clearance from the Antimonopoly Committee of Ukraine ("AMC"). Given the relatively low thresholds which, once met, necessitate obtaining an approval of the AMC for a transaction, acquiring shares or assets in Ukraine should be carefully considered in terms of antitrust and competition law.

8. What is the typical structure of directors (or family management structure) and liability issues for companies in your jurisdiction?

A director or members of the board of directors (or directorate) headed by the Chief Executive Officer ("CEO") of a Ukrainian company is a company's executive body (sole or collective, respectively), the exact composition and competence of which is set out in the company's statutory documents.

In general, directors can be subject to civil, administrative, and/or criminal liability for violations committed in person. The sole director or a member of the executive body becomes liable in case of damages or losses caused to the company by his/her actions or inactivity. Besides, in any such cases, the authorities of the member of the executive body can be terminated at any time, or the relevant person may be temporarily removed from the performance of his/her functions.

Administrative or criminal liability applies depending on severity of a specific violation. For instance, tax evasion, money laundering, grave violation of labour laws, or securities fraud can lead to criminal penalties including imprisonment. Administrative liability can be imposed for violations, such as conducting business without required permits/ licenses, failure to comply with currency control regulations, breach of safety rules, etc., and it usually has the form of insignificant monetary penalties.

Upon entrance into force of the Law on LLCs in June 2018 new respective requirements will be enacted. In particular, a member of the executive body or a director will have no right to act as a private entrepreneur or a manager of other company operating in the same area of activity without the previous consent of shareholders or a supervisory board of the given company. Breach of this rule may lead to the termination of the contract with a relevant person. Besides, the supervisory board (as a new management body which can be introduced in an LLC) will be authorised to control and regulate the activities of the company's executive body.

9. What is the minimum number of directors and shareholders required to set up a company in your jurisdiction? Are there any requirements that a director must be a natural person?

Since the executive body may exist as either a sole (director) or collective body (board of directors or directorate headed by the CEO), a director or CEO of the company should be in place for the company registration as a legal entity. Only a natural person can be the director or a member of the board of directors of a Ukrainian company. The initial director can only be a resident of Ukraine. After the company is registered, the director can be changed to a non-resident provided that a work permit and a residence permit are obtained.

As regards the minimum number of shareholders, an LLC and JSC can be established by 1 (one) person.

10. What are the requirements on how shares are offered in your jurisdiction?

In Ukraine shares are issued by JSCs only. Shares of a JSC may be offered at the stage of incorporation as well as in the course of the company's activity by way of increasing its equity capital by means of either private or public share placement, depending on the type of JSC (private or public), respectively. Incorporation procedure requires founders to agree on the type, number and nominal value of each share in the company's capital, perform placement of shares among the company's founders and apply for the registration of the share issue with the NSSMC. In case of share placement within the procedure of the authorised capital increase based on the relevant decision of the general shareholders meeting of a JSC, existing shareholders of a JSC have pre-emptive rights for the acquisition of the newly issued shares, unless these rights have not been withdrawn by the majority of shareholders holding not less than 95% shares of a JSC.

The Law on Simplifying Business Activity and Attraction of Investments by Securities Issuers 2017, has abolished previously existing separation of share placement procedures into private and public ones. Public placement may now be undertaken not only in the course of the new securities' issuance, but also in respect of already issued securities. The acquisition of shares within share placement takes place based on the relevant agreement between an investor and a JSC.

11. What are the key laws and regulations on employment in your jurisdiction that companies should be aware of? Are there any aspects of employment law that are heavily regulated?

The main normative acts regulating employment in Ukraine are the Labour Code of Ukraine and the Civil Code of Ukraine (in case of contracting freelancers).

There are two ways of hiring employees in Ukraine:

a. based on the labour agreement; and
b. by means of contracting person based on respective civil-law agreement (for freelancers).

Most common types of labour agreements are:

a. labour agreements for indefinite term;
b. fixed-term labour agreements; and
c. labour contract.

Employment contracts shall be executed solely in writing. Non-residents employed in Ukraine have the same labour rights as Ukrainian residents and are allowed to work in Ukraine based on preliminary obtained work permit and a residence permit.

Employers are obliged to pay the following taxes on behalf of their employees before salary payment:

a. personal income tax in the amount of 18% of the salary base;
b. military tax in the amount of 1.5% of the salary base; and
c. social security tax – 22% payable on top of the salary base (at the cost of the employer).

Termination of employment by an employer is possible only for a limited number of reasons outlined by law, such as failure to perform employee's duties, inconsistency of an employee with the performed job, absence at work for more than three hours without a valid excuse, etc. Directors and other company officers, however, can be dismissed any time, and the employer would usually be obliged to pay out a severance payment for such dismissal.

12. What is the nature of the corporate governance regime in effect in your jurisdiction? What agencies or government bodies regulate corporate governance?

Corporate governance is by and large regulated by the constituent documents, as well as by the NSSMC regulations relating to public and private JSCs. The regulations provide for certain reporting obligations, maintaining certain information on the company's web-site, requirements for composition of the supervisory board of a public JSC, etc.

13. Does establishing a company in your jurisdiction grant any kind of residency rights? Are there any conditions that in order to receive these residency rights (if applicable) one must partner or establish a joint venture with a local (e.g. a citizen of your jurisdiction)?

Ukrainian legislation provides the possibility of granting temporary and permanent residency permits to foreigners, each of such permits being granted based on relevant grounds.

Unless there are grounds for permanent residency (immigration) permit being obtained by a foreign shareholder of a Ukrainian company (which are usually not applicable in the overwhelming amount of cases), the latter may be eligible for the obtainment of the temporary residency as a result of the company being established in Ukraine.

The most relevant ground for issuance of the temporary residency permit to a foreign shareholder/founder of a Ukrainian company is employment with a Ukrainian company (including as the company's CEO), subject to preliminary work permit obtainment by the company for such individual.

The valid basis for obtaining a permanent residency permit is investing into the equity capital of a Ukrainian company, the amount of funds equivalent to not less than EUR 100,000 (without necessarily being in the employment with such company).

A temporary residence permit is issued for a period of one to three years and is subject to extension for the same period of time. If a foreign individual does not have legal grounds for an extension of a temporary residence permit, he/she has to terminate its registration at the address of his place of living within 7 days and leave the country.

To receive the residency permit, a person shall firstly obtain the Ukrainian long-term visa and complete several formalities with the State Immigration Services of Ukraine.

14. When is a company subject to tax in your jurisdiction? What are the main taxes that may apply to companies in your jurisdiction?

Resident entities are taxed in Ukraine on their worldwide income. Non-resident entities are taxed on their taxable income derived from the source in Ukraine. A branch or a permanent establishment of a non-resident entity in Ukraine is considered a separate entity for tax purposes. The legislation exempts from taxation an income of non-residents based on international agreements on technical and humanitarian assistance.

The main taxes applied to companies in Ukraine are the following:

a. corporate profit tax at the general rate 18%. Small enterprises and agricultural producers that meet special criteria may be subject to a simplified tax regime based on which their profit will be taxed at a lower rate;

b. VAT levied on the supply of goods and services within the custom territory of Ukraine and on import and export of goods and auxiliary services under export or re-export customs regimes, as well as international transport services. The standard rate of VAT is 20% for supplies within the custom territory of Ukraine, as well as imported goods and auxiliary services. A 7% VAT rate applies to supplies of pharmaceuticals and healthcare products. Exported goods and auxiliary services are subject to 0% VAT rate;

c. withholding tax on income (e.g., dividends, royalty, interest) payable by a Ukrainian company to a non-resident. The general rate of withholding tax is 15% and may be lower based on relevant double tax treaties; and

d. social security tax at a rate of 22% payable by the employer on the amount of remuneration paid to an employee.

15. How does the competition law in your jurisdiction regulate companies?

The following are the main laws governing competition issues in Ukraine:

a. the Law of Ukraine on Protection of Economic Competition 2001;

b. the Law of Ukraine on Protection Against Unfair Competition 1996;

c. the Law of Ukraine on State Aid Provided to the Business Entities 2014.

The AMC is a regulatory authority empowered to monitor compliance of market participants' activity, as well as state aid programmes and the public procurement procedures in accordance with the legislation pertaining to competition.

Ukrainian legislation introduces several main areas of competition protection. The first area relates to the prohibition for companies to act in a mutually agreed or collusive way, establish restrictive conditions of activity for other market participants and abuse their dominant position in the market. The second area includes merger control rules. Generally, companies are free to perform a merger until the conditions for mandatory AMC clearance are met. Finally, the law prohibits the unfair competition, in particular, spreading misleading information on the goods the company produces or sells, misuse of the business reputation of the other company, etc.

Additionally, in 2017 the concept of state aid was introduced in Ukraine. The Law of Ukraine on State Aid Provided to the Business Entities indicates that the vast majority of measures undertaken by Ukrainian government to support particular companies are not allowed if they do not have a rational ground, are not objective and/or establish groundless preferences. In this case AMC acts as a supervising authority and assesses the admissibility of respective state aid programmes.

16. What are the main intellectual property rights companies should be aware of in your jurisdiction?

Like other European countries, Ukraine protects copyright and related rights, trademarks, patents, industrial designs (both registered and not), geographical indications, topographies of semiconductor products, plant varieties, confidential information and trade secrets. The legislation is influenced mostly by several important treaties, such as the Paris Convention for the Protection of Industrial Property, the Berne Convention on the Protection of Literary and Artistic Works, the Convention establishing the World Intellectual Property Organization, Madrid Agreement, the TRIPS Agreement, Hague Agreement and EU-Ukraine Association Agreement.

17. Does your jurisdiction have laws or regulations that govern data privacy?

Ukrainian Parliament adopted a wide range of acts governing data privacy, namely: Personal Data Protection Law 2010, Law of Ukraine on Information 1992, Law of Ukraine on State Secrecy 1994, Law of Ukraine on State Service of Special Connection and Information Protection 2006, Law of Ukraine on Electronic Commerce 2015, and Law of Ukraine on Cyber Security 2017.

The Personal Data Protection Law was intended to implement the protection of individuals with regard to the processing of personal data and

on the free movement of such data. Moreover, the underlying regulatory instruments were also elaborated, such as the Standard Procedure of Personal Data Processing; Procedure of Monitoring Compliance with Data Privacy Legislation by the Ombudsman; Procedure for Notification of the Ombudsman in relation to Sensitive Personal Data Processing. It is highly anticipated that the General Data Protection Regulation requirements will be implemented this year by Ukraine.

18. Are there any incentives to attract foreign companies to your jurisdiction?

Under the general rule, foreign companies operating in Ukraine via their Ukrainian subsidiaries or as foreign investors are treated equally to Ukrainian investors. Foreign investors are entitled to various incentives proposed by Ukraine, in particular:

a. more than 70 bilateral investment treaties which set out obligations of Ukraine with respect to the treatment of foreign investors and the mechanisms for resolving disputes arising on this basis;

b. 75 bilateral double tax treaties entered into by Ukraine with other countries;

c. a number of free trade agreements aimed at removing customs barriers to the movement of goods and services between Ukraine and other countries;

d. privileges and guarantees for foreign investors under the foreign investment legislation (the protection against changes in the legislation, protection against nationalisation, guarantee for compensation and reimbursement of losses, guarantee in the event of termination of the investment activity, guarantee of profit repatriation, etc.);

e. certain tax incentives, in particular the release from taxation until 2021 of the newly established taxpayers which have an annual income of UAH 3 million or less and meet respective requirements, as well as some other tax incentives;

f. state guarantees for the companies participating in the privatisation procedures;

g. exemption from custom duty of the import of assets as an in-kind contribution into the equity capital of a Ukrainian entity, unless such assets are disposed within three-year period; and

h. gradual liberalisation of the currency control regulations, in particular the possibility of cross-border dividends' payment to foreign investors for all previous years up to the year 2017 inclusive, in the amount not exceeding USD 7 million or its equivalent per month.

19. What is the law on corporate insolvency in your jurisdiction?

The law of Ukraine on Restoring Debtor Solvency or Declaring a Debtor Bankrupt 1992, provides for the possibility of initiating insolvency proceedings against the debtor by the creditor or the debtor itself, in case the amount of undisputable outstanding debt within three concurrent months of the maturity date is not less than UAH 960,000 (approximately USD 37,000). There are several procedures that may be applied to a debtor in the course of insolvency proceedings, namely:

a. disposition of the debtor's property;

b. financial recovery of the debtor; and

c. liquidation of the debtor.

Initiation of insolvency proceedings usually triggers a moratorium on the satisfaction of certain creditors' claims. Some agreements concluded within a year prior to insolvency proceedings, as well as during the insolvency proceedings, which put the debtor in insolvent position, can be invalidated by the court based on application of the receiver or an unsecured creditor. The receiver is appointed randomly from a respective court database and performs the functions of a controlling body over the debtor. The receiver may request the court to remove the executive body of the debtor if it does not act in the interests of solvency of the debtor.

The recovery manager is, as with the receiver, appointed randomly from a court database. Its functions include development of a recovery plan, obtaining creditors' consent for the plan, submission of the plan to the court for approval and performance of the plan. If the earlier stages are unsuccessful, the court shall appoint liquidation of the debtor whereby its assets will be sold, management and employees will be dismissed, and the debtor will be wound up.

20. Have there been any recent proposals for reforms or regulatory changes that will impact company law in your jurisdiction?

The biggest reforms in company law of Ukraine is the Law on LLC which will enter into force on 17 June 2018. The law provides for more flexible regulation of corporate relations of an LLC, namely possibility of conclusion of shareholders' agreements by participants of LLC, provision of irrevocable power of attorney (only in relation to corporate matters), possibility to establish a supervisory board in an LLC, etc.

The Law of Ukraine on Privatisation of State and Municipal Property entered into force in March 2018 and establishes two different privatisation procedures:

a. auction for large privatisation objects (which value of assets exceeds UAH 250 million (approx. EUR 7,800,000)); and

b. online auction for small privatisation objects.

The new law provides the following state guarantees for investors participating in the privatisation process:

a. disputes arising from privatisation SPA can be settled in the international arbitration;

b. large privatisation objects' SPAs may be governed by English law (except as regards ownership rights transfer which are governed by Ukrainian law only); and

c. the state is to provide reliable and complete information on each privatisation object.

Some categories of investors are excluded from the potential purchasers of privatisation objects:

a. aggressor state(s) and companies of which the aggressor state or its resident is the ultimate beneficial owner;

b. individuals being citizens or residents of the aggressor state;

c. companies and individuals and their related persons that are subject to sanctions under the Law of Ukraine On Sanctions; and

d. companies registered in jurisdictions claimed to be non-cooperative by FATF, or companies whereby 50% or more shares of which is owned by a company registered in such jurisdiction.

21. Are there any features regarding company law in your jurisdiction or in Asia that you wish to highlight?

Company law features include concepts of squeeze-out and sell-out for joint-stock companies. Recently introduced escrow accounts with local Ukrainian banks comprise a new convenient tool which may be utilized in the course of restructuring shareholders' structure, within M&A transactions and in some other cases. Further to this, in 2018 corporate (shareholders) agreements were also introduced into the Ukrainian legislation which provide for the possibility of agreeing voting rules or rules of managing the company in a particular way; acquisition or disposal of participatory interests (shares) on the terms agreed by the parties; and refraining from selling participatory interests (shares) until the occurrence of certain circumstances as defined by the agreement. The law contains a number of requirements applicable to such agreements.

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1. What is the general situation for foreign companies in your jurisdiction? (For example, common presence, difficulty to setup, restrictive system, open and welcoming jurisdiction?)

The United Arab Emirates (the "UAE") is one of the most attractive destinations for foreign investments. In the past 10 years, the UAE has extensively worked to simplify the procedure for foreign companies to incorporate businesses. The country's high rank in the Ease of Doing Business Index reflects this.

There are a variety of jurisdictions in the UAE including the mainland and the free zones. The UAE is currently a base for a considerable number of multinational corporations. In general, the setting up of a business is a straight forward and easy process.

In the mainland of the UAE, the incorporation of a business depends on the regulations implemented on the level of each emirate and on the general framework of the UAE Federal Law No 2 of 2015 on commercial companies (the "CCL"). For certain structures under the CCL, such as limited liability companies (one of the most common structures in the mainland), UAE nationals or corporations wholly owned by UAE nationals must hold at least 51% of the shares. It is common for the shareholders in such cases to enter into a set of side agreements to govern the way the company will be managed and operated.

The UAE also boasts a friendly environment for business incorporations with more than thirty free zone jurisdictions that generally each cater to a specific types of business activities. These economic jurisdictions are designed to attract foreign investment and have simpler labour and immigration procedures. The incorporation of a business in a free zone is a fast and easy process, for which the requirements are simple. Free zone jurisdictions allow foreign nationals to have full ownership rights in a company. Companies established in free zones are generally not allowed to provide services or goods within the UAE unless they comply with the applicable regulations in this respect.

Foreign companies looking to establish themselves in the free zone areas can benefit from:

- 100% foreign ownership;
- Tax Exemption: Companies established in free zones are exempt from personal tax, corporate tax; and import/export tax;
- Full repatriation of revenue and profits; and
- Long-term leasing options.

While there are generally no restrictions on foreign companies established in the UAE, certain activities are restricted to UAE/GCC nationals, such as those relating to real estate outside of the freehold areas, education, and healthcare.

2. What are the key laws and regulations that govern company law in your jurisdiction?

The main piece of legislation governing company law in the mainland of the UAE is Federal Law Number 2 of 2015 on commercial companies, which replaced Federal Law Number 4 of 1984.

The CCL regulates commercial companies, including partnerships, limited liability companies, public joint stock companies, private joint stock companies, and local branches of foreign companies.

Other key laws and regulations that govern companies in the UAE in the UAE include:

- Federal Law Number 18 of 1993 on Commercial Transactions
- Federal Law Number 1 of 2006 on Electronic Commerce and Transactions
- Federal Law Number 5 of 1985 on civil transactions
- Securities and Commodities Authority' Board of Directors' Resolution Number (7 R.M) of 2016 Concerning the Standards of Institutional Discipline and Governance of Public Shareholding Companies, issued by the Securities and Commodities Authority
- Federal Decree-Law Number 8 of 2017 on Value Added Tax
- Ministerial Resolution Number 539 of 2017 on the regulations relating to private joint stock companies in the implementation of the terms of the CCL
- Dubai Law No. (13) of 2011 Regulating the Conduct of Economic Activities in the Emirate of Dubai

Companies established in certain free zones are governed by other laws. In the Dubai International Financial Centre (the "DIFC") free zone, the DIFC Law Number 2 of 2009 governs companies and the DIFC Law Number 5 of 2004 governs partnerships. In the Abu Dhabi Global Market (the "ADGM"), companies are regulated by the 2015 Companies Regulations.

3. What are the most common types of companies in your jurisdiction?

The most common form of companies found in the mainland of the UAE are the following:

- Limited Liability Companies (LLC);
- Companies with Listed Shares: Public Joint Stock Companies, and Private Joint Stock Companies;
- Branch and Representative Offices: Foreign companies can establish a branch or a representative office in the UAE, and local companies incorporated in an Emirate of the UAE can establish a branch or a representative office in any other Emirate. Although branches and representative offices are similar in nature, they can have certain defining characteristics which set them apart. Although a branch can conduct the same business activities as its parent company, a representative office is not authorized to engage in providing services, selling goods, or earning profit. Representative offices are mainly designed to market and promote the services of their parent companies.

Other, less popular, types of companies include:

- Joint Liability Companies;
- Limited Partnership Companies;
- Sole Proprietorship / Establishment: A Sole Proprietorship or Establishment is an entity owned exclusively by one individual, wherein the individual is fully personally liable for the entity's liabilities. A Sole Proprietorship or Establishment can conduct both commercial and professional activities. Carrying out commercial activities for sole proprietorship is limited to UAE Nationals and, in certain circumstances, to GCC Nationals. In contrast, there are no restrictions on who can carry out professional activities. A Sole Establishment owned by a foreign national must however appoint a UAE national as a service local agent (a service local agent does not own any interest right in the entity nor is entitled to have any control over its management); and
- Civil Companies: Civil Companies are professional companies that can be fully owned by foreign nationals. They still need to appoint a local service agent like sole proprietorship and they are generally restricted to professional activities such as engineering consultancies, management consultancies etc.

The most common types of companies found in the free zones of the United Arab Emirates are:

- Free Zone Companies (FZCO) or Free Zone Limited Liability Company (FZ LLC): This type of company must be registered with at least two shareholders and they have common feature with the mainland LLC;
- Free Zone Establishments (FZE): This type of company must be registered with one shareholder. It is a limited liability establishment. It differs from FZCO and FZ LLC by the fact that it can only have one shareholder;
- Branches of Free Zone Companies; and
- Offshore Companies: Only available in few free zones such as JAFZA and RAKEZ. These companies are not permitted to conduct business in the UAE. They can however operate bank accounts, and own real estate in some parts of the UAE.

In the Dubai International Financial Centre – "DIFC" (which is a financial free zone in Dubai having its own set of laws, rules, regulations and courts), the most common types of companies are:

- Limited Liability Companies;
- Limited Liability Partnerships;
- Companies Limited by Shares (LTD); and
- Branch offices of foreign companies or of foreign Limited Liability Partnerships.

In the Abu Dhabi Global Markets – "ADGM" (which is a financial free zone in Abu Dhabi having its own set of laws, rules, regulations and courts), the most common types of companies are:

- Limited and unlimited companies and
- Private and public companies

4. How long does it take to set up a company in your jurisdiction? (For example, it could be as fast as X amount of time, average setup time and then as slow as Y amount of time based on your experience – are there any mechanisms to fast track setup?)

The company's incorporation process in the mainland of the United Arab Emirates is managed by the Department of Economic Development. The setup time can be as fast as one to two days from the date all the required documents are submitted. If there are delays in the submission of documents, or if the documents are not properly attested, the incorporation process will take longer.

The average time to set up a company in the free zones will differ based on the specific free zone in which the company is being formed. For instance, in the Jebel Ali Free Zone ("JAFZ"), which is popular for trading activities, setting up a company should take around three weeks (this is once again assuming all documents are submitted correctly).

In addition, the shareholders setting up the company will have to appropriately determine what activities they will be conducting and what type of license they require. The average set up time for certain activities will take longer as approvals from other authorities will be required (for instance, for banking and insurance activities). As for licenses, some of them are regulated and will need a separate approval from other authorities.

5. What are the main registration requirements for companies in your jurisdiction? What are the fees?

The main registration requirements for companies in the UAE will differ based on whether the company is being incorporated in the mainland of Dubai, in the mainland of Abu Dhabi, in the mainland of another Emirate, or in a free zone.

Mainland (Dubai – Abu Dhabi)

Although companies looking to establish themselves in the mainland areas of Dubai and Abu Dhabi will be dealing with different departments, namely the Department of Economy in Dubai and the Abu Dhabi Department of Economic Development, their registration requirements are essentially the same. There are

six steps for starting a business in the mainland areas of the UAE:

A. Determining the Business Activity

The company must first select the business activity it will be carrying out. The company's business activity will affect the legal form it can take, as well as its requirements, conditions and fees. More than 2,100 business activities are available in Dubai for example, which fall into groups including industrial, commercial, professional, and tourism activities.

The activity type will determine the license type the company should take. For instance, if the activity type of a company is commercial, then the license will have to be a commercial license. When the license combines several activities, the business garnering the biggest percentage of the company activity will determine the license type. The industrial activity is the largest activity, followed by the commercial activity and then the professional one. For example, if a license contains both commercial and professional activities, the type of license should be commercial given that it is the larger activity.

Further, the company should ensure that the activities it has selected can be included on the same license. Some activities require the approval of other government authorities.

B. Determining the Legal Form

The company must determine the legal form it will take. The business type, the business activities, the number and the nationality of the owners, and ownership options must be taken into account when selecting the legal form. The options a legal form can take will depend on the particular business activities of the company.

C. Registration of the Trade Name

Once the activity and legal form have been selected, the company must decide on a trade name, which must appropriately suit the nature of the activity, the license type and the legal form of the company. The relevant authorities of each Emirate have issued trade name guidelines which can be accessed on their websites.

In Dubai, a trade name registration costs AED 620. An additional cost needs to be paid for trade names that include certain words. It is worth noting that trademarks are different from trade names and should be registered separately with the Trade Marks Department in the Ministry of Economy.

D. Application for an Initial Approval Certificate

The company must then apply for an initial approval certificate. This is a document issued by the licensing authority which confirms that they have no objection to the opening of the business. In Dubai, a payment of AED 120 must be made for the certificate.

Based on the legal form of the company, a Memorandum of Association will be required. A Local Service Agent Agreement will also be required when no local partner is present. All businesses established in Dubai must have a physical address; a tenancy contract (registered with Ejari in Dubai, and with Tawtheeq in Abu Dhabi) will need to be submitted to the Department of Economic Development to be able to issue the license.

E. Getting Approvals

Certain activities will require approvals from various other government authorities (for example, contracting activities will have to be licensed by the Municipality of the Emirate where the company will be registered, healthcare institutions will have to be licensed by the heath authority or municipality of the relevant Emirate etc). A request for these approvals can be made once the initial approval certificate has been submitted. For example, if you would like to set up a dental clinic in Dubai, you will need to obtain approval from the Dubai Health Authority. If you are looking to set up the representative office of an airline company in Dubai, you will need to obtain a non-objection certificate from the Dubai Civil Aviation Authority. If you would like to set up an Interior Design Engineering Consultancy company in Abu Dhabi, you will need to obtain approval form the Abu Dhabi Municipality.

F. Collecting the Business License

Once all the documents listed below have been submitted and payment (see below) has been made, the license will be issued.

The following documents need to be submitted if the shareholders of the company are corporate shareholders:

- Application Form;
- Notarized Board Resolution;
- Certificate of Incorporation;
- Articles and Memorandum of Association; and
- Certificate of Good Standing.

All these documents (except for the Application form) must be legalized by the Ministry of Foreign Affairs, by the UAE Embassy in the country of incorporation, and by the Ministry of Foreign Affairs in the UAE. The documents must be translated into Arabic by a certified legal translator and must then be legalized by the Ministry of Justice.

The following documents need to be submitted if the shareholders of the company are natural shareholders:

- Application form;
- Passport Copy;
- UAE Residence visa copy if applicable (a no objection from the current sponsor is also required if any of the applicants or manager holds a UAE Residence visa); and
- Business plan (in some cases).

G. Fees (Breakdown)

The following fees will apply to the incorporation of a business in Dubai:

Authority	Description	Estimate Fees (in AED)
Department of Economic Development	License Issuance Fees	Starting at 15,000* (*estimate which will depend on the activity and the lease value)
Department of Economic Development	Trade Name Approval Fees	620* (*this will depend on the trade name and whether it includes any words that bear an additional cost)
Department of Economic Development	Initial Approval Fees	2,120
Ministry of Economy	Application Fees	5,000
Ministry of Economy	Registration Fees	10,000

Free Zones

The procedure for incorporating a business in a free zone is the same, but no initial approval certificate is required.

A. Determining the business activity

The appropriate business activity must first be selected.

B. Submission of Documents

In the event where the shareholder of the company is a corporate shareholder, the following documents will need to be prepared and submitted to the Free Zone Authority:

- Application Form;
- Notarized Board Resolution;
- Certificate of Incorporation;
- Articles and Memorandum of Association; and
- Certificate of Good Standing

All these documents must be legalized by the Ministry of Foreign Affairs, by the UAE Embassy in the country of incorporation, and by the Ministry of Foreign Affairs in the UAE. The documents must be translated into Arabic by a certified legal translator and must then be legalized by the Ministry of Justice (Some free zones accept the English version).

In the event where the shareholder of the company is a natural shareholder, the following documents will need to be prepared and submitted to the Free Zone Authority:

- Application form;
- Passport Copy;
- UAE residence visa copy (if applicable) ;
- CV; and
- Business plan (in some cases).

6. What are the main post-registration reporting requirements for companies in your jurisdiction? (For example, annual reporting requirements: what to file, to whom, is a company secretary required?)

Article 26 of the CCL provides that each company in the mainland of the UAE must keep accounting records showing its transactions to reveal its financial position. These accounting books must be kept in the company's head office for a period of at least five years from the end of the financial year of the company.

Article 27 of the CCL also provides that Limited Liability Companies and Joint Stock Companies should appoint auditors to audit the accounts of the company every year. Other types of companies may appoint an auditor. The annual financial accounts should include the balance sheet and the profit and loss account statement. Branches of Foreign Companies are also required to submit audited financial statements on a yearly basis. The requirement to prepare and file audited accounts annually is also generally stated in a company's Articles of Association.

Some Free Zone Authorities have made it mandatory for companies to submit their audited financial statements for renewing trade licenses to the relevant authority.

Financial statements must be submitted to the authorities within ninety days of the end of a Free Zone Company's financial year. A fine of AED 5,000 may be levied on a Free Zone Company for every month in which the audited financial statements are outstanding, and these companies will not be able to renew their trade licenses until the statements are submitted.

In the DIFC, according to Article 22 of the DIFC Law Number 2 of 2009, companies must file a return with the Registrar stating information in respect of each class of Shares or Membership Interests in the Company. Similarly, according to Article 778 of the ADGM 2015 Companies Regulations, every company operating in the ADGM must deliver successive annual returns each of which is made up to the anniversary of the company's incorporation to the ADGM Registrar.

Companies operating in the DIFC and ADGM are also required to renew their data processing permits on an annual basis.

Apart from the standard reporting requirements under the CCL and applicable regulations and as of 1st January 2018, all companies except the ones established in designated free zones (such as JAFZA, DAFZA, Sharjah Airport Free Zone and others) will have to file VAT returns depending on the reporting dates set for them by the Federal Tax Authority.

7. Are there any controlling factors or restrictions on foreign companies in your jurisdiction?

The most popular legal forms foreign companies have taken to establish themselves in the UAE are:

- Limited Liability Companies (which is a widely used form for foreign companies);
- Free Zone Companies; and
- Branch Offices of foreign companies.

While there are generally no restrictions on foreign companies in the UAE, foreign owners setting up a Limited Liability Company in the mainland area of the UAE cannot own more than 49% of the shares in that company. Side agreements can be entered wherein the shareholders of a company will agree on the way in which the company will be managed and operated. Further, certain activities will be regulated and supervised by authorities other than just the Department of Economic Development and the Ministry of Economy.

8. What is the typical structure of directors (or family management structure) and liability issues for companies in your jurisdiction?

Companies in the UAE must appoint a director or a board of directors to manage the company. In Limited Liability Companies, Public Joint Stock Companies and Private Joint Stock Companies, the liability of a partner is limited only to the extent of their shares in the capital. Free Zone Establishments and Free Zone Companies are limited liability partnerships which means that the liability of the shareholder (in the case of the FZE) and of the company (in the case of the FZC) are also limited to their shareholding.

According to Article 83 of the CCL, every partner in a Limited Liability Company is liable against the company, partners and third parties for any fraudulent acts by the manager and for any losses or expenses incurred due to the improper use of power. According to Article 23 of the CCL, a company is bound by any act or behaviour arising out of its manager. The company is also bound by any acts of its employees or agents authorized to act on its behalf, and where a third party relies on its transaction with the company.

Directors of companies operating in the mainland of the UAE owe their duties to the company, and to all parties that have an interest in the affairs of the company. In contrast, the DIFC Companies Law does not specify a party to whom a director's duties are owed. In the event that a director fails to disclose an interest in a transaction, the DIFC Companies Law grants the company, the shareholders and the third parties the right to initiate a legal action.

9. What is the minimum number of directors and shareholders required to set up a company in your jurisdiction? Are there any requirements that a director must be a natural person?

In the mainland of the UAE, the minimum number of directors needed depends on the legal form of the company. For LLCs one director is sufficient, while for public and private joint stock companies, a minimum of three and a

maximum of eleven are required. The minimum number of shareholders is generally one shareholder except for public joint stock companies where a minimum of five shareholders and for private joint stock companies where a minimum of two shareholders are needed.

The main difference between Free Zone Establishments (FZE) and Free Zone Companies (FZC) is the number of shareholders they can have. An FZE must have a single shareholder. In contrast, FZCs will require at least two shareholders and can have a maximum of five shareholders. Both structures will require between one and two directors at least depending on the free zone.

There is a general requirement in the UAE for the director appointed under the by-laws to be a natural person. Any corporation may have an independent management agreement with a corporate person although this will not be recognised in the official registers.

10. What are the requirements on how shares are offered in your jurisdiction?

In the mainland of the UAE, at least 51% of the shares in a company must be owned by a UAE national. There are no such restrictions on ownership rights for professional licenses and in the free zone areas of the UAE – in these cases, foreign nationals can own up to 100% of the shares in a company.

In Limited Liability Companies, the shareholders have pre-emption rights which grant existing shareholders the first opportunity to buy shares before they are offered to any third party. It should be noted that for the shares of a corporation to be listed in the UAE, the corporation will need to take the specific form of a Private Joint Stock Company or a Public Joint Stock Company.

11. What are the key laws and regulations on employment in your jurisdiction that companies should be aware of? Are there any aspects of employment law that are heavily regulated?

The Labour Law – UAE Federal Law 8 of 1980 – applies to all private sector employees, employed in the UAE including the Free Zones other than those employed in the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM) (both being Free Zones in the financial sector), which have their own employment laws.

The employment law of the DIFC is being amended substantially at present, and a new law is expected in the foreseeable future.

Each private sector employee, outside of the DIFC and ADGM, is required to sign a standard form employment contract, which is submitted to the Federal Ministry of Human Resources and Emiratization. Often this is supplemented by an addendum or separate employment agreement signed between the parties to take account of any ancillary or additional terms of employment.

Every foreign employee, requires an employment visa to be able to be employed in the UAE.

Employees of the government and public sector are subject to the Federal Decree Law 11 of 2008, and certain ancillary Decrees dealing with the human resources of the public sector.

12. What is the nature of the corporate governance regime in effect in your jurisdiction? What agencies or government bodies regulate corporate governance?

The principle laws (regulations) to which public companies are subject to in respect of their corporate governance obligations are the following:

a. Dubai Financial Markets – Board of Directors' Decision No. (3) of 2000 Concerning Regulation for Disclosure and Transparency, which governs all public companies whose shares are traded on the exchange; and

b. Board of the Federal Securities and Commodities Authority Decree No: 7 of 2016 – Concerning the Standards of Insti-tutional Discipline and Governance of Public Shareholding Companies;

In respect of private companies, the corporate governance obligations are governed by Federal Law No 2 of 2015 on Commercial Companies ("the CCL"), which falls under the authority of the Federal Ministry of Economy and implemented at the level of the Emirates by the respective Economic Departments.

13. Does establishing a company in your jurisdiction grant any kind of residency rights? Are there any conditions that in order to receive these residency rights (if applicable) one must partner or establish a joint venture with a local (e.g. a citizen of your jurisdiction)?

There are no long term/permanent rights to residency, which flow from establishing a company. This applies to the mainland UAE and the Free Zones.

The rights to a residency, which do flow from the investment in or establishment of a Company in the UAE, are akin to that granted for employment. Each registered company is allocated a number of employment visas (depending upon its size and employee requirements).

14. When is a company subject to tax in your jurisdiction? What are the main taxes that may apply to companies in your jurisdiction?

In general, there is no corporate tax in the UAE. However, foreign banks and oil companies are subject to corporate tax.

VAT as an indirect tax, applicable to companies and individuals, was introduced in the UAE as well as Saudi Arabia and Kuwait on 1 January 2018.

15. How does the competition law in your jurisdiction regulate companies?

The applicable Federal competition laws in the UAE are the following:

a, UAE Federal Law No 4 of 2012 – On the Regulation of Competition;

b. Cabinet Decision No 13 of 2016; and

c. Cabinet Decision No 22 of 2016.

The following industries are excluded from the operation of these Laws, unless the regulatory authority in charge of such industry has requested the Ministry of Economy for such sector to be included and made subject to these Laws:

a. Telecommunications;

b. Financial Sector;

c. Cultural Activities (readable, audible and visual) ;

d. Sector of Oil and Gas;

e. Production and Distribution of Pharmaceutical Products;

f. Postal services including the express mail service;

g. Activities related to production, distribution and transportation of electricity and water;

h. Activities on the treatment of sewerage, garbage disposal, hygiene and the like, in addition to supportive environmental services thereof; and

i. Sectors of land, marine or air transport, railway transport and services related thereto.

Micro, Small and medium businesses are also excluded. Different thresholds apply to determine whether a business is considered a micro, small or medium business, in respect of the three different industry sectors (Trade, Industry and Service).

As a general rule the applicable threshold at which entities will require approval from the Ministry of Economy in respect of a merger is,

if their combined business is greater than 40% of the concerned market.

16. What are the main intellectual property rights companies should be aware of in your jurisdiction?

Intellectual Property rights, which companies normally seek to protect include:

a. Trademarks, through Federal Law No. 37 of 1992 (as amended by Law No. 19 of 2000 and Law No. 8 of 2002);

b. Trade names;

c. Copyright, through Federal Law No. 7 of 2002 – Concerning Author's Rights and Neighbouring Rights;

d. Patents, Designs and Trade Secrets and Know How, through Federal Law No. 17 of 2002 – Regulating and Protecting Industrial Property Rights for Patents and Industrial Design & Models and Federal Law No. 31 of 2006 Pertaining to the Industrial Regulation and Protection of Patents, Industrial Drawings, and Designs; and

e. Confidential Information.

Registration of trademarks, patents and designs falls under the authority of the UAE Federal Ministry of Economy.

17. Does your jurisdiction have laws or regulations that govern data privacy?

In the UAE (mainland), there is no specific Federal data privacy law. However, issues of data privacy are dealt with largely through the following laws:

a. Federal Law No 3 of 1987 – The Penal Code; and

b. Federal Law No. 5 of 2012 – Cyber Crimes Law

UAE based firms may also be subject to Regulation (EU) 679/2016 (General Data Protection Regulation), which is to be enforced beginning from 25 May 2018, if they are involved in the supply of goods or services to individuals (consumers) in the European Union and are involved in the processing or storage of personal data of such consumers.

Dubai Law No. (26) of 2015 – Regulating Data Dissemination and Exchange in the Emirate of Dubai, impacts data privacy. Although this law is not primarily aimed at data privacy, such privacy is recognized as an important right and consideration in the process of disseminating data by the relevant Government Authorities.

In the DIFC, data processing and privacy is governed by the Data Protection Law – DIFC Law No: 1 of 2007 (as amended), which will apply to data controllers situated in the DIFC.

18. Are there any incentives to attract foreign companies to your jurisdiction?

The right to 100% ownership of companies by foreign nationals in the Free Zones, with the guarantee of a tax-free environment for a certain time, and no restrictions on the right to capital expatriation are strong attractive features of the UAE for foreign investors.

The UAE is also focusing on making the UAE an attractive environment for the conduct of business, with special focus on system efficiencies, access to markets, and the encouragement of innovation, especially in the Fintech sector (through the DIFC and the ADGM), transport and renewable energy.

19. What is the law on corporate insolvency in your jurisdiction?

Federal Decree 9 of 2016 on Bankruptcy has made it now possible for a debtor (corporate entity or trader) to follow a formal process through the Court for the appointment of a Trustee to handle a Composition arrangement in respect of the Debtor's estate, alternatively for the declaration of the Debtor as insolvent and the liquidation of the Debtor's estate. The law is very new and its application in practice is still to be developed.

The DIFC has its own separate corporate insolvency law, modelled on the common law principles of insolvency and the rights of creditors, which will apply to corporate entities registered in the DIFC.

20. Have there been any recent proposals for reforms or regulatory changes that will impact company law in your jurisdiction?

The Commercial Companies Law of the UAE, came into force at the beginning of 2015, so is relatively new.

There are proposals to exempt certain sectors from the requirement of 51% ownership of Limited Liability Companies by a UAE (or GCC) national. The details of which sectors this will cover have not been finalized or released, however this is likely to encourage the development of these sectors by way of attracting further foreign investors.

The DIFC Company Law is the process of being updated and amended in terms of a new Company Law, which is in its draft form and waiting to be enacted.

21. Are there any features regarding company law in your jurisdiction or in Asia that you wish to highlight?

All commercial activity in the UAE must be carried out through a registered entity/company. The company law therefore plays a central role in the economy.

A key feature of the company law of the UAE is that companies and their business activities are strictly regulated. This means that entry into the market in the professional services, construction, manufacturing, industrial and technical fields is restrictive as a company will not be granted a license to operate without the approval of key personnel and management positions by the regulating authority. This is very positive for the business environment as it ensures that only suitably qualified persons can carry out the activity(ies) of the company.

The activity of the company is also well regulated, which ensures that companies are limited to (or focused on) their core business. The aim is obviously to ensure specialization, which is very healthy for the business environment and the protection of a company's customers and trading partners.

This strict oversight of companies is also facilitated by the requirement for the annual renewal of the commercial license by all companies. In order to secure the renewal of its commercial license, the company is required to file certain returns and ensure that its details are updated and verified.

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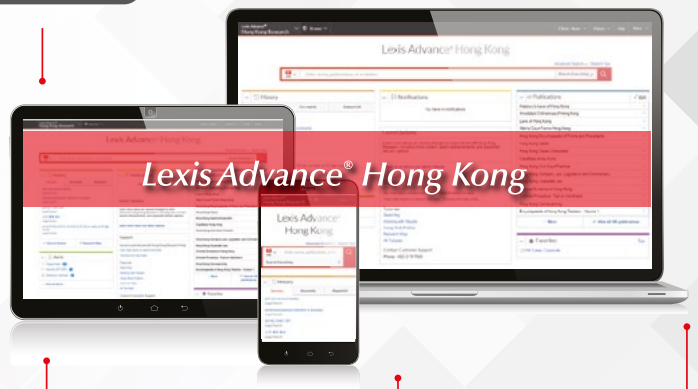

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