

Linklaters



Linklaters Global Guide: Starting a business



Purpose of this guide

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

It is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice, but we hope it proves useful. We have included the contact details of some of our experts who have contributed to this guide, but you should also feel free to get in touch with your own Linklaters contacts about any of the issues raised.

Information about Australia and Vietnam was contributed by Allens, Indonesia by Widyawan & Partners and South Africa by Webber Wentzel.

- Americas
- Europe
- Africa
- Middle East
- Asia Pacific

Australia	>	Netherlands	>
Belgium	>	Poland	>
Brazil	>	Portugal	>
France	>	Singapore	>
Germany	>	South Africa	>
Hong Kong SAR	>	Spain	>
India	>	Sweden	>
Indonesia	>	Thailand	>
Italy	>	United Arab Emirates (excluding free zones)	>
Japan	>	United Kingdom	>
Kingdom of Saudi Arabia	>	United States (Delaware)	>
Luxembourg	>	Vietnam	>
Mainland China	>		



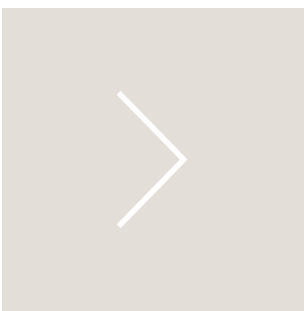
Australia



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Australia

How to start a business

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

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

A company may be incorporated from scratch or acquired “off the shelf”. The incorporation of a company is a relatively straightforward process and, depending on the service provider, can be incorporated within a few days assuming all the required information (such as details of the initial shareholder(s), officeholder(s) and registered office address) is available.

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

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

Key formalities for incorporating a company or setting up a branch

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

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

Key formalities for purchasing a shelf company

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

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

Any foreign investment restrictions?

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

Where no special rules apply, a foreign person may require approval to acquire a substantial interest (20% or greater) via the issue or transfer of shares if the target is: (i) an Australian company; (ii) an Australian unit trust; or (iii) a holding entity of either of them, where the target is valued above A\$310m (indexed annually) based on the higher of its total asset value or the total value of its issued shares. A higher threshold of A\$1,339m (indexed annually) applies for acquisitions by private investors established in Canada, Chile, China, Hong Kong, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, South Korea, USA or Vietnam, except for investments in prescribed sensitive sectors (including media, telecommunications, transport and military).

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

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





Australia

Corporate governance and ongoing obligations

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

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

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

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

Tax highlights

Both residents and non-residents who have a permanent establishment in Australia are subject to corporate tax at a rate of 30% (although a rate of 25% may apply for certain small business entities ("base rate entities") with an aggregate turnover under the relevant threshold).

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

Non-residents are taxed on capital gains arising from the disposal of Australian real property or certain "non-portfolio" interests in entities the assets of which, directly or indirectly, consist principally of real property in Australia. A purchaser acquiring such property from a foreign resident may be required to withhold 12.5% of the purchase price to remit to the Commissioner of Taxation.

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

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

Employment highlights

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

All employers must make regular payments, on at least a quarterly basis, into a pension plan (known as a "superannuation fund") chosen by the employee, at the rate of 10.5% of the employee's "ordinary time earnings" up to a maximum base of A\$60,220 per quarter (indexed annually on 1 July). The superannuation rate is set to rise by 0.5% per year until it reaches 12% from 1 July 2025.

Under the FWA, employees are entitled to certain minimum notice periods for termination based on the length of their service. It may also be possible to pay an employee in lieu of notice. Employees who earn less than the high income threshold (A\$162,000 and indexed annually on 1 July) are "protected" employees and their dismissal must be fair (that is, for a valid reason, pursuant to a fair procedure, and must not be harsh, unjust or unreasonable in the circumstances). All employees are protected from "adverse action" (including dismissals) taken for an unlawful reason, such as discriminatory grounds or an employee's complaint or inquiry about their employment.

An employer seeking to enforce a restraint against a former employee must demonstrate that the restraint is reasonably necessary to protect its legitimate business interests.



Australia

Issues that surprise foreign investors

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



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Belgium

How to start a business

Operating through a company: The two most common types of company are the company limited by shares (“**SA/NV**”) and the private limited liability company (“**SRL/BV**”). An SA/NV is sometimes chosen for larger businesses and is the standard corporate form for listed companies. It requires a minimum capital of €61,500 and it can be set up by a single shareholder. The SRL/BV is the standard corporate form for small and large non-listed companies, including for subsidiaries of U.S. Companies (as it qualifies for check-the-box election for U.S. tax purposes). The SRL/BV can be set up by a single person and has no “capital”. Instead, equity contributions made by the shareholders are simply referred to as “contributions”. Very few mandatory rules apply and it is known for its flexibility.

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

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

Key formalities for incorporating a company or setting up a branch

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

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

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

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

Key formalities for purchasing a shelf company

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

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

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

Any foreign investment restrictions?

Belgium is set to adopt a foreign investment (FI) screening regime, which is expected to enter into force on 1 July 2023 (subject to the timely approval by the various Belgian parliaments). It will introduce a mandatory and suspensory notification requirement for investments by non-EU investors that involve the direct or indirect acquisition of voting rights in certain entities incorporated in Belgium. Notifications must be made to the Inter-federal Screening Commission (ISC), composed of representatives of the three Belgian governments.

The Belgian regime will broadly be based on two different types of notification thresholds:

- > Acquisitions of 25% or more of a Belgian company whose activities relate to critical infrastructure or critical technologies or inputs, access to sensitive information, private security, media or biotech. There is no size or turnover threshold applicable, except for the biotech sector where the Belgian entity’s turnover must exceed €25m in previous financial year.
- > Acquisitions of 10% or more of a Belgian company that: (i) is active in certain strategic sectors in Belgium (e.g. defence, energy, cybersecurity, etc.); and (ii) realised a turnover exceeding €100m in the financial year preceding the investment.





Belgium

Corporate governance and ongoing obligations

A private limited liability company (SRL/BV) is managed by (i) one or more directors who may act individually or should act jointly, as determined in the articles of association, or (ii) a one-tier board composed of at least two directors, acting as a collegial corporate body. A company limited by shares (SA/NV) is mostly managed by a one-tier board as well. It can have a two-tier management structure or a sole director, but this is rare.

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

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

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

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

Tax highlights

The information below relates to non-SMEs:

Belgian resident companies are taxable on their worldwide income (incl. capital gains). Capital gains on qualifying shares held for at least one year are tax exempt.

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

Acquisition costs related to shares are in principle fully tax deductible, subject to the general interest deduction limitation rules (such as the EBITDA rule).

The domestic withholding tax rate is 30% for both dividend and interest payments (subject to domestic and treaty exemptions).

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

Employment highlights

Before employing personnel, the company must affiliate with a payroll agency, which will deal with all practical aspects of the payroll. The company must also take out an insurance policy against industrial injuries with a private industrial company and register itself as an employer with the Belgian social security administration ("RSZ"/"ONSS").

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

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

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

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

Issues that surprise foreign investors

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





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Brazil

How to start a business

Operating through a company: The most common types of entities used as corporate vehicles of foreign companies to establish a presence in Brazil are: (i) private limited liability companies (*sociedades limitadas*) (“**Limited Companies**”), which are governed by the Brazilian Civil Code; and (ii) corporations (*sociedades anônimas*) (“**Corporations**”) which are regulated by Law No. 6.404/76. Corporations (when owned by entities or individuals residing abroad) must be incorporated by at least two shareholders. Limited Companies may be incorporated by one quotaholder (*sociedade limitada unipessoal*). In both cases, quotaholders/ shareholders are not required to be Brazilian citizens or residents of Brazil. A company may be newly incorporated or may be acquired “off the shelf”.

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

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

Key formalities for incorporating a company or setting up a branch

While a Limited Company is incorporated by its founding quotaholders through the execution of the articles of association (*contrato social*), a Corporation requires the execution of the deed of incorporation (*ata de constituição*), both of which need to be filed with the Commercial Registry of the relevant state in which the entity was incorporated.

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

In general, for corporate acts of either a Corporation or a Limited Company (e.g. constitutional documents and any amendments thereto, minutes of shareholders’ meetings authorising execution of agreements, etc.) to be effective against third parties, such acts must be filed with the state Commercial Registry and automatically become publicly available.

Corporations are subject to more public disclosure requirements than Limited Companies (which includes, for example, an annual publication of its financial statements in a local newspaper).

Key formalities for purchasing a shelf company

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

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

The price of acquisition of a shelf company ranges between US\$2,500 and US\$5,000 (which depends on whether the shelf company is a Limited Company or a Corporation and on its date of incorporation). Such price generally includes paralegal fees to update the company’s fundamental records with federal, state and municipal public authorities.

Any foreign investment restrictions?

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

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





Brazil

Corporate governance and ongoing obligations

Limited Companies have two statutory governance bodies: (i) the board of officers (which is in charge of the daily representation and conduct of business of the Limited Company) and (ii) the quotaholders' meeting (which has authority to decide upon any matters of interest of the Limited Company or its quotaholders). However, the articles of association of a Limited Company may provide for additional governance bodies provided that they comply with the statutory requirements set forth in the Brazilian Civil Code.

A Corporation may have up to four statutory governance bodies: (i) the board of officers (which is responsible for representating and conducting of business of the Corporation on a day to day basis), (ii) the board of directors (which is responsible for overseeing the activities of the board of officers), (iii) the fiscal council (which is responsible for reviewing the management accounts), and (iv) the shareholders' meeting (which may decide upon any matters of interest of the Corporation or the shareholders). However, a privately-held Corporation is not required to have a board of directors and a fiscal council, and may limit its governance to the board of officers and the shareholders' meeting.

Costs and formalities associated with the maintenance of a Limited Company and a privately-held Corporation are similar. The legal framework applicable to Limited Companies, however, results in lower maintenance costs than the Corporation (especially due to more limited disclosure requirements). On the other hand, it limits the creation of more complex governance and financing structures which are available to Corporations.

Tax highlights

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

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

Brazilian companies are also subject to Social Contributions on Gross Revenues (PIS/COFINS) at the general rate of 9.25% or 3.65% depending on their tax regime (i.e. a cash or "presumed profit" basis).

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

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

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

In recent developments, Brazil plans to reduce the tax on foreign exchange transactions (IOF-FX), which is currently set at 6.38%, to 0% by 2029.

Employment highlights

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

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

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

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





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Issues that surprise foreign investors

Positive surprises:

- > Brazilian shareholders' agreements binding the company and all shareholders are effective and enforceable if such agreements are duly registered at the company's head office. They can be enforced in Brazilian courts.
- > Limited Companies and Corporations usually have lower maintenance costs than equivalent corporate forms in other jurisdictions.
- > The Brazilian corporate law framework is a hybrid system which draws from both civil and common law traditions.

Negative surprises:

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

Like all international law firms, Linklaters LLP is not licensed to practice Brazilian law and does not provide advice on Brazilian law. The contents set out above do not constitute any opinion, advice, determination, or certification in respect of the application of Brazilian law. Any comments concerning Brazil are based on our transactional experience and our understanding of the practice in Brazil. In cross-border transactions in which Linklaters LLP acts as international legal counsel, it provides advice on matters of non-Brazilian law, such as the laws of New York or the United Kingdom, closely collaborating with leading Brazilian law firms on Brazilian law matters.





France



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France

How to start a business

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

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

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

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

Key formalities for incorporating a company or setting up a branch

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

Branches of a foreign company shall also be registered at the Companies Registry. Registration of a branch requires the provision of various documents, including a commercial lease, a translation of the articles of association of the foreign company, the name of the local representative of the branch and ultimate beneficial owner(s) of the foreign company (in practice not required for branches of foreign companies registered within the European Union). The company setting up a branch is thereafter subject to filing requirements, including the obligation to file the accounting documents published in its country of origin (translated into French) with the relevant Companies Registry.

The formalities and filings with the Companies Registry can be carried out online.

Incorporating a company with the Companies Registry will generally take up to two to four business days.

Key formalities for purchasing a shelf company

Acquiring a shelf company is very rare in France.

Any foreign investment restrictions?

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

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





France

Corporate governance and ongoing obligations

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

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

As only a few rules are imposed by French law, an SAS is a legal form characterised by a very flexible internal structure. The only requirement is that an SAS must have one (and only one) “chairman”, and, apart from this, there is a wide range of options for creating other management bodies if desired.

SA and SAS are only required to have statutory auditor(s) when certain size conditions are met.

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

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

Tax highlights

Limited liability companies are generally subject to corporate income tax (CIT) on income derived from their French activities (no worldwide taxation for French tax resident companies, subject to French CFC rules). The effective standard CIT rate is up to circa 25.83%.

Capital gains are taxed as ordinary income unless they qualify for the participation regime (in which case only 12% of such gains are included in the taxable profits subject to the standard CIT rate, leading to an effective taxation of up to circa. 3.1%). Such regime applies to capital gains derived from the sale of shares that, *inter alia*, represent at least 5% participation and have been held for two years. Capital gains made by non-resident significant shareholders (typically holding at least 25% of the financial rights) on the sale of shares in a French company might be taxable in France, subject to tax treaties and subject to certain exemptions provided under French domestic law. Capital gains made by non-resident shareholders in companies that are French real estate rich might also be taxable in France.

Dividends received are generally 95% exempt (99% in certain cases) provided that they qualify for the participation regime. Dividends paid by French companies to non-French residents are subject to French withholding taxes (WHT) at a rate of up to 25% (75% if paid in a non-cooperative jurisdiction). Tax treaties, EU law and certain provisions of the French tax code allow certain qualifying beneficiaries to receive such dividends free of WHT or with a reduced WHT rate.

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

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

Employment highlights

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

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

The French pensions system is mostly public and state controlled. Employees benefit from two mandatory pension schemes which are financed through contributions paid both by employers and employees through the payroll system (the scheme provided for by the Social Security and a complementary mandatory scheme). Most of supplementary pension schemes granted on top of these two mandatory pension schemes are managed by insurers and are based on defined contributions. Employers and employees must contribute a specified proportion of the employee’s wages in order for the employee to benefit from the social security coverage and welfare schemes.





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Employment highlights (contd.)

Companies with 11 employees or more must organise the election of staff delegates and, with 50 employees or more, set up a works council with various information and consultation rights prior to major decisions affecting the company or the running of the business pending which the decision cannot be implemented.

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

Financial participation schemes (so-called “participation” and “*intéressement*”) designed to incentivise employees to participate in the success and capital of the companies are very widespread, highly institutionalised and an integral part of labour relations.

Issues that surprise foreign investors

- > Labour laws in France may appear restrictive to foreign investors. Working hours are controlled for many types of workers by a 35-hour working week and significant burden is placed on employers. However, France still maintains one of the highest productivity levels in the world.
- > On the corporate law side, investors will find a business friendly environment with very simplified formalities (e.g. no notary).





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Germany

How to start a business

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

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

A company may be incorporated from scratch or acquired “off the shelf”. Acquiring a shelf company is usually quicker and can be done within three to five days whereas the incorporation may take two to four weeks (in each case provided the necessary information is available from the client).

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

Further options may be pursued when investing in Germany, such as agency, franchise or joint venture agreements.

Key formalities for incorporating a company or setting up a branch

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

Due to the implementation of the Digitalisation Directive into German law in August 2022, the formation of a GmbH by videocommunication with a notary is possible under certain circumstances. For example, the persons appearing must have an ID card with electronic identification function issued in the EU/EEA.

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

The formation of a GmbH, AG and GmbH & Co. KG as well as the incorporation of a branch of a foreign entity must be notified to the competent tax office.

Key formalities for purchasing a shelf company

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

The acquisition is made by way of a notarised share deal. The investor may issue a (notarised) power of attorney to execute the purchase of the shelf company. Following the acquisition, a new shareholders’ list must be filed with the Commercial Register by the notary.

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

Regularly, the acquisition of a shelf company triggers reporting obligations to the relevant tax office (e.g. due to starting an economic activity and/or changing the registered office or place of management).

Any foreign investment restrictions?

Germany has an established and active foreign investment control regime which consists of three-pillars:

- > The mandatory and suspensory sector-specific review for non-German investors acquiring 10% or more of the voting rights in a German target company carrying out certain defence and IT security related activities;
- > The mandatory and suspensory cross-sector review for non-EU/EFTA investors acquiring 10/20% or more of the voting rights in a German target company active in certain other sensitive industries (e.g. critical infrastructures); and
- > The voluntary and non-suspensory cross-sector review for non-EU/EFTA investors acquiring 25% or more of the voting rights in a German target company not active in any of the mandatory sectors.

If no voluntary filing is submitted, the Federal Ministry for Economic Affairs and Climate Action can call-in the transaction within five years after signing.

Asset deals are also in scope of the regime.

In case a transaction raises concerns, the transaction may be subject to remedies or, in severe cases, even prohibited.





Germany

Any foreign investment restrictions? (contd.)

Over the last five years the German legislator has substantially strengthened and extended foreign investment control rules in Germany. By way of example, in 2020 there were four main reforms, including the introduction of criminal sanctions and fines for gun jumping in case of mandatory filing requirements. Further reforms took place in 2021, adding an additional 16 sectors to the scope of the list of activities where a mandatory filing is required and introducing new acquisition thresholds; including a concept of acquisition of atypical control, which can trigger a foreign investment review in the future. The regime is currently undergoing an in-depth evaluation and a further reform is expected in 2023.

Corporate governance and ongoing obligations

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

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

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

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

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

Tax highlights

Acquisitions of shares are in principle exempt from German VAT.

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

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

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

Employment highlights

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

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

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





Germany

Issues that surprise foreign investors

- > Employee participation has been broadly implemented as a way to involve employees and prevent conflicts. This results in a rather low incidence of work disruption arising from strikes and lock-outs.
- > Germany has implemented a women's quota of 30% for the supervisory boards of large listed companies which are also subject to parity employee co-determination. Furthermore, the management board of these companies must consist of at least one female and one male member if it consists of more than three members.
- > The new Supply Chain Due Diligence Act requires large companies to comply with certain human rights and environmental due diligence requirements in their supply chains.
- > It is not required that managing directors or board members hold German citizenship or are resident in Germany permanently. However, potential adverse tax consequences may occur if the company's centre of management is transferred out of Germany, i.e. the relevant decisions for the day-to-day management are not taken in Germany.
- > Domination and Profit/Loss Transfer Agreements are a commonly used, widespread instrument for both tax planning as well as corporate governance purposes.





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Hong Kong SAR

How to start a business

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

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

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

Key formalities for incorporating a company or setting up a branch

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

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

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

Key formalities for purchasing a shelf company

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

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

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

Any foreign investment restrictions?

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

There are no exchange control or currency regulations.





Hong Kong SAR

Corporate governance and ongoing obligations

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

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

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

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

Tax highlights

On a transfer of shares in a company incorporated in Hong Kong or which has its share register maintained in Hong Kong (i) a fixed stamp duty of HK\$5 and (ii) an ad valorem stamp duty of 0.26% on the value of the company will normally arise. For a sale and purchase of shares, the ad valorem stamp duty will be charged on the amount of the consideration if it is higher than the value of the company.

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

Employment highlights

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

There is no requirement in Hong Kong for a contract of employment to be in writing but in practice, most employers will prepare written employment contracts. In the absence of a written contract, continuous employment will be deemed as a one-month contract, renewable from month to month.

Employees must be paid at least the minimum wage (currently HK\$37.50 per hour and HK\$40 per hour with effect from 1 May 2023) and most eligible workers must be enrolled into a pension scheme by their employer, who is required to make minimum mandatory contributions into the scheme (5% of relevant income, capped at HK\$1,500 per month).

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

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

Issues that surprise foreign investors

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

- > The timing requirements for payment of stamp duty for a transfer of Hong Kong stock under the relevant law are specified in terms of a certain number of days after execution of the transfer documents (two days if they are executed in Hong Kong and 30 days if they are executed overseas). This formulation assumes the occurrence of a physical closing meeting which, since the advent of electronic communications, is fast fading into the annals of history. In addition, there is an express prohibition in the relevant law that an instrument which is required to be stamped for stamp duty (which includes Hong Kong stock transfer documents) may not be electronically signed, which means wet ink signatures must be applied.
- > Hong Kong law requires deeds to be sealed by a corporation, failing to recognise that foreign corporations may not legally be required to adopt a seal under their local laws, and therefore causing uncertainty as to how such corporations should execute Hong Kong law governed deeds.





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India

How to start a business

Operating through a company: The most commonly used legal entity in India is a limited liability company, which could be either private or public. A private limited company must have a minimum of two and a maximum of 200 members, and its articles must restrict the right to transfer shares. A public limited company is any company which is not a private company (but includes a private company that is a subsidiary of a public company). It must have at least seven members (no upper limit) and may invite the public to subscribe to its securities.

Setting up a branch: A foreign company can conduct business in India by setting up a branch office (which does not have a separate legal personality). The foreign company applying for a branch office in India must have a profitable track record in the immediately preceding five financial years and its net worth must be at least US\$100,000. If the criteria is not met, it can provide a letter of comfort from its parent provided that the parent satisfies the prescribed criteria for profit and net worth.

Other options include the incorporation of a limited liability partnership, the establishment of a limited presence in India through liaison/representative and project offices, investing through joint venture agreements or carrying on a business through distribution, agency or franchise agreements.

Key formalities for incorporating a company or setting up a branch

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

Applying for incorporation involves, inter alia, the reservation of a name, the submission of an application with supporting documents such as the charter documents, and payment of the necessary fee. The application must state certain information about the proposed company including its registered address and the names of its directors. There are various restrictions on the name which may be adopted by a company, including that it must not be similar to the names of any existing companies.

The incorporation of a company must be done entirely online through SPICE+, an integrated web platform available on the website of the Ministry of Corporate Affairs that provides the various services required for incorporation. The incorporation process may take up to two weeks (once the various documents required to be filed have been signed and are available).

Foreign companies can set up a branch with the consent of the Reserve Bank of India (“**RBI**”), which can be obtained through an application filed with certain authorised banks with supporting documents such as the certificate of incorporation and charter documents of the company. Once the RBI approval is received, an application for the branch registration must be filed with the Registrar of Companies (“**RoC**”).

Key formalities for purchasing a shelf company

The Indian Companies Act recognises “dormant” companies as companies with no significant accounting transactions that have been formed and registered for the purpose of a future project or to hold an asset or intellectual property. Once incorporated, such a company can apply to the RoC to obtain “dormant company” status. However, as a matter of market practice, shelf companies are not popular among foreign investors because the transfer of shares in an Indian company from a resident to a non-resident requires the fair valuation of the shares to be certified by a chartered accountant or merchant banker registered with the Indian securities regulator, which may take longer than incorporating a company from scratch.

Any foreign investment restrictions?

The Indian Foreign Direct Investment (“**FDI**”) rules take a sector-based approach to foreign investment. In most sectors, FDI falls under the “**automatic route**” i.e. it is permitted without prior governmental approval. In a few sectors, FDI is either prohibited (such as lottery business, gambling and betting and manufacturing of cigarettes and tobacco products) or falls under the “**government route**” where it is permitted with prior governmental approval.

FDI under the “automatic route” or “government route” is permitted up to 100% in some sectors (such as civil aviation and defence) or is capped in other sectors (such as 26% in newspaper and periodicals publishing, 51% in multi-brand retail and 74% in insurance and private sector banking).





India

Corporate governance and ongoing obligations

A public limited company must have at least three directors, and a private limited company must have at least two directors. Each type of company can have a maximum of 15 directors, provided that a company can appoint more than 15 directors after passing a special resolution of the shareholders. Every company is required to have at least one resident director (a person who resides in India for at least 182 days in a financial year). Only individuals can be appointed as directors of a company.

Directors are subject to statutory duties which include the duty to act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees and the shareholders. Directors in breach of their duties are liable to a fine.

Companies must hold a meeting of shareholders every year and the time between two such meetings must not exceed 15 months.

Companies must keep a register containing particulars of directors and key managers at their registered office. A return form containing these particulars must be filed with the RoC. Companies are also required to make various disclosures of information to the RoC, including annual returns containing company particulars, financial statements, and a report prepared by the board of directors.

Companies listed on stock exchanges in India are subject to stricter rules and obligations.

Tax highlights

Resident companies are taxed on their worldwide income at 30% (if their turnover is at least INR 4bn) and 25% (if their turnover is less than INR 4bn). Non-resident companies, including their Indian branches, are taxed at 40%. Non-resident companies are taxed only on their income arising from sources in India. Withholding taxes apply to payments of dividend (20%), interest (20%) and royalty (10%) to non-residents, subject to certain exceptions.

The rate of capital gains tax depends on the duration for which an asset is held. In the case of listed shares, the short-term holding period is 12 months or less, and in the case of unlisted shares it is 24 months or less. Long term capital gains to a non-resident arising from the sale of unlisted shares are taxed at 10% whereas short term capital gains are taxed as ordinary income. For listed securities, long term capital gains are taxed at 10-20% and short term capital gains are taxed at 15%, subject to certain conditions.

India levies a Goods and Services Tax, similar to VAT, on the supply of goods and services. It is generally passed on to the final consumer, and its rates depend on the nature of goods/ services and range between 5-28%.

Stamp duty is payable on specified instruments/documents effecting the transfer of movable or immovable property. The stamp duty amount depends on state-specific laws.

All tax rates mentioned above are exclusive of any applicable surcharge and cess, and may be reduced by applicable tax treaty benefits.

Employment highlights

India has a multitude of national and state-specific labour laws, which are applicable based on the types of industries and workers and the nature of work they undertake. These laws govern social security, industrial disputes, trade unions and employee welfare. It is general practice for employers to issue offer letters to employees outlining the terms and conditions of their employment including remuneration.

While industrial dispute laws provide for dispute resolution mechanisms between employers and employees, and govern lay-offs and compensation, they have a limited applicability and only apply to establishments with a minimum number of “**workmen**” (which excludes managerial/ administrative employees or a supervisor who draws a monthly salary exceeding INR 10,000 (c. US\$120)), and in certain cases, to only a factory, mine or plantation. Further, once a trade union is recognised under law, refusal by an employer to bargain collectively in good faith is regarded as an unfair labour practice.

Indian labour laws do not provide for automatic transfer of employees in an asset/business sale. If the buyer offers less favourable terms than previously provided by the seller, workmen (as defined above) can choose to leave and are entitled to a statutory notice (or salary in lieu) and compensation. While workmen can be dismissed on disciplinary grounds, the procedure followed must be fair.

Highly skilled/qualified foreign nationals who will draw a gross salary of at least INR 1.625m (c. US\$20,000) (except in certain cases) per annum are eligible for employment visas. Employment visas are not granted for jobs which are routine, ordinary or secretarial/clerical, and for which qualified Indians are available.





India

Issues that surprise foreign investors

- > In 2020, India made government approval mandatory for any investment into India by an entity located in a country that shares its land border with India (which includes China), or where the beneficial owner of such investment is located in such a country, regardless of the investment amount, resulting shareholding percentage or the sector.
- > Certain supporting documents (such as the certificate of incorporation, financial statements, resolutions executed outside India and charter documents) required to be submitted by a foreign company to the RoC in various company law contexts, such as while seeking to incorporate an Indian company or to set up a branch in India, must be notarised in the jurisdiction where such foreign company is registered. If the documents are in a language other than English, they must be translated into English, notarised as above and also attested by the Indian embassy/consulate where the foreign company is registered.
- > The financial year in India runs from 1 April to 31 March of the following year. However, where an Indian subsidiary of a non-Indian parent company is required to follow a different financial year for consolidation of its accounts outside India, the government may allow any period as its financial year on an application by the Indian subsidiary.
- > India is one of the first few countries to statutorily require companies to undertake corporate social responsibility (“**CSR**”) activities. Companies with a specified net worth, turnover or net profit are required to form a CSR committee with at least three directors, who must formulate and recommend a CSR policy to the board of directors. The board must ensure that the company spends at least 2% of its average net profits on CSR activities every year.
- > Under various environmental laws and labour laws governing the health and safety of workers, the following can be criminally prosecuted for a company’s non-compliance: (i) managing/whole-time directors (unless the offence was committed without their knowledge); and (ii) directors if the non-compliance took place on account of their negligence or with their consent.

The contents set out above do not constitute any opinion or determination on, or certification in respect of, the application of Indian law. Any comments concerning India are based on our transactional experience and our understanding of the practice in India. Linklaters LLP is not licensed to practise law in India.





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Indonesia

How to start a business

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

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

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

Key formalities for incorporating a company or setting up a branch

As a first step, the foreign investor needs to identify the business line to be carried out by the newly established PT by reference to specific numerical codes under the Indonesia Business Field Standard Classification (better known by its Indonesian acronym “**KBLI**”) and make sure that such business line is not subject any foreign ownership restrictions under the Positive Investment List.

Key documents and steps to incorporate a PT include (i) drafting and execution of the deed of incorporation (containing the articles of association) before an Indonesian notary and (ii) submission of the application for the incorporation approval to the Ministry of Law and Human Rights (“**MOLHR**”)’s online system. The PT will obtain its limited liability status only after the MOLHR has approved the incorporation of the company through the MOLHR online system – the PT will be legally incorporated at this point.

Immediately after the MOLHR issues the incorporation approval, the tax authority will assign the PT a tax identification number (Nomor Pokok Wajib Pajak – “**NPWP**”), which will be sent via email to the PT’s director in charge for tax matters.

As soon as the MOLHR incorporation approval and NPWP have been issued, the PT shall register itself in the Risk-Based Online Single Submission (Risk-Based OSS) system and apply for the required licences/permits with respect to its business line.

PMA PT company must have (i) at least two shareholders, (ii) a minimum investment value of more than IDR 10bn (excluding land and building) for each business line and for each project location, and (iii) a minimum paid-up capital of IDR 10bn. The gap between total investment value and the paid-up capital may be satisfied by shareholder or third-party loans. Foreign banks that intend to set up a branch must get prior approval from the OJK and meet certain conditions (e.g., must have a good performance and reputation, have its total assets ranked in the top 100 banks in the world over the past three years, and satisfy the Capital Equivalency Maintained Assets (CEMA) of at least IDR 10trn).

Key formalities for purchasing a shelf company

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

Generally, incorporating a company or acquiring a shelf company may take about two or three months. This is on the assumption that the target company has not undertaken any business activities and has no outstanding or hidden liabilities against third parties. If the target company has had certain business operations in the past, then the investor may need to undertake due diligence which will make the acquisition process longer.

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

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





Indonesia

Any foreign investment restrictions?

Foreign investment in Indonesia is administered and supervised by the Investment Coordinating Board (*Badan Koordinasi Penanaman Modal* or “**BKPM**”) except for certain specific sectors, e.g., financial services sectors, such as banking and insurance, which are supervised by the OJK, or payment sector which is supervised by the Indonesian Central Bank (*Bank Indonesia*). Indonesia has a relatively open foreign investment regime, but it is subject to restrictions on investment in certain sectors.

These restrictions are primarily set out in the Positive Investment List (current version of 2021), as well as in certain sector-specific regulations and policies.

Positive Investment List generally do not apply to (i) indirect (portfolio) investment which is generally understood to be where the investor invests through the purchase of equity securities in the capital markets without the intent to participate directly in the management or control of the investee company or (ii) debt investments (e.g., loan or bond instruments).

Corporate governance and ongoing obligations

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

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

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

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

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

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

Tax highlights

The standard corporate income tax rate is 22%. Public companies are entitled in certain situations to a tax discount of 3% off the standard rate, providing an effective tax rate of 19%.

Dividend income from a PT is taxable as ordinary income for a tax resident shareholder. Exemption applies if, among others, the dividend is received or earned by resident corporate taxpayers. Where the shareholder is not resident in Indonesia, a withholding tax rate of 20% applies, subject to variation by tax treaties.

Value added tax is charged at 11%, and will increase to 12% by 1 January 2025.

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

Employment highlights

Most foreign nationals who wish to work in Indonesia require a stay visa (*Kartu Izin Tinggal Terbatas* – “**KITAS**”), and the employer (i.e., the PT) who employs such foreign workers is required to obtain an expatriate utilisation plan (*Rencana Penggunaan Tenaga Kerja Asing* – “**RPTKA**”) approved by the Ministry of Manpower. An expatriate director or commissioner who does not reside in Indonesia does not require a KITAS and the employer also does not need to obtain RPTKA approval for him/her. That said, particularly for President Director, due to the managerial function and authorities of the President Director, the Ministry of Manpower would expect the President Director to reside and work in Indonesia, and thus, obtain KITAS and RPTKA approval.

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

Where a share acquisition (causing a change of control) of the target also results in a change to the employment terms of the target in a manner adverse to the employees (e.g. a reduction of benefits), the target’s permanent employees have a statutory right to elect to terminate their employment contract with the target, in which case they are entitled to be paid a severance package, calculated according to a statutory formula.





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Indonesia

Issues that surprise foreign investors

- > Indonesian laws evolve rapidly and often in an unpredictable manner. Due to the lack of coordination between central ministries, and between central and regional authorities, it is not uncommon to find conflicting laws from different authorities, and it is often unclear which regulations are applicable, unless the conflict could be resolved by reference to the hierarchy of laws. There is also often a time lag in passing implementing regulations for legislations passed by the Indonesian Parliament, therefore creating a gap in the line of regulations, which results in ineffective regulatory provisions that creates legal uncertainty. Often, there are unwritten policies imposed by regulatory authorities which are not publicly available, and accordingly, regular updates and consultation with relevant authorities are required.
- > Prior regulatory approvals from BKPM are no longer required for foreign investments. However, sectoral specific regulations (e.g., financial services and payment sectors) often still require specific approvals that can prolong transaction timelines.
- > Corruption is still a significant issue at the central and, even more so, regional governmental level. Courts are susceptible to influence and bribery. Foreign investors prefer international arbitration as the forum to settle disputes in most cross-border transactions. Indonesia is a party to the
- > New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.





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Italy

How to start a business

Operating through a company: The most commonly used is the limited liability company (“S.r.l.”), due to its organisational flexibility.

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

Acquiring a shelf company is no longer common practice in Italy, as the incorporation process of a company is fairly quick and, for S.r.l.s, can be carried out entirely online.

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

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

Key formalities for incorporating a company or setting up a branch

Incorporating a company requires that the deed of incorporation and the by-laws be drawn up as a public deed by an Italian notary, who is then required to file them with the competent Companies Register. S.r.l.s can be incorporated through an electronic platform that allows the notarial public deed to be executed online using digital signatures.

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

Setting up a branch requires that certain details of the branch office and the foreign company and certain documents of the foreign company (including constitutional documents and latest financial accounts) be filed by an Italian notary with the Companies’ Register. The resolution approving the establishment of the branch and the appointment of the branch manager needs to be notarised and a sworn translation in Italian is required.

A branch is not required to comply with any minimum capital requirement.

Key formalities for purchasing a shelf company

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

Generally speaking, the acquisition is a normal share deal that requires the involvement of an Italian notary (for the execution of a deed of transfer if it is an S.l.r. or the endorsement of the share certificates if it is a S.p.A.).

Simultaneously with acquiring the shelf company, the investor would commonly pass the relevant corporate resolutions to replace the directors, to change the registered office and, if necessary, to amend the by-laws (e.g. to change the governance or the company name).

The resignation and appointment of directors and, if applicable, the amendments of the by-laws, must be registered with the Companies Register.

Any foreign investment restrictions?

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

- > Reciprocity rule: Foreign investments in Italy are permitted to the extent that a similar right is granted to Italian investors operating in the foreign investor’s country of origin. However, verification of such reciprocity condition is not necessary in certain circumstances, such as where the foreign investor is a citizen of one of the EU Member States or a citizen of a country for which there is a specific international agreement with Italy governing international investment (so-called “Bilateral Investment Treaties” or “BITs”).
- > Golden Powers: Acquisition of shareholdings in an Italian company or of an Italian business active in a strategic sector as well as starting a new business through a newly incorporated entity in any such sector may require prior notification to the Italian government, which may, under certain circumstances, impose conditions or veto the transaction if necessary to protect national essential interests: the list of sensitive sectors includes, inter alia, defence and national security, aerospace, energy, transport, communication, 5G, semiconductors, AI, robotics, cybersecurity, data, media, credit, finance, insurance, health, water, agri-food.





Italy

Any foreign investment restrictions? (contd.)

In addition to foreign investment restrictions, a merger control regime is in place in Italy, which requires a distinct notification to be lodged by investors of any nationality before the Italian Competition Authority (AGCM) in relation to the acquisition of companies/ business activities where the applicable turnover thresholds are met. Under the Italian merger control regime, the AGCM has also the power to call-in transactions that, despite not meeting such thresholds, may nevertheless be detrimental to competition.

Corporate governance and ongoing obligations

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

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

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

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

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

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

Tax highlights

Resident companies are generally subject to corporate income tax (“**IRES**”) at a 24% flat rate on their worldwide income. Non-resident companies are subject to IRES only on Italian-source income, provided that they carry on their activity through an Italian permanent establishment.

Dividends paid to non-Italian residents may be exempt from withholding tax in Italy if the investor is an EU-resident company under the domestic law implementing the EU Parent Subsidiary Directive, or an EU/EEA undertaking for collective investments under the UCITS Directive, or an EU/EEA alternative investment fund under the AIFM Directive. Otherwise, dividends are generally subject to a 26% withholding tax. Specific percentages are established for withholding tax applied to pension funds and entities subject to corporate income tax in a white-list jurisdiction.

Capital gains realised by non-Italian residents and arising from the disposal of stock in a local corporation are considered Italian-source income and are generally subject to a 26% substitute tax. However, a domestic tax exemption and/or the provisions of most income tax treaties entered into by Italy (unless derogated by the MLI) provide that such capital gains are tax exempt in Italy. Capital gains on “land-rich” entities are generally subject to tax in Italy.

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

Employment highlights

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

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

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

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





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Italy

Issues that surprise foreign investors

- > An issue which may surprise foreign investors in a positive way is a constant trend in past and ongoing reforms of Italian bankruptcy law – lastly in July 2022 with the new Crisis and Insolvency Code implementing the Preventive Restructuring Framework Directive -, which sees a progressive rise in the importance and use of rescue procedures to improve the chances to preserve the going concern and offers more efficient and early corporate reorganization and restructuring tools aimed at keeping business continuity. The underlying purpose is that of reducing the opening of bankruptcy procedures, by favouring an early disclosure of financial and business distress. This has significantly restricted the use of claw back actions, adding legal certainty to contractual relationships.
- > Listed companies in Italy must ensure that their corporate bodies comprise both men and women in a balanced proportion. In particular, the least represented sex must hold at least two fifths of the body's seats and this ratio must persist for a minimum of six mandates. Any prolonged violation of this rule will result in a quite steep administrative fine and, eventually, if the violation persists, in the forfeiture of the office.





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Japan

How to start a business

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

Setting up a branch: A branch (*shiten*) of an overseas legal entity is not a company in itself but will be recognised as a part of the operation of the overseas legal entity in Japan. It is not a separate person from the overseas legal entity, but it can open a bank account in its name and rent property (e.g. enter into an office lease agreement) in its name.

Incorporating a company or setting up a branch may usually take two to four weeks, while acquiring a shelf company can legally be done by one day.

Key formalities for incorporating a company or setting up a branch

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

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

Online procedures for incorporating a company or setting up a branch is available in Japan, but there are various rules and restrictions, therefore, it is not realistic for a non-Japanese client to go through such procedures.

Key formalities for purchasing a shelf company

Shelf companies are companies that are already incorporated and registered in the Commercial Register. They are usually incorporated by specialised shelf company providers and have standard articles of incorporation and no previous business activity. It is however no longer usual to use shelf companies.

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

Any foreign investment restrictions?

There are restrictions on the foreign ownership of shares in a specific business sector. For example, in the following sectors, ownership in Japanese companies by foreign investors is restricted to less than the following ratios: (i) 1/5 for television and radio broadcasters; (ii) 1/3 for airline companies; and (iii) 1/3 for Nippon Telegraph and Telephone Corporation.

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

Further, an acquisition by a foreign investor of shares in a Japanese company or the setting up of a branch office whose business falls into a sensitive sector (e.g. weapons, aircraft, artificial satellites/rockets, nuclear materials, electronic devices and IT-related businesses, healthcare, critical minerals, agriculture, forestry, fisheries, petroleum, aerospace, electric/gas/water utilities, leather manufacturing, telecommunications and transportation) is subject to a pre-transaction filing requirement for an approval by the regulator (in the case of the acquisition of the shares in a listed Japanese company, such pre-transaction filing requirement applies only when the shareholding ratio of the acquiror (together with that of a party which has special relationship with the acquiror) after the acquisition will become 1% or more).





Japan

Corporate governance and ongoing obligations

A KK must have at least one director (*torishimariyaku*) who has the power to represent the KK if the KK has no board of directors. Each director owes statutory duties to the company, including the fiduciary duty to the company to exercise the duty of care of a prudent manager in performing his/her duties and to supervise the other directors of the company.

A company with a board of directors must have at least three directors. In such company, a representative director must be elected among the directors by a decision of the board. A company can elect more than one representative director and all the directors and/or the representative director(s) can be residents outside Japan. A representative director of a company has the full authority to represent the company and is generally responsible for the administration of the company, including tasks such as preparing the minutes and updating the company registrations.

If an overseas legal entity has a branch in Japan, the branch must appoint at least one representative in Japan who is a resident of Japan (it is not required to be a citizen of Japan). The representative in Japan will have the power to act judicially and extra-judicially (i.e. it must have full power) in Japan on behalf of the overseas legal entity.

Stricter rules apply to companies listed on Japanese stock exchanges.

Tax highlights

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

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

A 10% consumption tax is imposed on assets transferred.

Furthermore, an acquisition tax is imposed on the transfer of real estate. The rate is 3% (for a piece of land and a residential building) or 4% (for other buildings) of the real estate's value. The real estate's value is not the purchase price but the one calculated by the government for tax purposes. A registration tax will also be imposed when registering the transfer. The rate depends on the property but would be 2% in general and lower rates in certain cases.

A corporate income tax may be imposed on a transferring company for a share transfer or a business transfer if the amount of the consideration of the transaction exceeds the book value of the shares or assets.

A registration tax will be imposed for a company registration. Although the amount is minimal in most cases, as for a KK/GK, 0.7% of the paid-in capital (*shihonkin*) will be imposed upon incorporation and 0.7% of an increased amount of paid-in capital will be imposed for capital injections and company reorganisations.

Employment highlights

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

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

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

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

Issues that surprise foreign investors

- > A company seal is typically required and used instead of signatures for official documents to be submitted to the government offices. It is a mandatory requirement for a company to register at least one company seal. Registered company seals are considered more reliable than signatures.
- > A KK can issue share certificates by stipulating such in its articles of incorporation. In this case, ensuring to store the share certificates is necessary because under Japanese law (a) the holder of the share certificates will be presumed to be the lawful owner of the shares represented by such share certificates and (b) the transfer of shares will only be effective upon the delivery of the share certificates.
- > The fiscal year of most Japanese companies commences on 1 April and ends on 31 March of the following year. There is no mandatory requirement regarding the fiscal year and typically a Japanese subsidiary of a non-Japanese parent company applies the same fiscal term as the one applied to the non-Japanese parent company.





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Kingdom of Saudi Arabia

How to start a business

Operating through a company: A new Companies Law came into force in January 2023 (approved by Royal Decree No. M/132 dated 1/12/1443H, corresponding to 30 June 2022, the “**Companies Law 2022**”). The most common types of company are limited liability companies (“**LLCs**”) and joint stock company (“**JSCs**”). The Companies Law 2022 introduces a new concept of a simplified joint stock company (“**Simplified JSC**”).

LLCs are private which are subject to lighter regulation than other types of companies. There are no minimum capital requirements, no minimum or maximum number of shareholders or managers.

JSCs can issue shares of different classes, which can be offered for public subscription. A JSC whose shares are offered for public subscription is referred to as “public” (i.e. listed), and is subject to a higher degree of oversight and regulation. A JSC whose shares are not offered for public subscription is referred to as “closed” (i.e., unlisted).

A Simplified JSC offers simplified establishment and flexible management processes, with the potential to raise capital and offer differing rights and incentives to shareholder, whilst being subject to a lighter regulatory and corporate governance regime than a traditional JSC.

Setting up a branch: A branch is essentially the operation of the foreign company in Saudi Arabia and it has no separate personality from its overseas “parent”. The branch activities must comply with the foreign investment regime. Foreign companies cannot establish branches in Saudi Arabia if their proposed activities are subject to minimum Saudi Arabia participation requirements imposed by MISA. A branch must be licensed and carry out the same activities as the parent company. It cannot enter into contracts in its own name. It cannot conduct promotion, marketing or trading activities.

Key formalities for purchasing a shelf company

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

Key formalities for incorporating a company or setting up a branch

Company: The incorporation of a Saudi Arabian LLC involves the following steps:

- > check and reserve a company name;
- > apply for a foreign investment licence, if the LLC will have a foreign shareholder;
- > apply for any other relevant approvals from regulators;
- > prepare constitutional documents, which must be based on the required standard form and in Arabic, and submit for approval;
- > execute and legalise the constitutional documents before a notary public;
- > publish the company name and a summary of the constitutional documents in the Official Gazette;
- > open a bank account;
- > establish an office (e.g., arrange a lease of premises);
- > apply to the Ministry of Commerce for approval to incorporate the company and for a commercial licence; and
- > register the company in the Commercial Register;
- > register the company in the relevant Chamber of Commerce and Industry; and
- > register for tax.

It is important to consider applicable licensing requirements at an early stage, including:

- > Foreign investment licence: Foreigners seeking to invest in Saudi Arabian companies need a foreign investment licence issued by MISA.
- > Commercial licence: Businesses will also require a commercial licence from the Ministry of Commerce.
- > Other: Licences from other government agencies may also be required. Certain sectors (such as banking, securities business, healthcare, education and transport) may require approval from additional governmental authorities.

Shareholder agreements are expressly recognised under Saudi Arabian law.

Parties wishing to set up a Saudi Arabian closed JSC will need to carry out broadly the same steps as outlined above for an LLC and hold a shareholders’ general meeting.

Branch: The process to establish a branch in Saudi Arabia is similar to that of an LLC and is usually slightly quicker.





Kingdom of Saudi Arabia

Any foreign investment restrictions?

The Kingdom operates a sector-based approach to regulating levels of foreign investment in local companies. The regime is governed by the foreign investment law, Saudi Arabia Royal Decree No. M1/2000 and its Rules of Implementation, and is administered by the Ministry of Investment (“**Mol**”) (previously referred to as MISA).

The general principle is that a foreign investor may invest in minority, majority or wholly owned equity stakes a company incorporated in the Kingdom, provided that it operates in a sector which is open to foreign investment (subject to licensing requirements).

Certain sectors and activities on the “Negative List” are restricted (in whole or in part) from foreign investment, such as specified activities in the industrial and service sectors, including oil exploration, drilling and production (subject to certain exceptions), real estate investment in Mecca and Medina, commission agents’ distribution services, printing and publishing (subject to certain exceptions).

Minimum local ownership requirements also apply in specified sectors, such as communications, insurance and reinsurance, property financing, construction and engineering, intra-city transport, healthcare and education sectors. In other cases, the law might require a Saudi partner in order to obtain a licence.

New restrictions foreign investment in Saudi Arabian companies operating in sensitive and strategic sectors impacting (directly or indirectly) the national security and public policy in which foreign investment is to be restricted, under a proposed new foreign investment law.

Whether it is possible for a foreign investor to set up a wholly foreign-owned company will depend on whether the company will operate in a sector open to foreign investment.

Where only partial foreign ownership is permitted, foreign investors will need to partner with a Saudi national shareholder who will hold a specified minimum percentage of the share capital in the company.

Foreigners seeking to invest in Saudi Arabian companies need a foreign investment licence issued by the Mol. The licence is issued to the Saudi Arabian company in which foreign investment is made or to be made. Applications can be made by foreign nationals or foreign companies. However, Mol’s common practice is currently to permit applications for foreign investment licences from foreign companies only.

Corporate governance and ongoing obligations

Under the Companies Law 2022, there are new duties of care and loyalty which apply to directors and managers of all types of companies. In fulfilling these duties, directors and managers should:

- > Act within the scope of their powers and for the purpose for which the powers are conferred.
- > Act in the best interests of the company.
- > Promote the success of the company.
- > Exercise independent judgment.
- > Exercise reasonable care, attention, diligence and skill.
- > Avoid conflicts of interest.
- > Declare interests in proposed transactions or arrangements.
- > Not accept benefits from third parties.

Directors are also subject to the following duties:

- > to declare any interests (direct and indirect) in transactions with the company;
- > to avoid engaging in competing businesses; and
- > not to exploit the company’s assets, information or investment opportunities presented to them in their capacity as director or presented to the company to achieve a direct or an indirect interest for themselves.

Corporate governance and ongoing obligations (contd.)

Conflicts of interest and engaging in competing businesses can be approved by resolution of the shareholder.

JSCs are subject to greater regulation and must also comply with the regulations of the Capital Market Authority (“**CMA**”). Further and, in some cases, more strict rules apply to publicly listed companies and specific types of Saudi Arabian companies, including companies operating in certain sectors (e.g. the financial sector).

The new codified duties more closely align with the codified duties seen in Western jurisdictions, such the United Kingdom, as well as progressive regional regimes, such as in the United Arab Emirates. There are no nationality requirements for directors of Saudi companies.





Kingdom of Saudi Arabia

Tax highlights

Saudi Arabia implemented Value Added Tax (“**VAT**”) on 1 January 2018. Taxable supplies of goods and services are subject to a standard 15% VAT rate, zero-rated or exempt. The VAT rate was raised from 5% to 15% with effect from 2020.

Saudi Arabian companies are subject to corporation tax and/or Zakat (an Islamic assessment), depending on the ultimate indirect owners of local companies. The portion of taxable income attributable to the share of the company owned by foreign shareholder(s) is subject to corporation tax at a standard rate of 20% (the rate may be higher for companies engaged in certain activities, such as the production of oil and hydrocarbon materials). The portion of taxable income attributable to the share of the company owned by Saudi Arabian and Gulf Co-operation Council (“**GCC**”) nationals is subject to Zakat (an Islamic assessment based on net equity) at a standard rate of 2.5%.

Capital gains tax is assessed at 20% on the disposal of shares by the foreign shareholder in a Saudi Arabian company.

Saudi Arabia levies withholding tax (“**WHT**”) on payments of interest by a Saudi Arabian borrower or on dividends, each at the rate of 5% (WHT rates vary between 5% and 20% according to the type of income generated). Saudi Arabia has entered into tax treaties with several countries and there may be treaty WHT rates for payments made from Saudi Arabia to treaty country recipients.

Employment highlights

Saudi Arabia operates a domestic programme of “Saudisation”, known as the Saudi Arabian nationalisation scheme (*Nitaqat*). The company must have a certain number of Saudi Arabian nationals in their workforce, at a rate determined by the Ministry of Human Resources and Social Development. The levels vary depending on industry type and number of employees. However, Saudization quotas will not apply to companies which choose to establish or relocate their headquarters in Saudi Arabia.

Usually, a Saudi Arabian company in which a foreign entity invests must offer employment, training and senior management development opportunities to Saudi Arabian nationals.

Saudi Arabian labour laws regulate the working week (which is Sunday to Thursday), working hours (including adjusted working hours during Ramadan), types of contracts, confidentiality, health and safety, insurances, minimum wage (applicable to employees who are Saudi Arabian nationals only) and end of service gratuity, which is payable upon termination of an employment relationship provided that the employee meets the conditions under Saudi Arabian law. There are no redundancy provisions under Saudi Arabian law.

Reforms enacted in 2021 have significantly improved private sector workers’ rights. The reforms abolished the sponsorship system (known as “*kafala*”) for expatriate professional

workers. New standard contractual arrangements regulate relationships between employers and employees, under which employees benefit from minimum rights and entitlements. Foreign employees are now able to change jobs (which involves transferring their sponsorship from one employer to another), leave and re-enter the country and obtain exit visas without the consent of their employer, thereby improving job mobility.

Foreign employees may only be employed on fixed-term employment contracts, whereas Saudi Arabian nationals may be employed under permanent employment contracts. Foreigners usually have visas that are valid for a specified number of years, that are renewable and linked to their employment. In November 2021, a new Saudi Arabian Government regime was introduced which allows eligible foreigners who have specialised skills in the legal, medical, scientific and technological sectors with a route to Saudi Arabian citizenship.

Saudi Arabia surpassed the 2030 target of achieving the goal of 30% female participation in the workforce ten years early.

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

Issues that surprise foreign investors

- > Saudi Arabia is a Sharia-based jurisdiction with civil law influenced legislative overlay.
- > The Government adheres to a high level of transparency in the creation of new or amended laws, typically publishing draft laws and regulations online for public consultation prior to implementation.
- > Saudi Arabia has implanting wide-ranging reforms identified in Vision 2030 (an ambitious socio-economic reform programme) in recent years, including modernising its companies law regime, allowing 100% foreign ownership in a range of sectors, opening up its capital markets and new commercial laws modernising the bankruptcy, competition and tax regimes. The Kingdom’s laws continue to evolve to support foreign inbound investment across sectors.
- > There are no restrictions on the repatriation of funds.
- > Care must be taken to sign documents in accordance with the proper procedures under Saudi Arabian law. Some types of contracts will require handwritten “wet ink” signatures.





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Luxembourg

How to start a business

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

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

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

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

Key formalities for incorporating a company or setting up a branch

Incorporating a company in Luxembourg requires that articles of association are enacted by a Luxembourg notary before whom the founders must appear either in person or by proxy. These must then be filed with the *Registre de Commerce et des Sociétés* (the “**RCS**”) and published in the *Recueil Electronique des Sociétés et Associations* (the “**RESA**”).

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

Branches must also be registered with the RCS and obtain a registration number.

There is no requirement to obtain a licence if the company does not engage in actual business activities in Luxembourg (otherwise a permit application must be filed with the General Directorate for SMEs and Entrepreneurship). If the company intends to engage in banking, insurance or other financial activities, and it does not benefit from a relevant European passport, an application must be filed with the *Commission de Surveillance du Secteur Financier* or the *Commissariat aux Assurances*.

The ultimate beneficial owners of a company must also be filed with the *Registre des bénéficiaires effectifs*.

The Digitalisation Directive, which will notably allow the incorporation of SAs and SARLs entirely by electronic means, is in the process of being implemented in Luxembourg.

Key formalities for purchasing a shelf company

Shelf companies are companies which have been incorporated by a corporate service provider and registered with the RCS but have not yet engaged in any activities. They usually have the minimum share capital and standard articles of association.

They can be acquired ready to use so that the purchaser does not have to take care of the formalities of incorporation. Know-your-customer due diligence requirements to be carried out by the corporate service provider will apply in this context.

After having acquired the shelf company, the purchaser would typically adopt resolutions to amend the articles of association (e.g. corporate name and object of the company) and appoint new managers or directors.

Shelf companies are not frequently used in practice.

Any foreign investment restrictions?

There are currently no general restrictions on foreign ownership of businesses or shares in Luxembourg, and as a general rule there is no particular restriction on overseas investment in Luxembourg. There are however several draft laws currently pending before the Luxembourg *Chambre des Députés*, including on the implementation of Regulation 2019/452 establishing a framework for the screening of foreign direct investments into the Union.

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





Luxembourg

Corporate governance and ongoing obligations

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

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

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

A company must file its annual accounts with the RCS. It must also file any change in the management of the company, and any amendment made to the articles of association. These have to be published in the RESA.

Branches are subject to disclosure and publication obligations and will have to file some information with the RCS.

Tax highlights

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

Luxembourg resident companies are subject to Luxembourg corporate income tax and municipal business tax on their worldwide profits at the current combined rate of 24.94% (for companies established in Luxembourg City). Dividends and capital gains on shares are however tax exempt under the conditions of the Luxembourg participation regime.

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

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

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

The VAT standard rate is 16% as from 1 January 2023.

Employment highlights

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

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

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

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

Issues that surprise foreign investors

- > A translation of the articles of association in French or German, alongside the English version, is generally required.
- > A notarial deed is required for the constitution of a Luxembourg company as well as for each amendment made subsequently to the articles of association (except for the SCS and SCSp), which includes any change to the nominal capital.
- > In order to avoid challenges of a foreign tax administration, an administrative and decision-making centre of a company must be located in Luxembourg (e.g. the place where board meetings are held is taken into account).
- > The opening of a bank account in Luxembourg tends to be a lengthy process due to know your customer requirements so this needs to be factored in the incorporation timing.
- > All wages are indexed on the cost of life in Luxembourg and would automatically increase should certain thresholds be exceeded. It is not possible to derogate from this rule even with the agreement of the employee.





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Mainland China



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Mainland China

How to start a business

Operating through a foreign investment enterprise (“FIE”):

The most commonly used enterprise form of an FIE is the limited liability company, which may be either wholly owned by foreign investor(s) or jointly owned by foreign and domestic investor(s).

Limited liability companies are not required to have a minimum registered capital, although a minimum registered capital may be imposed by other applicable industry rules and regulations or otherwise required by the authorities. FIEs can also be incorporated as limited liability partnerships, joint stock companies or investment holding companies, each of which are governed by their own separate regimes.

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

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

Key formalities for incorporating a company or setting up a branch

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

- > Depending on the size and sector of the project (if involving significant investment in fixed assets), approvals need to be sought from, or a filing made with, one of various levels of the National Development and Reform Commission, which requires a project application report or an information report to be submitted.
- > All newly established FIEs require their proposed names to be reserved with the competent administration for market regulation (“**AMR**”). The name will typically contain details such as the location, a unique industry trade name and the form of business organisation.
- > Formal approval of the establishment of an FIE is issued by the relevant regulator in its particular industry sector, subsequent to which, establishment of the FIE is filed with AMR. However, if the FIE is not subject to national restrictions on market access (and many FIEs are not subject to such restrictions), filing with AMR (which applies to both FIEs and non FIEs) is still required and formal approval of the establishment of the FIE is not required.

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

No uniform practice applies as to whether the filings and approvals for establishment are made or issued online or physically. The practice varies according to where the company is located.

The FIE and/or its investors must submit foreign investment information pertaining to themselves and/or the FIE through the online Enterprise Registration System, which is managed by AMR.

Key formalities for purchasing a shelf company

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

- > Registration of Changes: The target must register its change to FIE status, new directors etc. with the AMR. Foreign investment information pertaining to the changes of shareholder and/or the target must also be submitted through the online Enterprise Registration System.
- > Governmental Approval: If the target industry sector is subject to restrictions on market access under the Negative List, the acquisition will need the approval of at least one governmental authority. This approval will be a substantive one and the relevant approval authority may require amendments to the transaction documents. In addition, in certain regulated industries (e.g. the financial sector), the foreign investor may be required to meet certain investor qualifications.
- > Other approvals or registrations are also commonly required on cross-border payment issues.

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





Mainland China

Any foreign investment restrictions?

The Special Administrative Measures (Negative List) for Foreign Investment Access (the “**Negative List**”) describes the industry sectors subject to restrictions on foreign investment or in which foreign investment is prohibited.

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

Foreign investment in industries within the Negative List, if at all permitted, is usually subject to stringent entrance requirements and high-level governmental approval, which may be more difficult to obtain.

Corporate governance and ongoing obligations

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

The shareholders’ meeting is the highest decision-making authority of a limited liability company. The shareholders’ meeting exercises powers and functions which would typically be reserved for shareholders in other jurisdictions. An FIE established in the form of a limited liability company must have a board of directors of between three to 13 members. Smaller FIEs may consider having one executive director only under certain circumstances.

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

Tax highlights

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

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

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

Employment highlights

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

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





Mainland China

Issues that surprise foreign investors

- > Certain acquisitions by foreign investors of mainland Chinese enterprises or assets may be subject to review on the grounds of national security. The legislative guidance does not provide a clear definition of these areas, so the regime could potentially be interpreted broadly and cover a wide range of products and services.
- > There is a fundamental distinction between “rights of ownership in land” and “rights to use land” in the PRC. Land in the PRC is owned either by the state (state-owned land) or by rural collectives (collectively-owned land). Land in urban areas is owned by the state, while land in suburban and rural areas is generally owned by rural collectives.
- > When an FIE is established, it must complete foreign exchange registration after its business licence is issued. An FIE must maintain separate foreign exchange bank accounts for current account items and capital account items. Foreign exchange transfer for capital account items into and out of the PRC are relatively more restricted than for current account items. Capital account items are transactions arising from the inflow and outflow of capital, for example, direct investments, loans and securities.

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The Netherlands

How to start a business

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

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

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

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

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

Key formalities for incorporating a company or setting up a branch

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

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

Key formalities for purchasing a shelf company

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

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

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

Any foreign investment restrictions?

The Netherlands is set to adopt a foreign investment (FI) screening regime, expected to enter into force on 1 June 2023. It will introduce a mandatory and suspensory notification requirement for all in-scope transactions. Notifications must be made to the Bureau Toetsing Investeren (BTI). The screening regime applies to all investors (i.e., non-EEA, EEA and Dutch investors). Most of the rules will apply retroactively to investments completed after 8 September 2020.

Qualifying transactions include the (indirect) acquisition of control in (i) a “vital” supplier; (ii) an operator or manager of a high-tech campus; or (iii) a company active in the field of sensitive technologies (such as dual-use products, military goods, quantum technology, photonic technology, semiconductor technology or high-assurance products).

In addition, besides this “generic” FI screening regime, the Netherlands continues to apply its specific sector regimes on (foreign direct) investments in the electricity, gas and telecommunications sector. The sector-specific regimes will prevail over the “generic” FI screening regime.





The Netherlands

Corporate governance and ongoing obligations

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

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

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

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

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

Tax highlights

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

Generally speaking, resident companies are taxed on their worldwide income. Non-resident companies are subject to taxation on certain Dutch-source income. Set-off of tax losses is limited to €1m of taxable profit, plus 50% of the taxable profit exceeding €1m. Losses may be carried back for one year, but may be carried forward indefinitely.

The Netherlands has a two-tier corporate income tax system. Taxable profit up to €200,000 is taxed at 19%; taxable profit exceeding this amount is taxed at 25.8%.

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

A withholding tax on interest and royalties applies in certain specific circumstances. The standard VAT rate is 21% and the reduced rate is 9% or 0%.

Employment highlights

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

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

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

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

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

Issues that surprise foreign investors

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





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Poland

How to start a business

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

The LLC is the most popular, subject to lower share capital requirements (PLN 5,000/approx €1000 compared to PLN 100,000 for the JSC) and has a more flexible legal framework. The JSC is required if the company will be listed on a stock exchange.

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

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

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

Key formalities for incorporating a company or setting up a branch

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

Submitting an application to the Commercial Register requires: (i) articles of association concluded in a form of notarial deed; (ii) appointment the members of the corporate bodies (iii) payment of the contributions to the shares in the share capital (in full in the case of an LLC and covering the minimum requirements in a JSC).

The registration in the Commercial Register usually takes two to four weeks from the date of submitting all required documents to the court.

LLC can be also incorporated through an electronic platform that allows the notarial public deed to be executed online using digital signatures. However, there are certain rules related to this process (i.e. all shareholders participating in the process need to have an active account on the platform).

A branch may start its activity after registration with the Commercial Register.

Foreign investor should submit an application, and (i) a notarised specimen signature of individual authorised to represent investor and (ii) copies of the founding deed and excerpt from the Commercial Register of the foreign investor.

The registration of a branch usually takes between two to four weeks.

Key formalities for purchasing a shelf company

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

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

The investor would usually pass the relevant resolutions to change the company’s business name, its registered office and management board composition. These changes must be notified in the Commercial Register and become valid upon registrations. This usually takes two to four weeks.

Formation of an LLC/JSC, as well as the incorporation of a branch must be notified to the competent tax office.





Poland

Any foreign investment restrictions?

Transactions involving acquisition of a significant interest in (in principle 20% stake or higher), or dominance over, a Polish protected entity by an investor from outside of the EU/EEA or OECD are subject to control by the Polish competition authority (**PCA**). Protected entity is a Polish domiciled company with turnover in Poland exceeding €10m in any of the last two years, and which meets at least one of the following criteria: (i) is publicly listed in Poland; (ii) holds assets considered as critical infrastructure; (iii) develops or modifies the software to operate the specified systems; (iv) is active in sensitive sector (e.g. telecommunications, energy, defence, chemical, software, pharmaceutical, food and beverage sectors or stevedoring in Polish ports, cloud computing). The respective transactions should be notified to PCA. Following the notification, the PCA has 30 working days to decide whether the transaction raises no concerns or if an in-depth review is required. In the latter case, the PCA has 120 calendar days to issue its decision.

Transactions involving strategic companies in some sectors (fuel, energy, chemical, petrochemical, telecommunications and defence sectors) are subject to control by the minister relevant for a specific branch of economy. The list is subject to constant reviewing. The acquisition of a stake exceeding thresholds of 20%, 33% or 50% in or dominance over a company listed as strategic must be notified to the relevant authority (minister). In such a case, the authority will issue a decision on permission for, or objection to, the acquisition within 90 days.

Transaction involving direct acquisition by non-EEA investors of (i) real property in Poland, or (ii) shares in a Poland-domiciled company owning real estate in Poland, requires prior approval of the minister responsible for internal affairs.

Corporate governance and ongoing obligations

The bodies that control an LLC/JSC are the management board and the shareholders through the shareholders' meeting. There is a wide range of options for the management body (sole director, board of directors, two or more directors acting jointly or severally).

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

It is mandatory to appoint statutory auditor(s) or an external auditor under certain circumstances (e.g. when the company is required to prepare consolidated financial statements or when operating in certain sectors, i.e. banks, insurance companies).

Branches do not have Management Board members/directors, but a representative of the foreign investor must be appointed.

Companies must comply with corporate formalities such as keeping a share register and holding annual general shareholders' meetings. Approval of their annual financial statements within six months after end of financial year must be filled with the financial statements in the Commercial Register and the tax office.

Branches are not subject to the above obligations, but they are required to maintain accounts in Polish in compliance with Polish accounting principles. They need however file the annual financial statements to the Commercial Register and the tax office.

Tax highlights

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

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

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

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

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

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





Poland

Employment highlights

Both Polish companies and Polish branches of foreign entrepreneurs must be registered with the Polish social security authorities (as social security contributions remitters) within seven days from the date of employment of the first employee. The new hires must be notified to the social security authorities within seven days from their commencement of work.

The minimum working age is 15 and, as a general rule, employees under 18 are in particular not permitted to work at night, work overtime or perform certain statutorily prohibited jobs. Similar limitations apply also to pregnant women. Generally, work on Sundays and public holidays is prohibited (subject to certain exceptions). Polish law prohibits discrimination in hiring, dismissing, employment conditions, promotion and training on grounds such as (without limitation – the catalogue is open) gender, age, race, religion, etc.

If the employment contract is not concluded in writing, the employer must confirm to the employee the terms and conditions of employment in writing not later than on the day of commencement of work. Additional information on working time and payment of remuneration etc. must be shared with employees within seven days of the date of concluding the employment contract.

Entities employing at least 50 employees must introduce Work and Remuneration Regulations (unless collective bargaining agreement applies), while for entities employing 20-49 employees (inclusive) introduction of the Regulations is obligatory upon the request of trade union organisation (unless collective agreement is in place). Non-obliged entities may introduce Work and Remuneration Regulations voluntarily.

Generally, foreigners from countries outside of the EU and EEA must hold a work permit to work in Poland. There are some exceptions to this rule (e.g. staying on the territory of Poland for less than six months in a consecutive period of 12 months in connection with performance of a function of a member of the management board of a Polish company).

Issues that surprise foreign investors

- > An LLC may not be established solely by another single-shareholder LLC, whether Polish or foreign.
- > There are specific rules regulating the purchase of agricultural land. According to newly introduced legislation, agricultural land may be as a rule acquired only by individual persons running farms on their own. Agricultural land may be acquired by other persons upon consent of the President of the Agency of the Agricultural Lands. Moreover, in the case of an intention to sell the shares in a company which owns agricultural land, the State has a pre-emption right to acquire such shares, subject to some limited exemptions.
- > The employer must engage employees directly and there is no recognised concept of the so-called Employer of Record (EOR) allowing to formally engage employees via a third party while their work is performed under the supervision and for the benefit of the Polish Company/Polish branch. It is possible to engage employee via a temporary work agency, but only within limited time frames (in general 18 months within consecutive 36 months).
- > Payments exceeding certain threshold are subject to the Polish withholding tax (“**WHT**”), i.e. dividends and interest made between related entities, in principle, the “pay and refund” mechanism applies. Also, to benefit from any WHT exemptions or reductions, the recipient of payments needs to be their beneficial owner in the meaning of the Polish domestic regulations which, to some extent (in particular with regard to the business substance requirement in the country of residence of the recipient) – remain unclear.





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Portugal

How to start a business

Operating through a company: The most commonly used are public limited companies (*Sociedade Anónima* or “**SA**”) and private limited liability companies (*Sociedade por quotas* or “**Lda**”). SA is designed for a medium or large business having a minimum required share capital of €50,000 and at least five shareholders, except in cases where a company has a sole shareholder. Lda is subject to €1 share capital requirement and it is the most used for small companies or less complex governance structures.

Other aspects, e.g. corporate governance, shareholding structure or corporate purpose, may also be relevant when deciding which company to incorporate.

Incorporating a company may take up to two weeks provided that all ancillary documentation has been prepared or obtained in advanced.

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

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

Key formalities for incorporating a company or setting up a branch

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

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

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

Key formalities for purchasing a shelf company

The acquisition of a shelf company is an alternative fast way to commence business in Portugal. A shelf, or ready-made company, is a business entity already incorporated and registered in Portugal with or without previous activity, although usually without any form of prior business. In order to acquire a Portuguese shelf company, the shares/ quotas of the company must be transferred to the buyer. For this purpose a share transfer agreement is required to be signed by both parties. Acquiring a shelf company usually takes a couple of weeks, depending on their availability and agreeing on the sale and purchase terms and conditions with the third party provider.

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

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

Any foreign investment restrictions?

The Portuguese foreign direct investment regime applies to acquisition regarding the main infrastructures and assets related to defence and national security or the provision of essential services in the areas of energy, transport and communications. Within its scope, the Portuguese Government may oppose a transaction entailing a direct or indirect acquisition of control over an asset that qualifies as strategic, if the acquirer is an entity from a country outside the EU and the European Economic Area, provided that it may seriously and sufficiently jeopardize the national defence and security or the security of the supply in fundamental services to the national interest.

Save for the above, Portuguese law is based on a principle of non-discrimination based on the investor’s nationality. There are no requirements for shareholders to be Portuguese and no limitations on the repatriation of profits or dividends. The rules that will apply to a foreign investor are the same that rule the national investment and the foreign investment is not subject with any special registration or notification with any authority (without prejudice to mandatory registration obligations or compliance with regulatory obligations in specific activities, namely financial entities and investment companies, insurance, energy, technology, media and telecommunications).





Portugal

Corporate governance and ongoing obligations

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

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

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

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

Tax highlights

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

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

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

Employment highlights

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

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

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

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

Issues that surprise foreign investors

- > The actions of the Portuguese government are concentrated on implementing wide-ranging structural reforms to boost productivity, simplify Portuguese bureaucracy and promote investment. All these reforms may play a key role in attracting private investments in Portugal.
- > Stamp tax is due on a wide range of taxable events, both of domestic and cross-border nature, including financing and provision of security or guarantees. Withholding taxes also applies to a wide range of taxable events, including the payment of services fees, unless tax treaties apply, for which certain formalities must be complied with.
- > Following European wide initiatives on anti-money laundering, all Portuguese companies and branches are required to submit a declaration identifying their ultimate beneficial owners. Such declaration should be updated on an annual basis.





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Singapore

How to start a business

Operating through a company: A company has separate legal personality from its directors and members. It may be private or public. Companies which raise capital by issuing shares to 50 or more persons have to be public companies, which are subject to stricter regulation. Using a company also means that members' liability is limited to their shareholdings or guarantee. A company may be incorporated from scratch or acquired "off the shelf".

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

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

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

Key formalities for incorporating a company or setting up a branch

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

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

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

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

Key formalities for purchasing a shelf company

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

It is relatively unusual for shelf companies to be bought as a company can usually be incorporated within two or three days after an online application is made. In addition, if a shelf company is purchased, certain steps will need to be taken and a number of filings will need to be made to ACRA to effect, among other things, any change of name, the transfer of shares, the resignation and appointment of officers, any change of registered office, and, if necessary, changes to the constitution. Therefore, there are no significant savings in cost or time in purchasing a shelf company.

Any foreign investment restrictions?

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

There are no exchange control or currency regulations.





Singapore

Corporate governance and ongoing obligations

All Singapore companies are required to have at least one director who is ordinarily resident in Singapore and directors must be natural persons (i.e. no corporate directors are allowed). Directors owe common law and statutory duties to the company, including a duty to act in the best interests of the company and a duty to act honestly and use reasonable diligence in the discharge of their duties.

A company is obliged to keep books and records of its business, for example, the minutes of meetings of shareholders and directors and a register of charges, registrable controllers, nominee shareholders and nominee directors. ACRA maintains an electronic register of members and officers for Singapore companies, and these are available to the public for a small fee.

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

A company must prepare and file audited accounts unless it is a dormant company or it is a small company within the criteria set out in the Companies Act 1967 (for example, its revenue does not exceed S\$10m and it does not have more than 50 employees, in each year for two consecutive financial years).

Stricter and more extensive rules apply to public companies.

Tax highlights

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

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

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

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

Employment highlights

The Employment Act 1968 provides statutory protections relating to, among other things, dismissal, pay and leave rights. All employers are required to issue itemised payslips and key employment terms to employees. The rights and obligations of employees are typically supplemented in their contracts of employment.

All foreigners working in Singapore without Singapore permanent resident status must have a work pass before they start work. Different types of work passes apply depending on criteria such as salary and the nature of services to be performed. Before submitting an Employment or S pass application and subject to certain exemptions, the employer must advertise the job vacancy to the local workforce for at least 14 days on an online portal.

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

The minimum retirement age for Singapore citizens and permanent residents is 63. Once an eligible employee turns 63, the employer must offer re-employment to him/her up to the age of 68 to continue employment in the organisation, provided that certain statutory requirements are met. If the employer is unable to offer a position, it must offer the eligible employee a one-off employment assistance payment. The employer’s re-employment obligation is also satisfied if another employer offers to employ the eligible employee in lieu of the employer and the employee accepts such offer.

Issues that surprise foreign investors

- > All Singapore companies are, unless exempted, required to maintain a register of registrable controllers. A registrable controller is someone with “significant interest” in or “significant control” over the company. The register of registrable controllers is maintained by the company, and ACRA also maintains a central register of controllers based on information provided by the company. This register is not available to the public.
- > ACRA maintains an electronic register of members and register of officers for Singapore companies. These electronic registers serve as prima facie evidence of the matters stated in the registers and have replaced the physical registers which used to be maintained by companies. A share transfer can only be completed when the electronic register of members is updated by ACRA. Entry into the electronic register of officers is not necessary to effect the appointment of an officer of the company. However, it is a criminal offence if ACRA is not notified of any changes to the information in the electronic register of officers.





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South Africa

How to start a business

Operating through a company: The most common form of investment vehicle in South Africa is a private limited liability company, which has separate legal personality from its directors and shareholders. A company may be incorporated from scratch or acquired “off the shelf”. It typically takes 7-10 business days for a new company to be incorporated where a unique form of the memorandum of incorporation (the constitutional document of the company) is used. Where the standard memorandum of incorporation (MOI) is used, incorporation typically takes 1-2 business days. Shelf companies may be acquired within 1-2 business days.

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

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

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

Key formalities for incorporating a company or setting up a branch

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

Applying for incorporation requires submission to the CIPC of (i) the relevant form, (ii) a fee of R175 (where the standard form MOI is used) or R475 (where a unique form MOI is used), and (iii) the memorandum of incorporation. A company may be incorporated entirely online via the CIPC’s website where the standard form MOI is used. However, where a unique form MOI is used, the application for incorporation must be submitted to the CIPC manually (i.e. via email).

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

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

Key formalities for purchasing a shelf company

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

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

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

Any foreign investment restrictions?

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

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





South Africa

Corporate governance and ongoing obligations

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

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

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

A company is obliged to maintain books and records of its business, such as its securities register. Every company is required to file an annual return with the CIPC each year within 30 business days after the anniversary of its incorporation and include in that return a copy of its annual financial statements (if it is required to have such statements audited). From 1 April 2023, a company must include in its annual return copies of: (i) its securities register; and (ii) its register of disclosure of beneficial interests (if it is required to maintain such a register). Companies must keep their securities registers and registers of disclosure of beneficial interests (if required) up-to-date and record such updated information with the CIPC. Companies must also provide the CIPC with up-to-date information about the business such as: appointment or resignation of directors, changes to constitutional documents and changes in share capital.

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

Tax highlights

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

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

The taxable incomes of South African resident companies are subject to corporate income tax at a flat rate of 27%. Effective for years of assessment ending on or after 31 March 2023, companies with taxable income above R1m will be able to set off assessed losses only up to 80% of taxable income.

Resident companies also pay dividends tax at a rate of 20% on dividends remitted to a foreign holding company. Certain dividends may be exempt from dividends tax or subject to reduced treaty rates.

South Africa also imposes a 15% withholding tax on interest and royalties, subject to any double tax agreement.

Branches, if they are taxed, are taxed at the same rate as domestic companies but profits can be remitted to its head office free of dividends tax.

Transfer pricing and thin capitalisation rules apply to cross-border related party transactions.

South African resident companies are subject to capital gains tax on all asset disposals at an effective rate of 21.6%.

Non-resident companies (including branches) are subject to the same rate, but only in respect of immovable property assets in South Africa, certain indirect interests in such property and assets effectively connected to a permanent establishment in South Africa. A relevant double tax agreement may vary this.





South Africa

Employment highlights

In South Africa, the regulation of employment issues is guided by a comprehensive set of labour laws. The individual employment sphere is governed by laws that regulate minimum conditions of work, occupational health and safety and national minimum wages. Most of these provisions apply to employees earning below a certain threshold. Higher paid employees' terms and conditions are typically governed by contract.

Employees are protected against unfair workplace practices, terminations and discrimination. Significant statutory requirements exist regarding business outsourcing and the sale of a business as a going concern. Disputes that arise in this arena are primarily resolved through mediation and adjudication by a statutory body dedicated to employment matters.

Businesses employing over 50 employees, must set equity targets and submit annual reports. South Africa's employment equity legislation was amended in April 2023. The implementation date of these amendments as well as regulations on transformational sector targets and what may constitute justifiable grounds for non-compliance are yet to be published. The employment of foreign nationals is also becoming increasingly regulated as the state addresses South Africans' expectations for labour market access.

The only statutory benefit that covers all employees across all sectors is the Unemployment Insurance Fund, and employers are required to register with this fund and contribute, along with employees, from the start of employment. While many employers contribute to private medical aid and retirement funds, such contributions are not compulsory. Various laws provide for mandatory contributions and deductions, including to a fund for the compensation for workplace injuries and diseases, income tax, skills development levies, and the like.

The right to strike is constitutionally protected in South Africa and the labour relations framework gives effect to collective bargaining and industrial action. Trade unions are granted extensive rights in the workplace based on their level of representation in the workplace.

Most South African employment laws apply to employees in South Africa, regardless of the jurisdiction of the head office or the jurisdiction cited in the employment contract.

Issues that surprise foreign investors

- > Businesses that require licences, concessions or authorisations from the South African State (e.g. mining permits and electronic communication network services licences), wish to provide goods and services to organs of State or public entities in South Africa, wish to acquire State-owned enterprises or wish to enter into partnerships with the State may need to comply with black economic empowerment (BEE) legislation to qualify or increase the likelihood of being successful. This legislation sets out, among other things, certain requirements for black ownership of South African companies and maintenance of these ownership levels. In the private sphere, compliance with BEE is generally not legally mandated, but almost all businesses operating in the South African economy are incentivised to contribute to BEE (e.g. procurement from black-owned suppliers) to attract business, including from entities that transact with the State, which may (as noted above) be required to meet specific BEE requirements.
- > Share certificates representing shares held by a non-resident in a South African company must be endorsed "non-resident" by an authorised dealer. The endorsement ensures that dividend payments, or the payment of sale proceeds in respect of the shares, will be freely remittable to shareholders offshore, without the need for specific exchange control approval having to be sought and obtained at a later stage.





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Spain

How to start a business

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

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

Since October 2022, it is possible to incorporate an SL with a minimum share capital of €1, subject to the following conditions until the share capital reaches €3,000: (i) 20% of the profit must be allocated to the legal reserve until this reserve together with the share capital reaches €3,000, and (ii) in the event of winding-up of the company, if the company’s assets are insufficient to meet the company’s obligations, the shareholders shall be jointly and severally liable for the difference between the amount of €3,000 and the issued share capital.

A company may be incorporated from scratch or acquired “off the shelf” (quicker and generally less costly than incorporating a company: incorporating a company may take up to two months, while a acquiring an “off the shelf” company usually takes a couple of weeks).

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

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

Key formalities for incorporating a company or setting up a branch

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

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

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

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

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

Due to implementation of the Digitalisation Directive into Spanish law in May 2023, SLs may be incorporated electronically, including the granting of the deed of incorporation by video communication with a notary, under certain circumstances.

Key formalities for purchasing a shelf company

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

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

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





Spain

Any foreign investment restrictions?

Investment by non-EU or non-EFTA investors (or by residents in EU or EFTA countries whose beneficial owners are foreign investors) made in certain key sectors (broadly, those affecting public order, public security and public health) or by certain types of those investors irrespective of sector (e.g., State-owned companies), are subject to prior authorisation (except those below €1m) provided that the investor (i) attains ownership of 10% or more of the company or (ii) gains control of the company or a part of it, by means of a corporate transaction or an investment in assets or branches of activity.

Until 31 December 2024, investments by other EU and EFTA investors in (i) Spanish listed companies or (ii) unlisted companies where the investment value is more than €500m are subject to prior approval if (a) the investor acquires a stake of 10% or more in the company or gains control of that company, and (b) the sector invested in affects “public order, public security and public health”.

In addition, foreign investments and divestments in Spain must be reported to the Foreign Investments Registry. As a general rule, these filings are merely for information purposes and can be made within one month after the investment. However, as an exception: (i) foreign investments made from tax havens must be declared six months in advance (still for information purposes); and (ii) certain foreign investments must be authorised in advance, namely those in connection with (a) activities directly related to national defence or (b) real estate assets acquired by non-EU nationals for diplomatic purposes.

Corporate governance and ongoing obligations

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

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

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

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

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

Tax highlights

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

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

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

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

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





Spain

Employment highlights

Both Spanish companies and branches must be registered with the Spanish labour and social security authorities before hiring any employees or opening workplaces in Spain. The commencement of activities at the workplace must be notified to the labour authorities. All employees must be registered with the social security system and any employment contracts must be communicated to the Employment Public Service.

Employers must protect the health and safety of their employees and insure against liability for occupational accident or disease sustained by employees. An occupational risk prevention plan must be attached.

Companies with a staff of 50 or above (or if compulsory under the applicable collective agreement or a ruling of the employment authorities in enforcement proceedings) must draw up an equality plan, with the involvement of workers' legal representatives, or trade unions. Equality plans must contain the necessary measures to eliminate gender-based inequities and discrimination and contribute to achieving real equality between women and men in the company. Companies with this duty must include an equal pay audit in their plans, to check whether the company's pay system complies with the principle of equal pay for women and men, and to avoid, correct and prevent any barriers to this.

All companies irrespective of staff number must keep a pay of all their staff remuneration for each calendar year. Workers' legal representatives must be involved in the preparation or amendment of this pay record.

All companies also have the duty to record daily their employees' working hours and must keep these records for four years at the disposal of employees (their own records) and the Spanish employment and Social Security authorities.

Termination needs to be formally notified to the employee, stating the grounds. Employees are protected against unfair dismissal, being entitled at the employer's decision to either (i) be reinstated at the company or (ii) receive the statutory compensation for unfair dismissal. Companies tend to pay the unfair dismissal severance. There are relatively few statutory consultation obligations. These mainly arise in the case of collective redundancies or collective substantial changes to employment conditions.

As a result of a recent labour reform, temporary contracts have been reduced to two types: (i) fixed-term contracts due to production circumstances; and (ii) fixed-term contracts for the replacement of employees.

Issues that surprise foreign investors

- > Acquisitions, disposals or contributions of core assets by a company incorporated in Spain require shareholder approval. The concept of "core assets" is indeterminate. Spanish law establishes a rebuttable presumption that an asset is a core asset if the amount of the transaction exceeds 25% of the value of the company's total assets on its latest balance sheet.
- > Non-Spanish resident legal entities making an investment in Spain or appointed as a director of a Spanish entity must apply for a Tax ID Number. In addition, non-Spanish resident individuals appointed as company directors or branch representatives, regardless of whether they are EU citizens, have to obtain a Spanish foreigner identity number (N.I.E.).
- > Tax representatives designated by branches of non-EU/EEA entities are jointly and severally liable for paying taxes owed by the branch.
- > When incorporating or acquiring shares in a company, founders/buyers are required to disclose to the notary their "beneficial owner" (ie. person who ultimately owns or controls, directly or indirectly, 25% or more of its share capital or voting rights). In the case that no individual can be classified as a beneficial owner, the identity of the directors of the founder/shareholder should be disclosed together with copies of their passport.





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Sweden

How to start a business

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

An AB (publ) is required if the company will be listed or trade on the stock exchange or on alternative market places, as well as to offer instruments to the public or otherwise offer more than 200 potential holders to subscribe for shares or securities. The AB is subject to lower share capital requirements (SEK 25,000 compared to SEK 500,000 for an AB (publ) or the respective € equivalent) and has a more flexible legal framework. A company may be incorporated from scratch or acquired “off the shelf” (quicker and generally less costly than incorporating a company).

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

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

Key formalities for incorporating a company or setting up a branch

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

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

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

Key formalities for purchasing a shelf company

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

Generally, to acquire a shelf company, the purchaser will open a new bank account for the shelf company, deposit the share capital in the account (usually SEK 25,000) and sign the share purchase agreement.

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

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

Any foreign investment restrictions?

As a general rule, foreign companies may establish a business in Sweden following the same rules and procedures as domestic establishers.

However, to protect Sweden’s security interests, a business operator that intends to transfer (i) all or a part of a security-sensitive business or (ii) assets of importance for Sweden’s security or international protective security commitments that are binding on Sweden, must carry out a special security assessment and a suitability assessment as well as consult with the relevant regulator prior to preparing for such transfer. The obligation to consult with the appropriate regulator before a transfer also applies to transfer of shares or units in an operator conducting security-sensitive business. If either the business operator’s suitability assessment or the regulator concludes that the transfer is unsuitable from a security protection point of view, the transfer cannot be carried out. It should be noted that a separate FDI regime is intended to enter into force during 2023.

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





Sweden

Corporate governance and ongoing obligations

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

A branch is obliged to have a managing director provided with a special power of attorney to represent the head office.

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

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

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

Tax highlights

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

Swedish companies must pay Swedish corporate income tax at a rate of 20.6% on the amount of the net income. Non-resident companies operating through a branch in Sweden are also subject to Swedish corporate income tax at a rate of 20.6% on the worldwide income attributable to the branch.

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

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

Employment highlights

Swedish companies and branches need to register for tax and are liable to pay social security contributions. Moreover, Swedish companies and branches are obliged to comply with Swedish mandatory employment law, such as with regard to terminations and annual leave. Certain types of businesses must also adhere to specific requirements, such as keeping an "employee register" (*Sw. personalliggare*) in certain types of business, e.g. the construction industry.

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

Issues that surprise foreign investors

- > The managing director of a limited liability company or a branch needs to be domiciled within the EEA. It is possible to apply for an exemption with the SCRO.
- > Sweden has no requirement as regards a board member's need to be a Swedish resident, but at least half of the board members need to be resident within the EEA. If none of the board members (or the CEO if applicable) are domiciled in Sweden, a person to receive process of service must be appointed.
- > Swedish companies are subject to corporate law rules which require them to maintain a level of shareholder equity (calculated on a specific basis for this purpose) corresponding to at least 50% of their registered share capital. To continue the company's business where more than half of the registered share capital has been spent may result in personal liability for the members of the Board and the shareholders.





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Thailand

How to start a business

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

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

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

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

Key formalities for incorporating a company or setting up a branch

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

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

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

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

Key formalities for purchasing a shelf company

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

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

Any foreign investment restrictions?

Business activities carried out by foreigners are restricted under the Foreign Business Act, the application of which applies regardless of forms of entity (company, branch, representative office, etc.). However, there are exemptions for certain business activities where licences or certificates could be obtained prior to commencement of such activities, including where the business qualifies for protection under an international treaty to which Thailand is a party, has obtained an investment promotion under the law on investment promotion, or has obtained a written permission for operation of industry or trade for export under the law on the Industrial Estate of Thailand.

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





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Thailand

Corporate governance and ongoing obligations

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

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

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

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

If public companies are listed on the Stock Exchange of Thailand, they will be subject to stricter rules and regulations.

Tax highlights

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

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

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

Employment highlights

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

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

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

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

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

Issues that surprise foreign investors

Foreign ownership of land is restricted under the Land Code. Foreigners may own land only for certain purposes as permitted under the law. For this purpose, foreigners include natural persons and juristic persons, e.g. a Thai incorporated company owning more than 49% of the registered capital or having a majority of foreign shareholders.



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United Arab Emirates (excluding free zones)

How to start a business

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

Setting up a branch: A branch has no separate personality from its foreign “parent” company. It operates pursuant to a commercial licence in the name of the foreign company. The branch may engage in commercial activities and earn profits, but the activities must be similar to those carried on by the foreign parent company in its home jurisdiction

Setting up a representative office:

A representative office has no separate personality from its foreign “parent” company, and its activities are limited to marketing and/or promoting its foreign parent company products and services. It cannot earn profits within the UAE and must appoint a local services agent.

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

Key formalities for incorporating a company or setting up a branch

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

- > prepare constitutional documents (based on standard forms) which must be in Arabic/dual language and notarised by a notary public;
- > enter into a lease agreement for commercial premises;
- > apply for approval to incorporate and for commercial licence to the competent authority (the Department for Economic Development) in the relevant Emirate;
- > for a PJSC, apply for approval to incorporate to the Securities and Commodities Authority (SCA); and
- > once the certificate of incorporation and commercial licence are issued, register the company in the Commercial Register maintained by the Department for Economic Development and the local Chamber of Commerce in the relevant Emirate.

Certain types of activity may also require the approval of a relevant government department or regulatory authority, for example, healthcare, insurance, financial services activities and telecommunications.

There are restrictions on the name which may be adopted by a company.

Branch: Establishing a branch in the UAE requires the approval of the Ministry of Economy and the foreign parent company must be licensed and registered in the relevant Emirate.

Branches are subject to the provisions of the UAE company’s law regime. A local services agent attends to the formalities of establishing a branch.

Key formalities for purchasing a shelf company

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

Should an investor wish to purchase shares in an existing LLC, the process can be time-consuming and highly procedural. Approval is required from the competent authority (the Department for Economic Development) in the relevant Emirate.

Shareholder pre-emption rights may limit the ability to freely transfer shares., Share transfer documents must be drafted in Arabic/dual language, executed in front of a notary and may need to be legalised if executed outside the UAE. The transfer must then be registered at the Department for Economic Development in the relevant Emirate. An updated commercial licence must then be issued, following which the transfer would be complete.





United Arab Emirates (excluding free zones)

Any foreign investment restrictions?

Foreign investment rules have recently been relaxed in the UAE. The historic foreign ownership restriction which required a UAE company to have not less than 51% of its share capital owned by UAE nationals no longer applies.

Shares in companies incorporated “onshore” in the UAE (i.e., not in a free zone) may be owned by foreign investors with no limit on the percentage of a company’s share capital that they may hold, subject to Federal restrictions protecting strategic sectors and applicable Emirate-level requirements.

At the Federal level, restrictions on foreign investment and additional licensing requirements apply for those companies engaged in activities which have a “strategic effect” on the UAE economy. There are seven strategic sectors in which foreign investment is restricted or prohibited, including security and defence, banks and insurance, and telecommunications.

At an Emirate level, the Departments of Economic Development in each Emirate may enact foreign investment restrictions and requirements as to UAE national board participation for companies engaged in activities which are “non-strategic”. The Economic Departments in the Emirates of Dubai and Abu Dhabi have published lists of commercial and industrial activities which do not have a “strategic impact” – in effect a “Positive List”.

Ownership restrictions may be greater in certain circumstances and sectors, including in the insurance, real estate, commercial agency, banking and energy sectors, where specific foreign investment rules apply. Further bespoke restrictions may be contained in a company’s Memorandum of Association.

There are no exchange control or currency regulations.

Corporate governance and ongoing obligations

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

A PJSC must have a minimum of three and maximum of 11 directors. The maximum term is three years (may be renewed by re-election). An LLC must have a minimum of one manager (no maximum) and their term is determined by the memorandum of association. If an LLC has more than 15 members, they may appoint a supervisory board (minimum of three members) to oversee the managers. There are no nationality requirements applicable to the management of PJSCs or LLCs.

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

A company is obliged to keep books and records of its business; for example, a register of members. Filings must also be made with the Registrar of Companies; for example, if changes are made to its constitutional documents and when certain resolutions of members are passed. Amendments to the constitutional documents of an LLC must be in Arabic/dual language format and the amended documents must be notarised by a notary public.

PJSCs are subject to greater regulation, and must also comply with the regulations of the Securities and Commodities Authority (SCA). Further and, in some cases, more strict rules apply to specific types of UAE companies, including government-related entities or companies operating in certain sectors.





United Arab Emirates (excluding free zones)

Tax highlights

The UAE implemented Value Added Tax (VAT) on 1 January 2018. Taxable supplies of goods and services are subject to a standard 5% VAT rate, zero-rated or exempt.

A new Federal corporation tax has been introduced which obliges businesses in the UAE to pay corporation tax (subject to certain exemptions) for tax periods commencing on or after 1 June 2023. A 9% rate will apply to taxable income exceeding AED 375,000 during the relevant tax period. The new corporation tax regime fundamentally changes the historically low tax environment in the UAE.

There is no capital gains tax in the UAE.

The UAE does not levy withholding tax on payments of interest by a UAE borrower or on dividends.

Employment highlights

Employees must obtain a residency visa and a work permit in order to work lawfully in the UAE. They must register with the labour department.

The UAE reformed the employment law regime for private sector employees in 2021. All employees must be on fixed term contracts, not exceeding three years in length (which may be renewed). The law now expressly recognises different models of work, including part-time and flexible/remote working, as well as full time work.

UAE labour laws address employee wages (there is no minimum wage), working hours (8 hours per day or 48 hours per week), annual leave, safety and protection, medical and social care, disciplinary procedures, termination of employment contracts, end of service benefits, non-compete restrictions, compensation for occupational diseases, labour inspections and penalties. New provisions introduce additional rights and protections, including family leave entitlements, discrimination protections, compassionate leave and minimum 14 day notice period of dismissal.

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

Termination benefits and entitlements crystallise on termination. One of the benefits to which employees with over one years’ service are entitled is an end of service gratuity, which is payable upon termination of an employment relationship in the UAE, provided that the employee meets the conditions under UAE law.

There are no redundancy provisions under UAE law.

Issues that surprise foreign investors

- > The UAE comprises seven Emirates, including Dubai and Abu Dhabi. Federal laws apply across all Emirates, and Emirate laws apply only within the relevant Emirate.
- > The Emirates have established free zones which, to a varying extent, operate outside of the commercial laws of the Federal and Emirate laws of the UAE. Free zones are typically zoned by industry type.
- > The financial free zones – the Dubai International Financial Centre or the Abu Dhabi Global Market, have their own laws and regulations.
- > This section does not cover or apply to companies incorporated in any of the free zones established in the UAE.
- > The law of the UAE, as an emerging market, is evolving; it is not comprehensive or always straightforward to apply in the context of international commercial transactions.
- > Legal and regulatory frameworks in the UAE are changing, predominantly in line with regional and global developments. In recent years, reforms to laws relating to companies, foreign investment, bankruptcy, taking security and electronic signatures/ transactions, among other things, have been enacted.
- > Market practice may differ depending on the circumstances of any given transaction and the entities involved (particularly where government or government-related entities are parties to the transaction).





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United Arab Emirates (excluding free zones)

Issues that surprise foreign investors (contd.)

- > UAE laws and regulations may come into effect without being published, there exists no general system of judicial precedent whereby the decisions of a court in one case have any binding authority in respect of another case and there is no full and reliable reporting of court judgments. As a result, there may be a lack of transparency in some areas which can make understanding the applicable law challenging.
- > Enforcing contracts in the UAE can be challenging. The choice of forum which will give an investor the best chance of successful enforcement depends on the nature of the transaction and the parties involved. This is a developing area of law and market practice is evolving.
- > Special rules may apply to government-related entities, such as regarding approvals and immunity.





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United Kingdom

How to start a business

Operating through a company: Commercial companies are usually limited by shares (i.e. the liability of the members is limited to the nominal value of their shares) and can be either private or public. Companies which raise capital by public offerings of shares have to be public companies, which are subject to stricter regulation.

A company may be established by applying for a certificate of incorporation for a new company or by acquiring a ready-made company “off the shelf”.

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

Setting up a branch: A branch is not a company, but the operation of an overseas legal entity in the UK. It has no separate legal personality so cannot enter into contracts in its own name. Certain UK filing and disclosure obligations apply to branches of overseas entities registered in the UK.

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

Key formalities for incorporating a company or setting up a branch

Applying for the incorporation of a new company is quick, simple and inexpensive. However, the drafting of the articles of association (which set out the constitution of the company) may require legal advice depending on the complexity of the ownership structure of the company to be used.

It will also be necessary to check whether the name of the new company is permitted. There are extensive restrictions on the names which may be adopted by a new company. Different companies may not have names which are too similar. In addition, a number of words, which imply a particular function or authority, are restricted and may require the prior approval of the government or of the appropriate professional body before they can be used in a company name.

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

Key formalities for purchasing a shelf company

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

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

Purchasing a shelf company used to be the standard option in the UK as the process was quicker than incorporating a completely new company. However, since Companies House introduced an electronic filing system, new companies can be incorporated on the same day on which an application is made.

Any foreign investment restrictions?

Certain acquisitions may require the approval of the UK government. Under the National Security and Investment Act, acquisitions of more than 25% of the shares or voting rights in qualifying entities may fall under a mandatory regime which means they require approval from the UK government for the acquisition to go ahead. Acquisitions (including of “material influence” over an entity, or of assets) which fall outside the mandatory regime but give rise to security concerns can be notified under a voluntary regime where parties request the UK government sign off on a particular transaction. Government approval is mandatory if a proposed qualifying acquisition of shares or voting rights falls into one of 17 defined sectors. The voluntary regime is not limited to certain sectors but there is guidance on when to notify the government as it can call in any transaction for review up to five years after closing. Failure to obtain approval can result in significant fines and the transaction being blocked or unwound, as well as potential criminal liability under the mandatory regime for failing to notify a qualifying acquisition.

Certain investments or acquisitions may also be subject to the UK sanctions regime if they involve Russian or other restricted parties.

There are no exchange control or currency regulations.





United Kingdom

Corporate governance and ongoing obligations

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

A company is obliged to keep books and records of its business, for example, a register of members and financial records. The directors must approve the annual accounts, as well as circulating them to the members and submitting them to the Registrar of Companies within a specified period after the financial year-end (nine months for private companies and six months for public companies).

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

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

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

Tax highlights

Transfers of shares in companies incorporated in the UK or with a share register in the UK are taxed at 0.5% (stamp duty or stamp duty reserve tax).

UK resident companies are subject to UK corporation tax on worldwide income and capital gains (subject to an optional exemption for overseas branches). The rate of corporation tax is 25% for companies with profits of over £250,000 and 19% for companies with profits of £50,000 or less. Companies with profit margins between these two brackets pay tax at the 25% rate reduced by a marginal relief, providing a gradual increase in the effective corporation tax rate between 19% and 25%.

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

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

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

Employment highlights

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

On or before the start of employment, an employer must give its workers a written statement of certain basic terms of their employment.

Workers must be paid at least the national minimum wage (£10.42 per hour for those aged 23+ from April 2023) and most eligible workers must be enrolled into a pension scheme by their employer subject to meeting certain criteria. Workers and employers will then be required to make minimum contributions into the scheme. Workers are subject to maximum weekly working hours unless they opt-out, and have the right to daily, weekly and in-work rest periods.

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

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

Issues that surprise foreign investors

- > Companies and LLPs must maintain a publicly available register of persons which have significant control ("**PSCs**") over them. A PSC includes someone who, among other things: (i) holds 25% or more of the company's shares or voting rights; (ii) can appoint or remove directors holding a majority of the votes that can be cast at a board meeting; or (iii) has the right to exercise, or actually exercises, significant influence or control over the company.
- > There is a corporate offence in the UK of failing to prevent bribery. A company or partnership that was incorporated and/or carries on business in the UK can be guilty of the offence if: (i) a person associated with it commits a bribery offence; and (ii) there are no adequate procedures in place designed to prevent bribery.
- > Commercial organisations which: (i) carry on all or part of a business in the UK; (ii) supply goods or services; and (iii) meet a minimum turnover threshold of £36m must publish a "slavery and human trafficking" statement each financial year. This must state what has been done to ensure that there is no modern slavery in their supply chain or organisation.
- > The UK government is currently working on new laws to tackle economic crime by improving the quality of the corporate information held by the Registrar of Companies and to make the structure and ownership of legal entities more transparent.





United States

(Delaware)



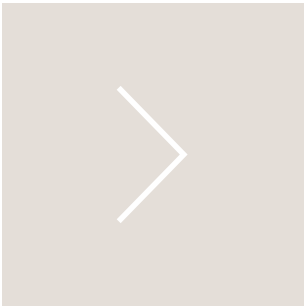
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United States (Delaware)

How to start a business

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

Delaware is the most utilised state for business law, with more than 50% of all U.S. publicly traded companies and more than 66% of the Fortune 500 incorporated there. The Delaware legislature is perceived as being business friendly and the judiciary has a very sophisticated understanding of business law.

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

Key formalities for incorporating a company or setting up a branch

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

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

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

Key formalities for purchasing a shelf company

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

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

Any foreign investment restrictions?

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

However:

- > The Committee on Foreign Investment in the U.S. may review and order divestment where a transaction threatens to impair the national security of the U.S.;
- > Federal law places restrictions on non-U.S. ownership of companies in certain sectors (e.g., aviation, telecoms, utilities); and
- > Federal sanctions may restrict ownership of U.S. assets by certain persons (e.g., Cuban nationals) in certain circumstances.





United States (Delaware)

Corporate governance and ongoing obligations

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

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

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

Tax highlights

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

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

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

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

Employment highlights

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

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

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

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

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

Issues that surprise foreign investors

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

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

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

- > complying with corporate formalities;
- > maintaining separation between the parent and the subsidiary, including separate boards, separate management (paid by the subsidiary) and separate bank accounts;
- > adequately capitalizing the subsidiary appropriate to its business; and
- > documenting the arm's length nature of any material transactions between the parent and subsidiary.



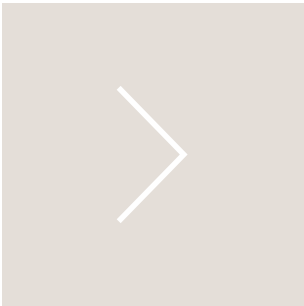
Vietnam



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Vietnam

How to start a business

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

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

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

Key formalities for incorporating a company or setting up a branch

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

To register a new company, a foreign investor must first have an “investment project” which will require approval through the form of an Investment Registration Certificate (“**IRC**”). Certain types of project require “in-principle approval” from relevant heads of government prior to issuance of the IRC.

Once the IRC is issued, an Enterprise Registration Certificate (“**ERC**”) must be obtained to establish the new enterprise to implement the approved investment project. Each company established in Vietnam must have a company constitution called a “charter”, equivalent to by-laws or articles of association.

Applying for an IRC can be done partly by electronic means but hard copy application dossiers are still required to be submitted to competent provincial authorities. Registration for ERCs can now be conducted 100% online via the national enterprise registration portal.

In order to establish an RO in Vietnam, a foreign company needs to register for RO establishment with the relevant provincial Department of Industry and Trade. That process involves submission of a statutory registration form and supporting documentation. A foreign company establishing an RO in Vietnam is required to appoint a Chief Representative to head up the RO though such person is not required to reside in Vietnam.

Registration for establishment of an RO cannot currently be conducted electronically.

While the statutory timeline for establishment of a new enterprise is 18 days (15 days for IRC and three days for ERC) and 15 days for M&A approval, such timelines are not strictly followed in practice. It would not be unusual for it to take up to four to six months in total to establish a new company or obtain an M&A approval, or possibly longer operating in certain conditional sectors or sensitive locations.

Key formalities for purchasing a shelf company

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

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

Additionally, if the foreign investor is seeking to contribute capital, purchase of shareholding or purchase of a capital contribution portion results in an increase in foreign investor ownership in the economic organization, or doing business in the market approach industry or trade subject to conditions applicable to foreign investors; is seeking to acquire more than a 50% charter-capital in the company; or acquire a stake in a company which has a land use right certificate for land on an island or on a coastal or border commune, ward or town or in another area which affects national defence and security, prior approval of the authorities is now required (termed “M&A approval”).

M&A approval is not conducted via electronic means.





Vietnam

Any foreign investment restrictions?

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

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

An ownership cap in a conditional business line is identifiable in international treaties of which Vietnam is a member (e.g. WTO Commitments) or domestic legislation. If no limit is set for a conditional business line under an international treaty or domestic legislation, a standard cap of 50% will apply.

Until recently, a blanket cap of 50% applied to foreign investment in public and listed companies. However, it is now possible for this cap to be exceeded following registration of the higher threshold with the State Securities Commission. The upper permissible limit will be determined by the business lines of the relevant company, with 100% foreign ownership being permitted in companies operating solely in non-conditional sectors.

Corporate governance and ongoing obligations

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

The three layers include: (i) the company chairman or members' council for a single-member limited liability company,

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

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

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

Stricter ongoing obligations apply to listed companies.

Tax highlights

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

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

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

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

Employment highlights

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

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

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





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USA

VIE

Vietnam

Issues that surprise foreign investors

- > The law of Vietnam is constantly developing and at times can be very vague. Therefore, implementation of the law may be different in practice compared to what is stipulated in legal instruments and inconsistencies of interpretation of the law between the various local authorities are very common.
- > Under Vietnam's Constitution, all land is collectively the property of the people as a whole. As such, no one is permitted to "own" land in the sense of holding indefeasible title. The right to use land includes leasing from the state or by transfer from an existing land user.
- > Vietnam has a very strict foreign exchange control regime. No transactions, payments, advertisements and quotations, by residents and non-residents, can be denominated or conducted in a foreign currency. Foreign investors are permitted to transfer revenue and disbursements via direct investment capital accounts and indirect investment capital accounts, which will depend on the nature of the investment.



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