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International Law Firm Alliance

COMPENDIUM 2014

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"One can resist the invasion of an army, but one cannot resist the invasion of ideas".

—VICTOR HUGO

International Law Alliance
COMPENDIUM 2014

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Who we are

E-lure is a young, vibrant and expanding network of international law firms, established in 2003. Now, E-lure comprises a network of law firms from all over the world. Meant to be a link between Europe and Latin America, during the last few years, E-lure has grown to be a truly global network. Legally, E-lure has been formed as an association under Spanish law, with headquarters in Madrid, Spain.

Following the needs resulting from globalization and European integration, E-lure is facilitating the exchange of professional information, locally and globally, for the development of law, enhancing communications among its members and improving the members' abilities to serve the needs of their respective clients, which are increasingly dominated by international activities.

E-lure members are drawn from commercially-minded medium sized practices, possessing the highest professional standards, and committed to provide creative business solutions, as well as service excellence in an international surrounding.

E-lure members are not affiliated in the joint practice of law. Each member firm is an independent law firm, which renders professional services on an individual and separate basis, maintaining complete autonomy.

Practice areas & goals

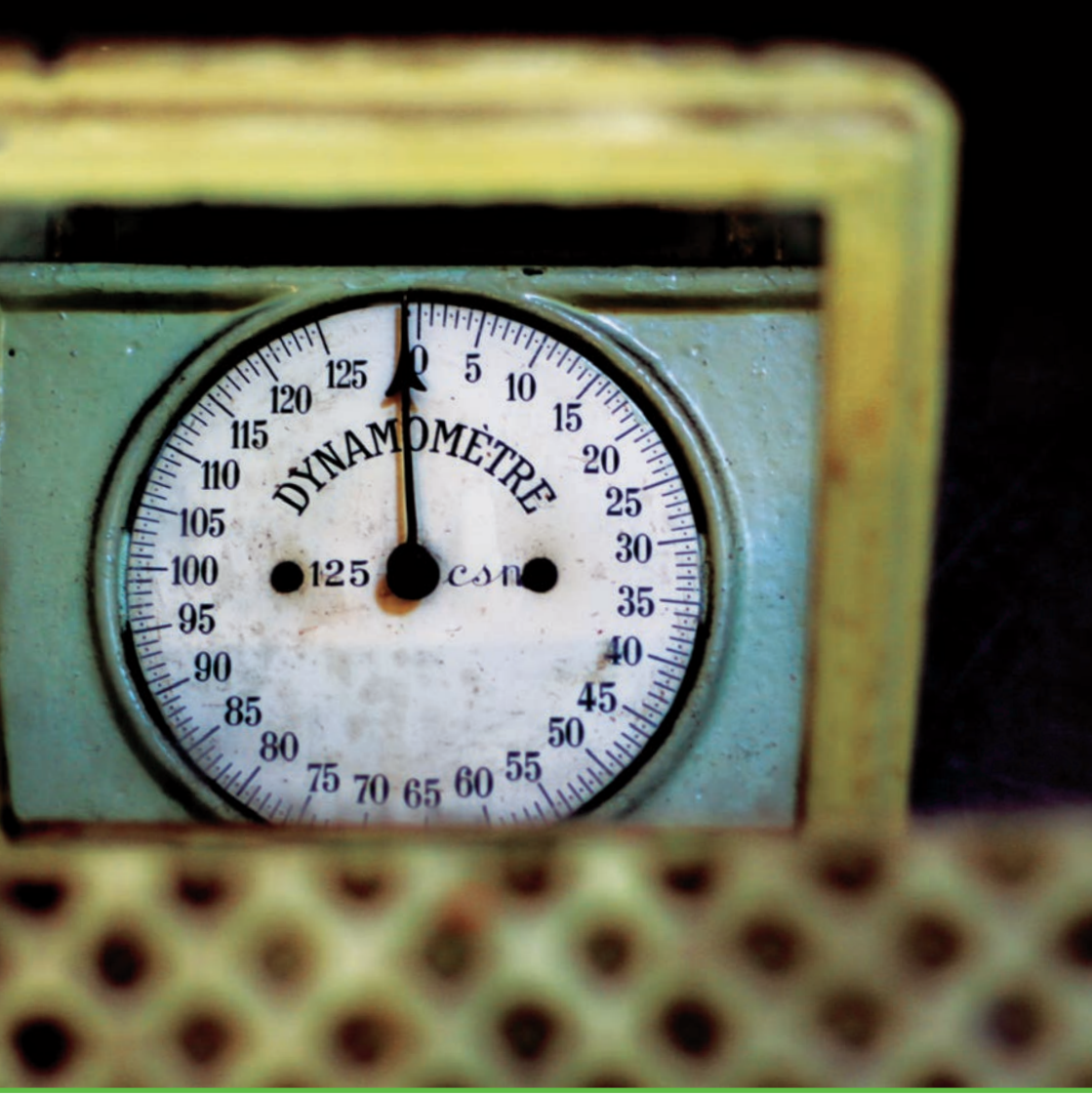
- Corporate
- Litigation
- Private Equity
- Tax
- Labor & Employment
- Intellectual Property
- Real Estate
- Insolvency
- Structured & Project Finance

Our goal is to have the best service for cross border operations.
All E-lure members have been involved in cross border transactions on regular basis. We know that any of our clients will be covered, no matter the jurisdiction or the country they are at. The E-lure members will work together as a team to solve our clients' needs.

Our goals are:

1. Act as one team, giving the best service to our clients all over the world.

2. Share the knowledge between the members of the alliance and be excellent on our service.



Dedicated to the ones whom make this book a reality, from a proud and admiring friend.

JESUS CASTELLANO
Coordinator of this work

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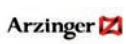

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→ Argentina

→ Firm Profile

Silva Ortiz, Alfonso, Pavic & Louge ("SOAPL") is a law firm with more than 100 well trained lawyers who provide its clients with reliable and professional solutions. Most of our clients are among Fortune 500 and Global 500. We also represent individuals, state owned companies and nonprofit organizations.

Our business approach, together with our professionals' commitment allows us to design in each case creative solutions for our clients' needs, looking for the construction of sound and solid relationships. Our professionals are always oriented to obtained real results previously agreed with the client. The diversity of our services and our business approach contribute to a more complete understanding of the problems we deal with.

Silva Ortiz, Alfonso, Pavic & Louge has experience in working in coordination with other firms or organizations and in providing our services for complex matters. In addition, the firm litigation practice is based on broad substantive expertise in all kinds and a great deal of litigation and a large number of proceedings.

We offer our services within the whole Argentine country through wholly owned offices or correspondent offices. Silva Ortiz, Alfonso, Pavic & Louge in a few words:

- More than 140 professionals and employees
- More than 30 associated firms within Argentina and abroad
- Ranked locally among the most important law firms in Argentina (Revista Apertura as of 2008)
- Several lawyers ranked locally among the most prestigious professionals in Argentina (Revista apertura, as of 2006)

Corporate Law

The members of the firm have participated in a variety of complex merger and acquisition transactions, spin offs and structuring of corporate and trust agreements, especially in the insurance, financing services and agriculture businesses. Our important value is our expertise in the coordination among the several participants and advisors involved in the transaction.

Banking and finance – Capital Markets

The members of the firm devoted to this area of practice have acquired their experience in Banks and companies related to the financing sector. The firm has the advantage of knowing deeply the day to day client's needs in a highly regulated market. They have also rendered advise in the granting and obtaining of loans, issuance of securities, public offerings, etc.

Business Structuring

The holistic company advisory service is a concept integrated to all our services in every area. Our counseling service aims at finding the best solution. Therefore, we make a detailed analysis and inform, in every case, all the potential legal consequences of our decisions. We advise our clients in the foundation of new company structures and in dealing with diverse transactions, helping the strategic decision-making as well as the solution of less complex problems.

Insolvency and Restructuring

The members of the firm have represented creditors, bond holders and issuers, in out-of-court restructuring, out-of-court preventive settlements and in debt swap agreements. They have negotiated corporate debt, including advise in court and out-of-court restructuring proceedings.

Litigation and arbitration

The firm has high expertise in representing our clients before federal and local courts (including the Supreme Court) in civil, commercial, tax and labor litigation as well as conducting arbitration procedures on behalf of our clients.

Administrative Law

Our Administrative Law Department represents our clients and their relationship with the audit agencies (SSN, SRT, SAFJP and others), and provides professional services in Administrative Agreements (Biddings), Concessions, Public Construction Works, Administrative Easement, Expropriations, Issues of State Domain and others in connection with this field.

Insurance and Reinsurance

The firm has a solid experience in general liability insurances, out of court claims, settlement proceedings and litigation, professional liability insurances, advice on writing of "occurrence general liability policies", "claims made" or "mixed" of any kind, hail and agricultural multi-risk, special exclusion clauses and adjustments, reinsurances, negotiation of cut off agreements, representation of the reinsurer and dispute resolution with the assignors. Our specialty has been developed to the service of retirement and pension funds administrators and retirement insurance companies.

In addition the firm is a proven leader in services related to the labor risks system. Members of the firm have had a significant participation in the market since the very first years of the current legislation and since then, our firm has been among the leaders in legal services rendered to Labor Risk Insurers.

Shipping

We deal with the full range of legal issues affecting those involved in the shipping industry, advising on – among other things - charter parties, shipbuilding, insurance and cargo claims. Our high expertise in insurance and litigation offers a complete maritime legal service to insurers, P&I Clubs, owners, charterers and cargo clients. We have a sound understanding of how the market works, both from the perspective of underwriters and clubs and that of their clients and members.

Labor Law and Immigration

Our advisory services in Labor Law are focused on legal representation of employers as well as on counseling regarding any potential conflicts between employee-employer. We provide alternative mechanisms of labor conflict solutions out of court. This kind of proceeding also includes analysis and negotiations of collective agreements. Our firm regularly represents its clients before the National Ministry of Labor, National and Provincial Administrative Authorities, as well as Labor Courts all across the country.

Social Security

This area of the firm advises both corporate clients as well as individual clients. The main purpose is to help them to construct their pension history, obtain pension benefits, retire benefits, early or compulsory retirement, etc.

Health

Our firm has worked with a variety of actors of the health market and is a recognized leader in providing services to private operators of Social Security sector. Among others we provide services to medical service providers, medical centers, professional associations and other medical professionals. Our services comprise advising on the current legislation in force, as well as representing our clients before audit entities and other authorities. We also offer legal representation in litigations all across the country.

Consumer Protection

The firm provides assistance in this area of practice from the corporate perspective, both in the evaluation and prevention of potential claims, as well as in the defense of our clients' interests in administrative and judicial procedures. This department renders advice in matters also related to Fair Marketing Regulations and Advertising Marketing. Therefore, we let our clients take the necessary preventive steps in marketing and development policies involving services and products addressed to consumers.

Tax Law

Our professionals have represented companies and individual clients in complex tax issues. In addition to this, they have advised thoroughly in tax issues related to foreign investments in Argentina, debt restructuring and M&A operations. The firm provides counseling in matters related to the enforcement of national and provincial taxes, and represents clients before fiscal authorities of each jurisdiction.

Telecommunications - Media

The members of the firm have expertise in advising local and foreign telecommunication companies. Our expertise includes regulatory issues and day to day business.

Intellectual Property

The firm provides all services related to advice, registration and follows up regarding trademarks, invention patents, trade names, use patterns and industrial designs, strategies on registration, searches, and products classification in Argentina and in the United States of America.

We give advice on trade contracts, technology transfer, licenses, franchises and usage.
Besides, the firm carries out legal matters and disputes resulting from issues related to infringements as regards intellectual and industrial property as well as resolution of conflicts and protection of rights and against piracy.

Debt Collection

The firm has specialized in collection and debt follow-up by means of optimizing the service in what concerns to costs and efficiency. Our professional services aimed at recovering our customers' assets include the management of debts with or without warrant as well as the tax repetition and the collection of debts in general.

Pro Bono

Access to courts for those who lack necessary means but are damaged in their essentials rights has become relevant in our days. The members of the firm consider that, as law professionals and members of a community its time that they return to the society what they have received from it. Our profession implies an ethic obligation to help those in need. Therefore the firm works for such purpose and collaborates with a number of foundations and non profit organizations.

→ Corporate Law

Commercial Companies and Branches

There are basically three kinds of legal entities by means of which commercial activities may be carried out in Argentina: the corporation, the limited liability company and the branch of a foreign company. There are other kinds of entities created by statutory law, but with little practical use. The applicable rules are comprised in the Argentine Commercial Companies Act 19,550 ("ACCA"), which is applied nationwide. State law complements and sets forth rules for registration and other requirements. In Buenos Aires, state rules are enacted by the *Inspección General de Justicia* or "IGJ" (Superintendency of Corporations). In addition, public companies are subject to regulations issued by the *Comisión Nacional de Valores* or "CNV", the local securities exchange commission.

Corporation ("S.A.")

The corporation is the most commonly used legal entity in Argentina. It is used for the development of all kinds of activities and businesses. Its main characteristics are the following:

SHAREHOLDERS: At least two shareholders are required. The ACCA does not establish minimum or maximum equity percentages that a person is allowed to own in a local company or corporation. However, the current IGJ's criteria is that a sole shareholder cannot own more than 98% of the equity, unless certain conditions occur (e.g. the minority shareholder does not

exercise preemptive rights *vis à vis* an increase in stock capital). Shareholders can be domestic or foreign companies, or individuals. There are no nationality or residence requirements. Shareholders' liability is limited to the full payment of their capital contributions.

SHARES: The stock capital is divided into shares. Shares must be nominative, non-endorsable and may or may not be represented by certificates. The issuance and ownership of certificated and non certificated shares stems from records in the company's shares registry book, or from the records of a third party commissioned for that purpose.

CAPITAL: A minimum stock capital of at least AR$ 100,000 is required. Resolution 7/2005 of IGJ provides that the stock capital must be appropriate for the development of the corporate purpose. Therefore, the IGJ may require that companies attain higher stock capital. At least 25% of the capital must be paid in at the time of incorporation, and the remaining amount within the next two years. When the consideration for the stock is other than cash, subscriptions must be paid-in in full.

SHAREHOLDERS MEETINGS: Unless shareholders meetings are unanimously held, which means that 100% of the capital stock is present at the meeting and all resolutions are voted affirmatively, meetings shall be summoned by means of publications in the Official Gazette, and in specific cases, in a nationwide newspaper. Twenty days prior to the date the shareholders' meeting is scheduled to be held, the board shall submit to the shareholders, at the corporate domicile or by electronic means, all relevant information regarding the shareholders' meeting, the documents to be discussed and the proposals of the board. Shareholders' meetings may be ordinary or extraordinary. Shareholders may authorize another person who is not a director, employee or syndic of the relevant company to act on their behalf as a proxy at the meetings.

BOARD OF DIRECTORS: The board is in charge of the management of the corporation. There is no requirement of a minimum number of members. Thus, the board may be comprised of only one director, with the exception of certain corporations (i.e. section 299 companies, for instance those which capital exceeds AR$ 10M, publicly held companies or public utilities). Boards of Section 299 companies must be comprised of at least three members. There are no nationality requirements for being appointed as director, nor it is required that directors be shareholders. However, the absolute majority of directors appointed must reside in Argentina. The Board must appoint a president, who has the use of the signature and company seal. The quorum for board's meetings is the absolute majority of members, and resolutions are made as provided in the by-laws. With regard to public companies, the members of the Board of directors have additional duties, which may be classified in the following categories: (i) public offering duties (must inform the CNV and self regulated entities of: a) any fact or situation which, because of its importance, is capable of substantially affecting the underwriting of negotiable obligations or the course of the negotiation thereof; and b) holdings of shares, debt securities and debt certificates); (ii) duties to inform and to maintain secrecy (certain persons who are identified under certain CNV resolutions, as having information regarding a fact which has not

been publicly disclosed and that, because of its importance, may be capable of affecting the price of a company's securities, keep strict secrecy and refrain from negotiating the same until the information becomes public); and (iii) duties of loyalty and diligence (1. make the corporate interest of the company and common interests of all its partners prevail over any other interest; 2. refrain from procuring any personal benefit on behalf of the listed company; 3. organize and implement preventive systems for the protection of corporate interests; 4. procure adequate means to carry out the activities of the company and exercise internal control such as may be necessary to guarantee a prudent management, and prevent non-compliance of duties imposed by the CNV and self regulated entities; 5. act with the diligence of a "good business man" in the preparation and disclosure of information obtained in the market).

AUDITING COMMITTEE: On December 27th, 2012, law Nº 26.831 on Capital Markets was enacted. Among other things said law annulled Decree 677/01, captioned "Regulation for Transparency of Public Offering" (the "Decree"), thus keeping its main provisions and spirit. One of the main purposes of the Decree has been to include provisions related to market transparency and the protection of investors in public companies, which the recently enacted law maintains. In this sense, the new law ("Capital Markets Law") provides for the mandatory creation of an Auditing Committee in the case of those companies making public offering of their shares. The Committee is to be formed by three members of the Board. The majority of the members shall be independent. In order to be qualified as independent, the director must bear this condition both with respect to the company and the controlling shareholders and shall not carry out executive activities within the company.

SYNDIC: The syndic is an officer of the corporation entrusted with the task of supervising that the corporation's acts are in accordance with the law and the by-laws. He/she is required to be an attorney or accountant. Appointment of the syndic is not mandatory, except for certain corporations (i.e. those whose stock capital exceeds AR$ 10M, are publicly held or public utilities). If syndics are not appointed, it is mandatory to appoint alternate directors. When the company is included in the cases described under Section 299 of the ACCA (with the exception of cases included in Subsection 2, whose stock capital exceeds AR$10M) it must have a surveillance committee.

Limited Liability Company ("S.R.L.")

The SRL is the second most commonly used legal structure after the corporation. Its principal characteristics are:

QUOTA HOLDERS: There must be a minimum of two and a maximum of 50 (also, a single quota holder cannot own more than 98% of the stock capital). No nationality or residency requirements apply. Their liability is limited to the full payment of the equity subscribed.

STOCK CAPITAL IS REPRESENTED BY "QUOTAS". There is no minimum capital requirement, as opposed to the corporation. However, the stock capital must be appropriate for the development of the company's purpose. The stock capital must be subscribed in full and 25% shall be paid in at the moment of the incorporation. The balance must be paid within two years. If the quotas are paid by means of contributions of property other than cash, then all the quotas must be paid in full, at the time of incorporation.

MANAGEMENT: The management of the SRL may be performed by one or more managers, acting individually or jointly as set forth in the articles of incorporation. There is no nationality requirement. In case the managers act jointly, or in case there is only one manager appointed, then the absolute majority of all managers must reside in Argentina.

SYNDIC: The appointment of a syndic is not mandatory unless the SRL's stock capital reaches certain minimum figure – currently AR$ 10M.

QUOTA HOLDERS' MEETINGS: Resolutions are adopted as set forth in the by-laws. For amendments to the by-laws, if a sole partner represents the majority vote, it is required that an additional partner affirm the vote.

Participation in the capital stock of a corporation or SRL: registration as a foreign company

According to ACCA, any foreign company intending to conduct regular business in Argentina shall have two options, depending on its purpose: to set up a branch, agency or representative office, as set forth in section 118 of the ACCA; or to participate in the share capital of an existing company or a company to be established in Argentina pursuant to the provisions of section 123 of the ACCA. The difference between the types of businesses is mainly the kind of legal relationship with the foreign company and the applicable civil liability regime.

Foreign companies interested in either incorporating local companies or owning equity in local companies must, in accordance with Section 123 of the ACCA, be registered with the Public Registry of Commerce ("PRC").

In accordance with Resolution 7/2005 of the IGJ, foreign companies shall also: (a) inform whether or not the company is subject to prohibitions or legal restrictions to conduct the activities related to its corporate purpose in its place of incorporation; and (b) show that the foreign company meets any of the following conditions: (i) owns one or more agencies, branches or permanent representations outside Argentina (ii) owns equity in companies located abroad if the investment qualifies as non-current asset; or (iii) owns fixed assets in its country of incorporation or outside Argentina.

Additionally, Resolution 7/2005 of the IGJ requires that foreign companies keep the registration current by filing documents showing that they own assets outside of Argentina and report on the identity of their shareholders.

In case a foreign company, which has already been registered or will be registered with the Public Registry of Commerce, is incorporated for the sole purpose of being a vehicle for investing in other companies, and consequently cannot comply with General Resolution IGJ 7/2005, compliance can be achieved if its controlling company complies with the aforementioned resolution and files certain documentation with the IGJ.

Pursuant to the provisions of General Resolution 12/05 of the IGJ, foreign companies which have economically significant and internationally known business carried out abroad may be exempted from filing the documentation set forth in Resolution 7/2005 if, in place thereof, such companies at any time file information that provides evidence of such status and complies with this requirement.

Branch

Foreign companies may use a branch to perform businesses or activities in Argentina. The branch is a mere administrative decentralized office of the headquarters with no legal independence, which means it is not a different legal entity. Even when it has certain autonomy, in principle, and may even have capital for the development and management of its businesses, the assets of the branch belong to the headquarters. This implies that the headquarters must answer directly for the obligations and commitments assumed by the branch, though initially the creditors may execute the capital stock assigned to the branch by the foreign company. Only a legal representative duly authorized to operate the branch must be appointed.

From a tax viewpoint, however, branches must keep separate accounting registries from their parent companies, and file annual financial statements with the Public Registry of Commerce.

Branches must also comply with Resolution IGJ 7/2005 or, if applicable, with the information regime regarding investment vehicles. Consequently, the same documentation must be filed with the IGJ by the time of its registration and on an annual basis.

From a tax perspective there is no difference between branches of foreign companies or Argentine corporations. Argentine corporations and Argentine branches of foreign companies are subject to income tax at a 35 % rate applicable on the net income derived on the fiscal year. Costs and expenses are tax-deductible in order to determine the net taxable income. e tax-deductible in order to determine the net taxable income.

→ Tax Law

There are three levels to the Argentinean tax system: federal, provincial and municipal. The National Constitution sets forth the taxation powers of the federal and local governments, as well as the general tax principles and limitations. The main taxes are the following.

A. FEDERAL TAXES

Income Tax

This tax is levied on the worldwide income of Argentinean residents (individuals or legal entities), and permanent establishments in Argentina of foreign companies. Non-residents are taxed only on income from Argentinean sources. An entity is deemed to be a resident in Argentina for tax purposes, and thus subject to tax on its worldwide income, if it is incorporated in Argentina. Foreign individuals are considered residents and therefore subject to tax on their worldwide income if they stay in Argentina with a permanent visa –for immigration purposes- or with a temporary visa for at least 12 months. However, foreigners who stay in Argentina for work for less than five years are not considered residents and thus only subject to tax on Argentinean source income.

Individuals' taxable earnings include only their eligible gains and recurring income, which is income which may be derived on a periodic basis and which implies the permanence of the source producing it. Conversely, taxable income of companies and permanent establishments includes any nonexempt income or gains.

Residents have the right to credit taxes of a similar nature paid abroad against their income tax liability, to a maximum amount equal to the tax liability arising from such foreign-source income. Losses may be carried forward for a five-year period and a basket limitation applies to foreign source losses and losses arising from the disposal of shares and other interests. The progressive rates applicable to individuals range from 9% to 35%. The highest rate applies to taxable income in excess of AR$ 120,000. Companies and permanent establishments of Argentinean nonresidents are subject to a flat 35% income tax rate.

For individuals, the fiscal year matches the calendar year. The fiscal period for resident entities is the commercial period established in its by-laws. Argentina adopts the arm's length principle applicable to transactions between related parties and has developed detailed rules on transfer pricing, which require the making of a transfer pricing report, the submission of transfer pricing tax returns and the maintenance of the documentation thereof.

Payment of Argentinean-source income of non-residents is subject to a final withholding tax at the following effective tax rates: (i) Interest on inter-company loans: 35% effective tax rate. The rate is reduced to 15.05% in cases where the lender is a financial entity –other than an offshore one– in a jurisdiction not deemed to be a low-tax jurisdiction; or when the jurisdiction has concluded an information exchange agreement with Argentina and, according to its internal rules, no banking, capital markets or other secrecy systems apply; (ii) Royalties, Patents, trademarks and know-how: 28% in general (other 35%); (iii) Copyrights: 12.25% under certain conditions. If those conditions are not met, the rate is 31.5%; (iv) Motion pictures: 17.5%; (v) Technical assistance: 21%, 28% and 35% effective tax rates; (vi) Capital gains on movable or

immovable property: generally 17.5% effective tax rate; (vii) Rents of immovable property: 21% effective tax rate; and (viii) Rents of movable property: 14% effective tax rate.

In connection with shareholders' income, as a rule, dividends paid out of profits subject to income tax are not subject to any further tax. An equalization tax is applicable at a 35% rate on dividends paid either to residents or non-residents when the dividends that are payable in cash or in kind exceed taxable profits accumulated at the end of the tax period preceding the distribution. Capital gains on shares of a local entity (i.e. investment by means of an Argentinean holding company), it is subject to income tax at the regular 35% rate on capital gains derived from the disposal of shares in other companies.

Finally, on September 23rd, 2013 a new law was enacted (Law Nº 26,893) which introduced some amendments to Argentine income tax.

The results derived from the transfer of depreciable movable goods, shares, quotas, equity participation bonds and other securities are subject to tax, regardless of the nature and residence of the beneficiary. In the case of gains obtained by individuals and undivided estates resident in the country, it will be applicable a 15% tax rate. The law does not set forth the tax rate applicable to non-resident individuals.

Furthermore, it will be subject to income tax law the distribution of dividends (excluding those made in shares or quotas of the distributing companies) made by corporations, limited liability companies, trusts and mutual funds investment and permanent establishments and branches of foreign entities at the rate of 10%. These amendments are applicable to the tax events occurred as of September 23rd, 2013.

Double Taxation Conventions

The following countries have entered into comprehensive double taxation treaties with Argentina which are currently in force: Australia, Belgium, Bolivia, Brazil, Canada, Denmark, Finland, France, Germany, Italy, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom.

Argentina has also signed several treaties for the avoidance of double taxation with respect to income arising from international shipping and/or air transportation.

Minimum Deemed Income Tax

At the end of each tax period, this tax is levied on the value of assets located in Argentina and abroad belonging to companies domiciled in Argentina or abroad, which are held by companies domiciled in Argentina, permanent establishments of non-residents of the country, trusts organized under Law No. 24,411, and common investment funds, among others. The tax rate is 1%. Taxpayers with assets in the country the aggregate value of which do not exceed AR$ 200,000 are exempt from this tax.

Shares and other participations in the capital of local companies are exempt from this tax. This tax is deemed to be payable in advance of the income tax in case the income tax is higher than it. If the minimum deemed income tax of a given year is higher than the income tax, the excess may be carried over to the following ten tax periods and used as a credit towards the income tax liability exceeding the minimum deemed income tax of the future tax period.

Value Added Tax (VAT)

Practically all economic transactions effected in Argentina are subject to this tax, which is levied on taxable supplies of goods and services in Argentina as well as imports of goods and services into the country. Exports of goods and services are zero rated. The exemptions are very limited generally restricted to educational services and international transportation. The general rate is 21%. Certain transactions are subject to a reduced rate of 10.5% (i.e. interest payable to local financial institutions and to foreign financial institutions located in countries where the Central Bank has adopted the international supervisory banking standards approved by the Basle Bank Committee) and certain supplies are subject to a higher rate of 27% (i.e. certain gas, energy and water supplies). In computing the VAT liability, input VAT may be credited against output VAT, so that only the value added to the taxpayer's supplies is taxed. VAT applies to each stage of the production or distribution of goods and services upon the value added during each of the stages.

Tax on Bank Accounts

This tax is levied at the general rate of 0.6% on each credit and debit incurred in bank accounts registered with financial institutions. Though the taxpayer is the holder of the account, the bank is responsible for paying the tax. Certain fund transactions not executed through bank accounts are also subject to this tax at a 1.2% rate. The tax on bank accounts may be computed as a credit for income tax and minimum income deemed tax.

Personal Assets Tax

This tax is levied on Argentinean residents (individuals and legal entities) with respect to their worldwide net wealth exceeding AR$ 305,000 at the end of each calendar year. It is also levied on individuals and legal entities located abroad in relation to their net wealth located in Argentina at the end of each calendar year. Furthermore, residents and nonresidents are subject to the tax with respect to shares held in Argentinean companies. An ordinary foreign tax credit system is also available. Individuals domiciled in Argentina are subject to the tax on all their assets exceeding AR$ 305,000. The tax rate varies from 0.5% to 1.25% depending on the amount of these assets. For non-residents, the applicable rate is 1.25%. With regard to shares and other interests held by residents or nonresidents in Argentinean companies, the tax is payable by the issuing company at a flat rate of 0.5% on the pro-rata value of the securities according to the companies' net worth.

Excise Taxes

This tax is levied in one stage on the transfer and importation of goods specified by law (i.e. tobacco, alcoholic and non-alcoholic beverages, extracts, cellular and satellite phone services, luxury objects and engines) and on the rendering of specified services. Certain electrical appliances as well as certain electronic products are subject to the excise tax (e.g. air conditioning equipments; heating equipments; telephones and other devices for the transmission or reception of voices, images and other information; GPS'; among others). Excise taxes are levied at ad valorem rates based on the price of goods and services.

B. LOCAL (PROVINCIAL) TAXES

Turnover Tax

The turnover tax is a local tax levied on the regular exercise of an economic activity. The taxable base is the turnover (e.g. gross receipts). The relevant rates depend on the given jurisdiction and the activity carried out by the taxpayer. The tax rate average is 3%. Certain industrial activities may be exempt. For activities carried out in more than one jurisdiction, there is a distribution system which is common to all, referred to as the Multilateral Agreement.

Stamp Tax

This is a provincial tax levied on the execution of acts and contracts in any Argentinean jurisdiction other than the province of La Rioja. It is payable in the jurisdiction in which the economic transaction is instrumented but may also be applicable in the jurisdiction in which it has effects. The tax rate may vary in each jurisdiction, but it is usually between 0.8% and 1.5% of the economic value of the transaction.

Real Estate Tax

This is also one of the most common provincial taxes and is levied on the value of the property held. Rates vary according to each jurisdiction. In some provinces this tax is collected by municipalities.

C. LOCAL (MUNICIPAL) TAXES

As the scope of the municipal taxes is determined by each Provincial Constitution, municipal taxing rights generally encompass only those taxes levied as a consequence of services granted by the municipality. These taxes include those applicable to the granting of permission for starting an economic activity, taxes levied on security and health control of taxpayers' activities, taxes on the right to use public spaces and taxes on advertisements made in the municipality. Each municipality has its own tax system.

→ Labor Law and Social Security

Argentinean labor law is divided into three major areas: individual law, collective law and social security law. Individual labor law regulates the relationship between an employer and an employee by means of (i) the Employment Contract Law; (ii) regulations that apply to specific professional categories (i.e. journalists, sellers of goods or domestic employees); and (iii) the applicable collective bargaining agreement, depending on the activity developed by the employer. Collective labor law governs the relationship between unions, collective representatives of employees, and an employer or group of employers. The results of collective negotiations are collective bargaining agreements. Finally, social security law establishes the mechanisms by which the public administration grants monetary or other compensation to workers in the event of death or disability due to labor and non labor illnesses or accidents, or retirement.

The fundamental principles of Argentinean labor law include the following: employees' inability to waive their labor rights, continuity of the employment contract, priority of reality, good faith, social justice, equity, non discrimination, and gratuity of judicial proceedings.

Individual Labor

The parties to the individual labor relationship are the employee and the employer. The employee must be an individual of working and legal capacity, and cannot be substituted in this relationship by any other person. The employer is the individual person or legal entity that hires the employee. According to the Employment Contract Act, an employer (company) is defined as an organization of personal, material and non-material resources for the attainment of benefits or economic purposes. A company may be comprised of one or various branches. In case a company hires personnel for the provision of services to a third company, employees are considered direct employees of the hiring company. Temporary staffing companies are the exception to this rule, being specifically regulated by law and requiring formal authorization for the provision of their services. In cases where a company hires another entity to perform part of its normal, ordinary and specific activities, it shall be jointly and severally liable for labor infringement vis-à-vis the latter's employees. This liability extends to any company that controls or is affiliated with the employee's formal employer.

The employment contract is the agreement between an employee and an employer where the employee offers his services to the employer in exchange for payment of a salary. Such an agreement is characterized by the legal, economic and technical subordination of the employee to the employer. In principle, the employment contract does not require a specific form. In this sense, it does not need to be written to be valid. One exception, among others, is the fixed-term employment contract. The employment contract is presumed to last for an undetermined period of time. The law allows for an initial trial period of three months, during which no indemnification is due for termination of the contract without cause (with the exception of payment of indemnification equal to fifteen days of salary due to lack of prior notice).

A special kind of employment contract to be executed for an undetermined period of time is the seasonal employment contract. Even though its term length is undetermined, the effects of the contract –rendering of services and payment of a salary- only take place during the corresponding season determined by the nature of the employer's activity (i.e., life guards). Notwithstanding these rules, under special circumstances, the employment contract can have a limited duration. Such cases include: (i) fixed-term employment contracts, in which a term is established in advance by the parties, said fixed term being justified under extraordinary circumstances, (ii) temporary staffing contracts, in which a specific term cannot be preestablished, the term of the contract thus depends on the length of an extraordinary event (i.e., excess of seasonal work, performance of an extraordinary work, sick leave, maternity leave, replacements, etc.). The National Government determines the minimum salary.

According to the Employment Contract Act, every employee is entitled to a thirteenth salary paid as two semiannual bonuses at the end of June and December each year. Salaries are paid by deposit into the employee's bank account, which the employer must open on the employee's behalf. Fringe benefits have been specifically enumerated by the Employment Contract Act: they are reimbursement of medical expenses, supply of work clothing, reimbursement of nursery school tuition, provision of school supplies, raining courses, and seminars and burial expenses. These benefits are considered non remunerative payments, and therefore do not trigger payment of any social security contributions.

Termination of the employment contract may be motivated by various reasons. On the one hand, the employer can terminate the contract at will. If there is sufficient and just cause for the dismissal, no indemnification shall be due to the employee. If the termination is due to an unjustified dismissal (without cause), the employee shall be entitled to indemnification equal to one monthly salary per year worked, or a fraction equal to or higher than three months salary. The monthly salary to be paid is the highest normal, ordinary monthly salary accrued by the employee during the last year of employment. Notwithstanding the above, there are caps on collective bargaining agreements which must be considered when calculating employee indemnification. The cap is equal to three times the average of all salaries covered by the collective bargaining agreement in the respective work category. In case the employee's salary is higher than this cap, the latter shall be taken into account for the calculation of the indemnification. The floor of this indemnification is one month's salary, not taking into consideration the application of the collective bargaining agreement cap. Even though the legislation that establishes these caps is still in force, the National Supreme Court of Justice declared it unconstitutional in 2004 ("Vizzoti c/ AMSA"). Depending on the amount of the employee's salary, the calculation of the indemnification in case of dismissal without just cause shall be made according to the following alternatives: (i) if the collective bargaining agreement's cap is less than 67% of the salary, the cap amount must be taken as base for the calculation; (ii) if it surpasses 67%, the precedent of the Supreme Court becomes applicable, and the seniority indemnification shall be calculated considering 67% of the employee's salary multiplied by the number of years worked.

The employee shall also be entitled to prior notice of his dismissal without cause equal to one month if he has less than five years of seniority, or two months if he has five years or more of. In lieu of prior notice, the worker shall be entitled to one or two monthly salaries, depending on the seniority of the employee. The indemnification due for dismissals without cause shall be higher if the employee is dismissed during the period of protection for marriage or maternity, or is a union representative.

The employment contract may also be terminated by an employee for any serious infringement by the employer (thus entitling the employee to receive indemnification). If the employee terminates employment without cause, the employee shall not be entitled to any indemnification. Similarly, the employment contract may also be terminated as a result of the mutual agreement of both parties, in which case no indemnification is owed either.

The law also regulates other causes of employment contract termination which result in reduced or eliminated indemnification. These causes include: force majeure, lack of or decrease in workload, death of the employee or of the employer, disability of the employee, and bankruptcy of the employer and retirement of the employee.

Collective Labor

Collective labor legislation, which is referenced in the National Constitution and has been codified in specific labor laws, regulates the relationships, rights and duties between collective labor parties: labor unions and employers. Collective labor law governs the regulation of unions, collective negotiations and strikes.

Each industry sector is entitled to a sector-specific union. The union negotiates with the employer or its collective representative the terms of the collective bargaining agreement that will regulate the activity in question. Unions must be recognized by the Secretariat of Labor. Even though the union represents all workers within the sector it represents, each worker is free to decide whether or not to become a member of the union. Contributions from union members and employers finance the unions.

Social Security Law

The scope of the social security regime's application goes far beyond that of labor law, since it extends not only to wage workers but to the independent workforce, the unemployed and people living in extreme poverty. Contingencies covered include death, disability due to occupational and non occupational illnesses or accidents, retirement, maternity, family expenses and unemployment. The social security system is financed primarily by the employees' and employers' mandatory contributions, which range from approximately 40% to 44% of the employee's salary, depending on the size of the company.

The Occupational Risks Act establishes a system of protection against contingencies which may occur at work or resulting thereof, either by accident or occupational illness. They can be the cause of temporary or permanent disability, or death. This system foresees the existence of an Occupational Risks Insurers (*"Aseguradores de Riesgos del Trabajo"* or "ARTs") to indemnify injured workers. Employees cannot waive this which coverage. ARTs are obligated to not only provide insurance for occupational accidents or illnesses, but also to prevent their occurrence by implementing periodic health and safety controls within insured companies.

The conditions for retirement are that the employee reach the age of sixty (women) or sixty-five (men) having contributed a minimum of 30 years to the system. Employees may also obtain special retirement as a result of disability and deceased employee's family members may receive pension payments if the employee supported his or her family. The social security system also provides for family benefit payments. These include benefits for children, disabled children, prenatal, school support, maternity, birth, adoption and marriage benefits.

→ Real Estate

Argentina is a civil law country; consequently, its laws are stated in detailed codes such as the Civil or the Criminal Code. The National Constitution is Argentina's principal and fundamental source of rights, among which is private property. Additionally, the Civil Code, laws and regulations govern the rights of people and entities, all of which must be in accordance with the National Constitution. Real estate in Argentina is mainly regulated by the Argentine Civil Code.

The Argentine legal system regards ownership under the numerus clausus principle, therefore real estate rights are only those expressly recognized in the Civil Code or special laws. Ownership has been defined by the Argentine Civil Code as 'the ownership by means of which a certain thing is subject to the will and action of an individual' (section 2506). In particular, real estate is also regulated by other laws such as Condominium Law No. 13,512 (which regulates the subdivision of buildings into independent dwelling or business units) and Law No. 24,441 (related to housing and construction), which also provides for regulation of trusts.

The Civil Code stipulates that all agreements for the transfer of title, the creation of encumbrances and the conveyance of real property rights regarding property of other persons, as well as any other transaction inherent in the sale and purchase of real property, must be effected by means of a public deed. Leases, on the other hand, do not require a public deed. Pursuant to Public Law No. 17,801, all real property must be registered with the corresponding registries, except state-owned property. In addition, documents constituting, transferring, declaring, modifying or terminating ownership rights and those setting embargoes, restraining orders and similar legal inhibitions shall also be registered. Each province of Argentina has its own real estate registry. National Law No. 17,801 sets forth general guidelines, but each jurisdiction has its own specific

rules and regulations that must not be contrary to the national law. Consequently, fees and taxes imposed on the formalization of acts and contracts are established by the local relevant authorities and will therefore vary among the different jurisdictions.

Foreign investors

The Foreign Investment Law No. 21,382 states as a general principle that foreigners investing in Argentina enjoy the same status and have the same rights that the Constitution and domestic laws confer on local investors. As a general rule, there are no legal restrictions on the ownership of real estate by particular classes of persons. However, two exceptions can be pointed out: (i) pursuant to Decree-Law No. 15,385/44 (PL 12,913), the acquisition of property located in 'frontier zones' or 'security zones' by foreign individuals or legal persons requires the previous consent of the National Commission for Safety Areas; and (ii) Law No. 26,737 enacted in December 2011 imposes limits on the ownership or possession of rural land by foreign individuals or legal entities. For example, no more than 15% of the total amount of "rural lands" in Argentine territory may be owned or possessed by foreign individuals or legal entities. This percentage is also applicable to the territory of the province or municipality where the relevant lands are located. Under no circumstance may foreign individuals or legal entities of a same nationality hold or possess more than 30% of the aboveestated 15%. Also, ownership by the same foreign owner may not exceed one thousand hectares (1,000 Ha) of the "core area," or the "equivalent surface" to be determined by the enforcement agency according to the location of the land.

Business organizations incorporated abroad must register locally to be able to purchase real estate when it is not an isolated act. Additionally, within Argentina, the administration, use and zone regime of the land is governed locally and the jurisdiction comprising the property under matter will rule. Urban, construction, subdivision, development and zone indicators, among others, shall be considered depending on the ruling jurisdiction.

The owner of a real estate property has responsibility for damages (tort) and paying property taxes. The civil liabilities of an owner of real estate in our jurisdiction are established in the Civil Code. Accordingly, an owner will be responsible for any damages produced by or in the property and the owner should prove that there was no culpability from him to be released from responsibility. Nonetheless, if the damage was produced by a risk produced by the property or a defect of it, then the owner will be responsible regardless of culpability and will be released from liability only if the culpability of the damaged party is proven. Also, the owner can be released from responsibility if the property was used against his will.

Regarding environmental issues, the National Constitution and the Constitution of the City of Buenos Aires set forth the obligation of preventing and, if necessary, redressing any environmental damage. In addition, the National Constitution establishes that the federal government specifies minimum environmental protection standards and that the provincial governments have their own specific laws and procedures.

An owner can protect itself from the consequences of most civil liabilities by taking out liability insurance; in general terms, it does not constitute an obligation except under certain legal regimes. In this sense, someone's property may be insured against fire, theft and destruction. Environmental General Law No. 25,675 provides that any person or entity carrying out activities that are dangerous for the environment must contract an insurance policy that guarantees the remediation of any damages the activity may cause. However, the lack of specific regulation on certain issues, such as the definition of 'environmental damage', constitutes a stumbling block for the insurance market, which continues to grant insurance under the normal standards of the industry. Under Argentine law, insurance over a risk in Argentina can only be taken in Argentina and not abroad.

Lease covenants and representation

According to Argentina's laws a lease will survive the sale of the property and must be respected by the buyer. It is usual for the seller to assume the duty of transferring the property free of tenants. However, if the property is subject to an existing lease and the buyer knows and accepts this situation, the seller is under obligation to maintain the situation and conditions from the date of contract to the closing date.

Leases and mortgages

It is general practice in our jurisdiction to include a clause in all mortgages stating that leases on the mortgaged property will not be allowed unless expressly authorized by the creditor and that if any lease is allowed, then the tenant must acknowledge and agree with the existing mortgage. Even if the lease contract makes no reference thereto, the lease will be subordinated to the prior mortgage and the creditor will be able to evict any tenant in the case of foreclosure. On the other hand, if the lease is prior to the mortgage, then a foreclosure proceeding will not affect the pre-existing lease.

Financing for real estate

The most frequently used method in cases involving the acquisition of real estate or transfer of property is the mortgage, for which there exists judicial and extrajudicial foreclosure. For significant and more complex investments or loans on real estate the use of a trust is more common, subject to suitable tax planning, which provides important advantages since the relevant assets (moveable and immoveable assets, not limited to rights or credits) may be placed in trust with a trustee that holds them as a separate estate, which is, according to Law No. 24,441, not subject to judicial proceedings of either the settler, the trustee or the beneficiaries.

Mortgages can only be created by public deeds prepared by public notaries. For a mortgage to be enforceable against third parties, it shall be registered in the real estate registry in the jurisdiction where the property is located. For a mortgage loan it is possible to bring a judicial

or extrajudicial foreclosure. As a consideration, the extrajudicial process might be more flexible under certain circumstances. Foreclosure of mortgages and pledges takes place through a special summary proceeding that provides for the sale of the property or the goods. As in any foreclosure, the defenses that the debtor may file are limited. Payment of a court tax is required. Pursuant to Law No. 23,898, the general rule is a tax of 3 per cent based on the amount involved; in the case of real estate, this is based on the amount determined by the tax valuation, unless the subject matter of the litigation has a higher value.

The time frame for a foreclosure varies but can be estimated to last between six months and two years. However, Law No. 24,441 gives a particular proceeding for foreclosure that is extrajudicial and shorter; to bring a foreclosure under the provisions of this law, the only requirement is to expressly include such a clause in the corresponding agreement.

Although Argentine law permits a summary proceeding to collect unpaid rent and a special proceeding to evict tenants, eviction proceedings in Argentina are difficult and time-consuming. Eviction proceedings generally take between six months and two years from the date of filing of the suit to the time of actual eviction.

The Civil Code establishes that someone's debt is guaranteed by all of the debtor assets. If the loan is secured by a pledge or a mortgage, usually the creditor first has recourse against the security and then, should the security be insufficient, to the remaining property of the debtor. In bankruptcy filings or reorganization proceedings, a creditor whose loan is secured by a collateral such as a mortgage or a pledge shall have a privilege against other unsecured creditors up to the amount of the security (that is, they will collect their debt first, up to the secured amount), and then their claim will be prorated with the other creditors of the debtors.

→ Foreign Investment

Foreign Investment Act

Foreign investment is regulated in Argentina by law Nº 21,382 enacted in 1976 ("FIL") as amended by law Nº 22,208, law 23,697 and law 23,760. In September 1993 the Executive Power enacted Decree 1853/93 approving the new updated text of the FIL. The FIL carries three basic principles which are highlighted by Decree 1853/93.

Foreign investors may invest in the country in any economic activity – industrial, mining, agricultural, commercial, financial, provision of services or others related with the production and exchange of goods and services – without the need of any type of prior approval, and under conditions equal to those applicable to domestic investors. There are no activities excluded from the principle – except for certain specific exceptions such as broadcasting or the acquisition

of real estate in border areas or the limits established by law Nº 26,737- nor is there any type of obligation of being associated with domestic investors or other type of restriction or condition.

Foreign investors have the right to repatriate their investments and to remit profits abroad at any time. In this sense it must be noted that capital repatriation is presently limited due to Central Bank of the Republic of Argentina (the "Central Bank") foreign exchange regulations limiting the purchase of foreign currency by non –Argentinean residents to a monthly cap, among other restrictions.

Since the reinstatement of foreign exchange controls in December 2001, as a general rule, all transfers of foreign currency to and from Argentina must be made through an Argentine licensed financial entity or foreign exchange house (the "FX Market") and are subject to numerous restrictions and requirements set forth in the applicable foreign exchange regulations. While technically the Central Bank may grant, upon request, a special exemption from some of the restrictions described below, in practice it rarely does. The rate of exchange in the FX Market is determined by market forces, but the Central Bank has the power to intervene by buying and selling foreign currency for its own account, a practice in which it engages on a regular basis.

On October 31, 2011, the Tax Authority, through General Resolution No. 3210, implemented the Foreign Currency Transactions Consultation ("FCTC") computer system. When selling foreign currency, any entity authorized to carry out foreign currency transactions must verify the transaction's validity and register it through the new FCTC system. The Tax Authority will immediately decide whether the transaction is valid or shows inconsistencies, on the basis of the potential buyer's fiscal, economic and financial situation. As of July 6, 2012, the access of Argentine residents to the FX Market for the purchase of foreign assets for investment purposes (*"atesoramiento"*) without Central Bank's prior authorization has been indefinitely suspended. Therefore, the procedure described before is only applicable for the acquisition of foreign currency for a limited number of purposes (i.e tourism and travel, payment of services, etc.)

Those foreign investors making capital investments in Argentina for the promotion of economic activities, or the extension or improvement of those already existing activities, have the same rights and obligations which are conferred by the National Constitution and local legal provisions to domestic investors. Technically, Argentine companies may freely purchase foreign currency and transfer it abroad to pay profits and dividends to non-Argentine shareholders, provided that the dividends correspond to closed financial statements certified by external auditors and a number of documents have been duly filed. However, informal or de facto restrictions can not be ruled out.

Bilateral Investment Treaties

All guarantees available under the FIL have been reinforced and improved by the Bilateral Investment Treaties (BITs) entered into by Argentina during the 90s. BITs have been designed to encourage foreign investments, providing investors with a safe environment in which to develop their businesses, through several guarantees and commitments which are voluntarily assumed by the host state. These guarantees deal both with foreign investor protection issues and dispute resolution clauses, providing for an international arbitration forum, at the investor's option.

The main aim of BITs protections and guarantees is to prevent or overcome any prejudice or restrictions which the host state may impose on foreign investment in its territory, either by means of particular or regulatory measures. For this purpose, it must be noted that that BITs supersede domestic acts, according to both international and domestic rules. Internally, this principle can be found in the Argentinean Constitution (Section 75 paragraph 22) and has been repeatedly acknowledged by the Argentinean Supreme Court. Accordingly, in case of conflict, BITs and international law should prevail.

Foreign Exchange

Following the 2001 economic and financial crisis, Argentina implemented strict control foreign exchange transactions that entailed restrictions on the acquisition of foreign currency by Argentinean and non-Argentinean residents and on the inflows and outflows of capital from Argentina (both regulations are related since there are no transfers abroad in Argentinean pesos). Decree 260/02 established a single free exchange system whereby exchange transactions can be made at the parties' freely agreed upon exchange rate, subject to the restrictions established by the Argentinean Central Bank. Pursuant to the Central Bank's regulations, exchange transactions can only be effected by entities authorized by the Central Bank to operate in foreign exchange ("Authorized FX Traders"). In addition, all exchange transactions require an exchange contract to be executed with the relevant Authorized FX Trader in which the parties must disclose the purpose of the underlying transaction. Copies of the exchange contracts must be made available for the Central Bank, which is able to analyze them and to request information from the Authorized FX Traders and the customers in order to verify whether the funds were in fact used for the purpose disclosed thereunder. Exchange contracts are considered sworn statements.

The underlying principle of exchange regulations is that no transaction may be made if it is not expressly authorized by those regulations, and that all transactions must be supported by relevant documentation which must allow the Authorized FX Trader involved in the transaction to verify whether exchange regulations are being complied with. Transactions not complying with exchange regulations are reached by the Criminal Exchange Law No. 19,539, as amended.

Inflows of Funds into Argentina

Pursuant to Decree 616/2005, as regulated by the various Communications issued by the Central Bank, funds entering into Argentina may only be transferred abroad after a 365-day term, counted from the date the funds were converted into Pesos, has elapsed. Accordingly, financing must typically have a minimum duration of one year. In addition, all inflows and outflows of currencies from the Argentinean exchange market must be registered with the Central Bank by the Authorized FX Trader involved in the transaction.

Decree 616/2005 also subjects funds entering into Argentina to a 30% "withholding" that must be transferred to registered non-transferable interest free deposits with Argentinean banking entities during a 365-day term (i.e., 30% of the funds entering into Argentina must be automatically withheld by the Authorized FX Trader and allocated to this mandatory deposit). Pending such term, funds held in deposit cannot be disposed by any means nor used as collateral for any transaction. This mandatory deposit is generally applicable to the following transactions:

1. "EXTERNAL" FINANCINGS, i.e., financing granted to Argentinean residents by non-Argentinean residents to be repaid abroad. The mandatory deposit is not applicable to the primary issuance of securities, external financing with certain multilateral and bilateral lending agencies and with official lending agencies, and external financing aimed at the acquisition of certain non-financial assets or related with imports and exports. According to the Central Bank's regulations, only assets that are registered in the balance sheet of the companies as "durable goods" –machinery and equipment– *(bienes de uso)* or inventory *(bienes de cambio)* and "exploitation rights" *(derechos de explotación)* qualify as "nonfinancial assets" for purposes of this exemption. In addition, external financings aimed at the acquisition of non-financial assets must have a minimum duration of two years on average considering principal and interest payments.

2. TRANSFERS BY NON-ARGENTINEAN RESIDENTS EXCEPT FOR "DIRECT INVESTMENTS" (as this term is used internationally), which comprise the acquisition of participations in local companies and assets located in Argentina that qualify as "direct investment."

3. REPATRIATION OF CAPITAL BY ARGENTINEAN RESIDENTS for the surplus exceeding USD 2M per calendar month.

Inflows by non Argentinean-residents that are applied to the payment of certain taxes and contributions are exempt from the mandatory deposit.

Outflows of Funds from Argentina

The various regulations issued by the Central Bank have relaxed restrictions imposed on outflows of funds from Argentina, particularly regarding financings repayments, and payments of services, commercial debts and dividends. Repayment of external financings is generally permitted provided that the relevant financing complied with the applicable exchange regulation (the minimum duration and the 30% mandatory deposit) and was disclosed by the debtor pursuant to a certain information regime established by the Central Bank. In addition, prepayment of debts with non-residents domiciled abroad is permitted provided that certain conditions are met.

Payment of profits and dividends to foreign shareholders (or other foreign partners) resulting from financial statements certified by external auditors is legally permitted, irrespective of the sums involved. Services rendered by, and commercial debts owed to non Argentinean residents, may be paid with no limitation.

The Central Bank's regulations allow repatriations of capital by non Argentinean residents resulting from the disposal of "direct investments" in the Argentinean non-banking sector provided that the relevant direct investment has been maintained by the non-Argentinean resident for at least one year. Capital repatriations are subject to a USD 2M monthly cap when they result from the winding-up of a company and to a USD 500,000 monthly cap when they result from the liquidation of portfolio investments. Except for these exceptions, purchases of foreign currency by non Argentinean residents are subject to a monthly cap of USD 5,000.

However, as stated before, informal or de facto restrictions can not be ruled out. Therefore, it may be possible in a large number of cases that, although complying with all the requirements of the law, monies will not be repatriated.

Transfer of Technology

All agreements signed between a licensor domiciled abroad and a licensee domiciled in the country which have effect in Argentina and in which the main or incidental objective is the transfer, assignment or licensing of foreign technology or trademarks in exchange for valuable compensation are governed by Law No. 22, 426.

The term "technology", as defined by the Law, encompasses all patentable inventions, industrial models and designs and any other technical knowledge applicable to the manufacturing of a product or the rendering of a service. Transfer of technology agreements must be filed with the *Instituto Nacional de la Propiedad Industrial* (National Industrial Property Institute – "INPI") for information purposes only. There are no limitations concerning any of the following issues: the amount of royalties which can be paid, terms of duration, clauses limiting the licensee's level

of exports or excluding the licensor's product liability, submission to foreign jurisdiction, etc. However, terms and conditions of the agreements between related parties (mainly between controlling and controlled companies) should be in accordance with the arm's length principle.

Agreements which are not filed with the authorities are, notwithstanding the requirement of filing, valid and enforceable. However, the licensee will not be able to deduct royalties paid as expenses for income tax purposes and the total amount of royalties will be considered taxable income with respect to the licensor and therefore subject to a withholding of 35% according to articles 92 and 93 of the Income Tax Act.

If the agreements are registered thus filed with the INPI, payments made by the licensee will be deductible for income tax purposes and only a portion of such payments will be considered income taxable in the country. In agreements dealing with technical assistance, consulting and engineering services which are not obtainable in Argentina as judged by the INPI, only 60% of the valuable compensation will be considered net income subject to a withholding of 35%. Consequently, the effective tax rate will be 21% on the gross amount. In the case of all other transfer of technology agreements (sale or licensing of patents, trademarks, industrial models and designs and know-how), 80% of payments will be considered net income subject to a withholding of 35%. In this case, the effective rate will be equal to 28% on the gross amount.

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→ Austria

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- Divorce and judicial separation
- Adoption
- Wills
- Probate
- Trusts
- Estate planning

EMPLOYMENT
- Employment agreements
- Work and residency permits

REAL ESTATE
- Acquisition and disposal of property
- Condominium agreements
- Lease agreements

INTELLECTUAL PROPERTY
- Trademarks
- Model and design
- Licensing

DEBT COLLECTION

LITIGATION
- Commercial disputes
- Labour disputes
- Unfair competition
- Lease and property disputes
- Medical liability
- Trademarks
- Product liability
- Personal injury

CAPITAL MARKETS
- Supervision of capital markets
- Liability of investment counsels
- Licensing proceedings
- Investor proceedings
- Compliance issues

→ Corporate Law

Regulations and Rules

The main statutes in corporate law are the Code of Enterprises *(Unternehmensgesetzbuch, UGB)*, which entered into force on January 1st, 2007, the Law on Limited Liability Companies *(Gesetz über Gesellschaften mit beschränkter Haftung, GmbHG)* and the Stock Corporation Act *(Aktiengesetz, AktG)*.

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

Type of Companies

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

The so-called liberal professions *("freie Berufe"),* as for example lawyers, accountants or architects, and small businesses, who suffered from restrictions concerning the foundation of Partnerships under the regime of the former Commercial Code *(Handelsgesetzbuch, HGB),* being replaced by the Code of Enterprises at the beginning of the year 2007, may now also found a Partnership *(Personengesellschaft).* According to the Code of Enterprises, everybody is allowed to found a General Partnership or a Limited Partnership. Therefore the Registered Partnerships (General Registered Partnership and Limited Registered Partnership) are not needed any more. By law *("ipso iure")* the General Registered Partnership *(Offene Erwerbsgesllschaft, OEG)* was transformed into a General Partnership and the Limited Registered Partnership *(Kommanditerwerbsgesellschaft, KEG)* into a Limited Partnership.

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

Liability of Shareholders

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

Share Capital

The minimum share capital *(Stammkapital)* of a Company with Limited Liability is EUR 35,000. In principle, at least one half of the capital must be paid in cash (but there are exceptions for contributions in kind). The minimum face value of one share has to be EUR 70.

Since July 2013 the conditions for establishing a company with limited liability have been facilitated. The minimum capital was reduced to EUR 10,000. Additionally, the minimum corporate income tax only amounts to EUR 500 a year. Costs for notary public and legal expertise were reduced. The reporting requirements in the official gazette section of the *Wiener Zeitung* were repealed. Due to these cost reductions the founding of 1000 companies with limited liability per year is expected. Existing companies are entitled to reduce their share capital.

The minimum stock capital *(Grundkapital)* of a Stock Company is EUR 70,000. At least 25 per cent of the stated capital stock (plus any premium) must be paid up prior to the registration. The minimum nominal value of the shares is EUR 1,00 unless the shares simply represent a percentage of the share capital (without a nominal value). It is possible to issue non-voting

preferred shares which grant a right to a preferred dividend but do not include any voting rights. Since 2011 non-listed companies have to issue registered shares. There is no minimum share capital for General Partnerships and Limited Partnerships.

Corporate Governance

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

Companies with limited liability must have the following corporate bodies:

- Managing director(s) *(Geschäftsführer)*
- Shareholders assembly *(Generalversammlung)*
- A supervisory board *(Aufsichtsrat)* is only compulsory for large Companies (e.g., more than 300 employees) and optional for the others.

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

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

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

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

towards creditors of the company in general but only if they violate special legal rules (e.g., the requirement that they file for bankruptcy on a timely basis). The corporate bodies of a Stock company are the board of directors *(Vorstand),* the shareholders meeting *(Hauptversammlung)* and the supervisory board *(Aufsichtsrat).*

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

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

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

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

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

Annual Account - Financial and operating results

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

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

The financial statements must be filed with the commercial register (except Partnerships which must only register if the general partner is a corporation) within nine month of the end to the accounting year. Large Stock Corporations, companies listed on the stock exchange, banks, insurance companies and investments funds must publish the financial statements in the *"Wiener Zeitung"*. Any delay in such filing of the financial statements is subject to a penalty which is imposed against the company and the managing director (Sec 283 UGB).

Establishing of a Company

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

Liquidating a Company

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

→ Foreign Investments

Registration with Government, authorities and permits

There are in general no restrictions on converting or transferring funds related to foreign investments. All cross-boarder capital transactions for non-residents and residents, including

the acquisition of Austrian securities, debt services, the repatriation of profits, interest payments, dividends and proceeds from the sale of investment are unrestricted.

Nevertheless the Austrian Central Bank *(Nationalbank)* is entitled to enact restrictions pursuant to EU-law under certain circumstances, e.g., major difficulties in international relationships, where the security of Austria is endangered, etc. In this case certain transactions require the permission of the Austrian Central Bank. Furthermore various transactions related to foreign countries, e.g. foreign direct investments, must be notified to the Austrian Central Bank for statistical purposes.

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

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

Transfer of dividends, interests and royalties abroad

Austria does, generally, not restrict the transfer of dividends, interests and royalties abroad. The exemptions are mentioned above. For the taxation of these transfers see section "Tax Law".

Repatriation procedures and restrictions

Austria applies no repatriation procedures or restrictions.

Foreign personnel

There are restrictions on employment of foreign employees. Citizens of the "old" EU member states plus Malta and Cyprus have already been entitled to work in Austria without a work permit. On May 1st, 2011 the restrictions concerning citizens of the other new member states ended. Currently, only for citizens of Bulgaria and Romania special transition rules still apply (until 31.12.2013).

The former system of a quota-based system has been changed. For key personnel, high qualified persons and skilled workers in shortage occupations the "Red-White-Red-Card" is possible: the work permit is valid for a certain job in a certain company for a maximum period of one year. After a year a (i) "Red-White-Red-plus" card or (ii) a temporary residence permit is possible. The" Red-White-Red-plus" allows working not only in a certain job but in the whole country. After five years a residence permit EC *(Daueraufenthalt EG)* can be obtained if an integration agreement (especially evidence of knowledge of the German language has to be provided) is fulfilled. Additionally, there are special provisions regarding juvenile persons, family reunification and citizens of non-EC member states having a residence permit of another EC-member state.

Besides of a work permit foreign employees may under certain circumstances obtain a certificate of exemption *(Befreiungsschein)* which allows them to work generally in Austria (not only in a certain job) for a period of 5 years. This is possible for employees who worked legally for 5 years in the last 8 years in Austria or juvenile employees.

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

→ Labour Law

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

Employment Contracts

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

In addition to the usual labour contract, there is the possibility to enter into a free labour contract *(freier Dienstvertrag)*. In a free labour contract the "employee" is not personally dependent on the "employer" (e.g., he can set his working time by himself, he works with his own equipment etc.). Only a few labour laws apply to free labour contracts.

A labour contract may be concluded for a definite or indefinite period of time. A contract for indefinite time can always be terminated by an ordinary termination *(Kündigung)* by both of the parties, provided they comply with certain notice requirements (termination periods and dates). The termination period the employer must comply with depends on the years of service: in case of white-collar workers, it may run from 6 weeks (in the first two years of service) to 5 months (after 25 years of service). A white-collar worker must comply with a termination period of one month. The statutory termination period may be lengthened but not shortened by the individual contract. The period the employee has to comply with must not be longer as the period the employer has to comply with. The employer of a white collar worker may terminate the contract to the end of each quarter; the white-collar employee may terminate employment to the end of each month. This rule can be changed by contract, so that both parties may terminate the contract on 15th or the last day of the month. In the case of bluecollar workers, the applicable termination period is two weeks for both parties, there are no certain termination dates. The period may be lengthened or shortened by collective bargaining or by contract. In enterprises where a work council is actually established the work council must be informed by the employer before giving notice to the employee of the termination.

An ordinary termination may be challenged by the employee if he works in a plant where establishment of a work council is required (see below). A termination can be challenged because of a proscribed reason of the termination (e.g. union activity, activities in organizing the election of a work council) or because it was socially unjustified (important for elder employees). For some protected groups as members of the work council, pregnant employees, handicapped people or apprentices terminations are restricted.

Beside ordinary termination contracts (whether for a definite or indefinite period of time) may be terminated with immediate effect if there are important reasons that make the continuation of the employment unacceptable for one of the parties. The employer may immediately terminate the labour contract if the employee is disloyal in his service, incapable of performing his services, refuses to comply with orders of the employer etc. If the dismissal is not justifiable because there is no important reason the employment nevertheless ends immediately, but the employee will be entitled to full pay as if the employer would have ordinarily terminated the employment.

If an employment contract or a freelance contract is terminated after 31.12.2012, generally (e.g. in case the contract is terminated by the employer, in case of unjustified dismissal or contracts ending by passage of time), a fee of EUR 113 (expected to be EUR 115 in 2014) has to be paid by the employer. Under certain circumstances no such fee applies: termination by employee, justified dismissal.

An employee, whose employment has lasted for at least three years, is entitled to severance payment (Abfertigung) in the event of ordinary termination by the employer, termination by mutual consent, justified immediate resignation by the employee and unjustified dismissal by the employer. The severance payment depends upon the time of service and ranges from 2

months salary to 12 months salary. The Act on Statutory Corporate Employment Retirement Scheme *(Betriebliches Mitarbeiterversorgungsgesetz)* applies to contracts beginning after December 31, 2002 (there is an opt-in-possibility for older contracts). Under this new legislation the employer has to pay 1.53 % of the monthly remuneration to a fund which pays the severance payment.

The members of the managing board of a Stock Corporation are excluded from the protective provisions of the labour law. However, labour law may apply to managing directors of a Company with Limited Liability depending on the rights and duties they have. Shareholders holding a majority or a blocking minority of shares will not be regarded as employees if they serve as managing directors of that company.

Employees Representatives and union representation

In Austria there is only one trade union, the Austrian Trade Union Federation *(Österreichischer Gewerkschaftsbund, ÖGB)*. The influence of the trade union is traditionally big but has declined in the last years in particular since the inauguration of the former conservative government and a scandal involving the trade union-owned Labour and Economics Bank *(Bawag)*. The influence of the trade union is still significant since the Austrian Trade Union Federation conclude collective bargaining agreements (see below).

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

The members of the work council enjoy certain privileges and the law provides them specific protection (e.g. protection against termination). If their duties as members of the work council requires them to perform such activities during normal working hours their salary must not been reduced. In companies with a great number of employees (more than 150) one or more members (2 if there are more than 700 employees, 3 if there are more than 3000 employees) of the work council are entitled to be totally released from their duty under their employment contract. Members of the work council must not be discriminated against. There are no specific privileges for members of the Trade Union but a termination because of union activities is not justified (see above).

Collective Bargaining Agreements, Company Agreements

The parties of collective bargaining agreements are the Austrian Trade Union Federation and statutory employer organisations, in particular the chamber of commerce *(Wirtschaftkammer)*

and its sub-organizations. Generally collective bargaining agreements are concluded for a specific sector or branch, in most of the cases they apply to the whole territory of Austria, but there are also collective bargaining agreements applicable only in a certain province. The collective bargaining agreements apply to all employees in the specific branch, no matter if they are members of the trade union or not. Collective bargaining agreements govern the main aspects of the employment like wages, working conditions, working time etc. They apply to all employment relations, overriding the individual contract, except where the terms of the individual contract are more favourable to the employee. Collective bargaining agreements are thus of great significance in Austria.

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

Wages and other types of compensation

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

Other types of compensation common in Austria are the provision of a company housing or a company car, contributions to a pension funds or meals at a reduced price. Since collective bargaining agreements usually stipulate a salary paid in cash (transferred to the bank account of the employee) remuneration in kind has no great importance in Austria. If an employer repeatedly grants additional benefits (e.g. a bonus at the end of the year) the employee is entitled to receive these benefits in the future. The employer can avoid this by explicitly reserving the right to terminate the practice at will.

The normal statutory working time is eight hours a day and 40 hours a week. Many collective bargaining agreements stipulate shorter working-times (38 hours a week are common). Overtime hours have to be paid at the normal hourly rate plus 50 % (collective bargaining agreements may stipulate higher extra pays in particular for overtime hours on Sundays). It is permissible to agree on a lump-sum for overtime hours or an all-in- salary as long as the lump-sum or the all-in-salary exceeds the minimum payment for overtime hours set by the applicable collective bargaining agreement. Besides payment for overtime hours it is also possible that the employee takes a compensatory time off whereby one overtime hour is equal to at least one and a half hours of extra free-time.

Employment regulations

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

Social Security costs

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

The employees contribution is currently (2013) 18.07 per cent of the salary for white collar-workers and 18.20 per cent of the salary for blue-collar workers

The employers contribution is currently (2013) 21.83 per cent of the salary for white collar workers and 21.70 per cent of the salary for blue collar workers.

There is a ceiling on the basis for contribution (Höchstbeitragsgrundlage) of EUR 4,440 a month (in the year 2013; to be expected EUR 4,530 in 2014) which means no social insurance contributions have to be paid for the part of the salary exceeding this ceiling.

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

Health and Safety

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

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

Contracting and outsourcing of work or services

If work is outsourced this may be deemed as transfer of business *(Betriebsübergang)* and the corresponding regulations apply (liability of the old owner, position of the employee must not deteriorate). According to the Austrian provisions any transfer of business, generally, has no consequence for the employees being affected – any purchaser enters into their unchanged contracts. An important exception exists for the transfer of a business by share deal: since the employer (being the company itself) is still the same, no transfer of business is made and the above mentioned protection provisions are not applicable.

If freelancers are engaged it is important to formulate a contract which is not deemed as illegal avoidance of labour law. Therefore the freelancer must not be personally dependent on the employer (see above). If the contract is deemed as illegal avoidance of labour law, labour law nevertheless applies.

→ Real Estate Law

The following statutes regulate real estate in Austria:

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

Types of ownership

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

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

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

"USUS FRUCTUS": *"Usus fructus"* means the right to use a certain piece of real estate whose owner is someone else and consume all earnings of this property.

CONSTRUCTION RIGHT *(Baurecht)*: A construction right principally means the right to construct a building on the surface of a property owned by another one. This right is transferable and has to be constituted by a contract with the owner of the real estate. Further more it is limited for certain time.

Closely related with the Construction Right is the *"superaedifikat"*.

Land Register

In Austria rights according to real estate, especially the ownership, *"usus fructus"*, mortgages *(Hypotheken),* easements *(Dienstbarkeiten)* and Construction Rights *(Baurecht)* are recorded in the Land Register, administrated by the District Courts *(Bezirksgerichte).* Currently there exist 134 District Courts.

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

- Schedule A is the schedule of estate *(Gutbestandsblatt)*
- Schedule B is the schedule of the ownership *(Eigentumsblatt)*
- Schedule C is the Schedule of encumbrances *(Lastenblatt).* This schedule especially shows mortgages and easements.

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

Transfer formalities

It is not necessary that a contract to establish rights and encumbrances on real estates is constituted in the form of a notary deed. Only the declaration of the registered owner that he agrees to the registration of the right which is subject matter of the concerning contract in the Land Register *(Aufsandungserklärung)* needs a certification by a notary public.

Mortgages

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

A registration is only allowed in case that the document, which is the basis for the mortgage, contains a certain sum of money or a reference to a maximum amount of money *(Höchstbetragshypothek).* Furthermore it is possible that more than one mortgage is registered on one piece of real estate. In this case the ranking between the mortgages depends on the day of registration in the Land Register (principle of priority). Where the secured debt is not repaid as agreed, the creditor has the right to initiate a public sale of the property by order.

Restrictions on acquisition

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

The existing restrictions are to be split up in two parts: On the one hand there are constraints for real estates used for agricultural purpose and on the other hand there are restrictions on properties in certain areas which are of special interest for tourism. In both cases the acquisition of real estate and other certain rights is subject to approval by the Land Transfer Authorities *(Grundverkehrsbehörden).*

Special legal protections for parties

In case a consumer concludes an agreement to become owner or tenant of a property, he has the special right to withdraw from this contract within one week, if the contract was signed on the day of the first examination of the subject matter of the contract.

Construction and use restrictions

A number of restrictions concerning the use of real estate law can be found in public law. Not all of them can be mentioned here. The most important are:

- If it is planned to build a house or another building on a certain property, it is necessary to obtain a building license *(Baubewilligung);*

- It is not possible to obtain a building permit on every piece of real estate. It is important to know that there is a land development plan *(Flächenwidmungsplan)* for every piece of Austria.

This plan divides the concerning area in different zones. For example you can find there agricultural or building land. It is forbidden to construct buildings on agricultural land.

Leasehold types

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

In case of "Miete" the lessee is highly protected by the provisions of the Rent Control Act (Mietrechtsgesetz, MRG). Especially restricted is the right of the lessor (Vermieter) to terminate the lease contract of land and to determine the amount of rent.

Of certain interest are the following limitations of the lessor:

TEMPORAL LIMITATIONS: It is only possible to place a contract of lease under temporal limitation, if this agreement was settled in written form. Moreover not every temporal limitation is possible, as the Rent Control Act appoints minimum respites.

REASONS FOR THE LESSOR TO TERMINATE THE CONTRACT: Generally the lessor is only allowed to terminate the contract for important reasons. The Rent Control Act enumerates several important reasons. It is for example possible to terminate the contract, if the lessee does not use the property for the purpose under the contract or does not pay the rent punctually.

UPPER LIMIT FOR THE RENT: Generally the lessee and the lessor can stipulate an adequate rent. For certain kinds of apartments, especially if they are of a lower category, the Rent Control Act provides low upper limits for the rent.

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

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

Lease formalities

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

→ Tax Law

CORPORATE TAXES

Taxes on corporate income

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

Since 2005 the rate of the corporate income tax is 25 per cent (previously being 34 per cent). Therefore, the level of corporate income tax in Austria is now comparatively low.

The profits of a corporation are taxed whether the profits are paid out to the individual shareholders or retained in the company. Dividends paid to individual shareholders are subject to a withholding tax of 25 %. (Therefore, profits of a corporation which are paid to their shareholders are taxed in all with a rate of 43.75 per cent). Beginning with the second year of unlimited tax liability a Company with Limited Liability has to pay a minimum corporate income tax of EUR 1,750, a Stock Corporation has to pay EUR 3,500. The minimum corporate income tax has to be paid even if no profit is generated. Since the reform of July 2013 and the possibility to establish small companies with limited liability the minimum corporate tax has been reduced. The amount is EUR 500 for all companies with limited liability with profits or losses of up to only EUR 2,000.

The taxation of Private foundations differs from the taxation of other legal entities: the dedication of assets to a foundation is, generally, taxed with 2.5 % (the tax rate is 25%, e.g., if the documentation is not disclosed or the foundation is not comparable to an Austrian one). Some types of incomes, e.g. income from bank deposits, debt securities or from the sale of participations are subject to a tax rate of 25 % (interim tax) as long as they are retained. Dividends from participations in an Austrian corporation and – under certain circumstances - from a participation in a comparable foreign corporation are tax exempt. Benefits to the beneficiary from the substance are tax-free, whereas such from the proceeds are subject to the capital gains tax of 25%.

Corporate Residence

A company is resident in Austria if it has its legal seat (as designated in its statutes) or its place of effective management in Austria. A company with its residence in Austria is taxed on its worldwide income. A company with no residence in Austria is taxed on its income earned through the activities of a permanent establishment in Austria and its incomes from immovable property located in Austria, capital gains on the sale for shares in resident companies (if the shareholding has amounted at least 1 % at any time during the last 5 years) and royalties (see below).

Other Taxes

VALUE ADDED TAX: The rate is in general 20 %; 10 % are charged for leases of land and buildings for residential purposes, services rendered by theatres, museums etc, transport of passengers, foodstuff, books, etc.

REAL ESTATE TRANSFER TAX *(Grunderwerbssteuer):* rate 3,5 % (2 % if real estate is transferred between close relatives and/or spouses).

CAPITAL TRANSFER TAX *(Kapitalverkehrssteuer):* rate 1 % in particular for issuing shares in a domestic corporation (company with limited liability and stock company),

STAMP DUTIES: e.g. for lease agreements, suretyships, assignments etc.

ENERGY TAXES on natural gas, electricity, coal, petroleum

There is NO PROPERTY TAX in Austria, only the possession of real estate is taxed with an annual rate of app. 1 % of the assessed value *(Einheitswert),* which is regularly beneath the actual value. Since 2008 no inheritance and gift tax is imposed any longer due to a ruling of the Austrian Constitutional Court.

Branch Income

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

Income Determination

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

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

Participations

Capital gains (dividends) from a shareholding in domestic subsidiaries and foreign companies (under certain circumstances, e.g., EC companies or other foreign companies comparable to Austrian companies from countries providing Austria with full administrative assistance) are exempt from taxation. This exemption applies irrespective of the amount of holding and the holding period. Withholding tax is levied for dividends from domestic participations not exceeding 10%.

Gains from the disposal of participations are, generally, not taken into account. For international participations (parent company is subject to unlimited income taxation in Austria, subsidiary is comparable to an Austrian company, the participation exceeds 10% of the subsidiary's capital and is held for more than one year) the parent company can irrevocably opt into taxability (including the possibility for depreciation to the shares' fractional value).

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

Deductions

Generally all expenses being caused by running a business are deductible. The costs for business lunches are deductible with 50% if made for promotion purposes. The basis for depreciation is the cost price or production cost. Only the straight line method of depreciation is permitted by tax laws (no progressive or diminishing balance depreciation is allowed). The depreciation period is from 5 to 10 year for machines, at least 8 years for passenger cars, 15 years for the goodwill, 33 1/3 years to 66 2/3 years for buildings depending on the use of the building. Excess write down to the lower going concern value (= fraction of the total purchase price that a buyer of the whole company would pay for a certain asset assuming the buyer intends to continue the business) is only possible in case of technical or economic obsolescence. Some assets cannot be depreciated, in particular real estate.

Net profit losses may be carried forward without any time limit, but loss carry forwards can only be set off against 75 % of the income of the current year (excess losses can be forwarded to the next year). To avoid misuse of losses carried forward a change in ownership of the company shares under certain circumstances, namely a substantial change of the shareholders (more than 75 per cent), a substantial change in the organization and a substantial change in

the economic structure (so called *"Mantelkauf"*), lead to a loss of the ability to carry forward the net profit losses of the previous years.

Although there are no statutory provisions specifically dealing with transfer pricing the arm's length principle is applied in Austria because of general rules of the Austrian tax law. The income tax and the corporate income tax are not deductible.

Group Taxation

Since 2005 Austrian tax law allows the building of a tax group. The group parent needs an equity participation of more than 50 per cent (directly or indirectly) including the majority in voting rights. It is also possible to build a group where one company holds at least 40% and another at least 15% *(Mehrmüttergruppe).* Such participation has to last for at least three years and an application with the tax office has to be filed. Irrespective of the participation held, 100 % of the profits and losses of Austrian group members will be attributed to the group parent, while losses of foreign group members will be attributed according only to the ownership percentage of the participation held. Profits of any foreign group members are not attributed to the parent company.

Tax Incentives

There are several tax incentives in Austria, e.g., different forms of research tax allowances, an education allowance and an education premium, or an apprentice premium. An invention allowance for example is granted for expenses incurred in the development or improvement of inventions valuable for the economy. An education allowance is granted for expenses incurred for the education and training of employees. It amounts to 20 % of these expenses.

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

Withholding taxes

A withholding tax of 25 % is levied on dividends distributed by a resident company to its Austrian shareholders. For natural persons, generally, the taxation is final *(Endbesteuerung).* No withholding tax is levied if the parent company holds more than 25% of the capital, for lower participations the withholding tax is credited. Dividends of resident companies to its foreign shareholders in the EC/EEA are tax-free if the participation exceeds 10% and exists for more than one year. Double taxation treaties can contain lower tax rates. Interest income from other sources is subject to standard corporate income tax (or individual income tax)

Royalties paid to non-residents are subject to a final withholding tax of 20 % unless a reduced rate applies under a tax treaty. Tax rate on dividends, interest and royalties according to tax treaties (selected countries):

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

Tax administration

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

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

INDIVIDUAL TAXES

Different from the Corporate Income Tax the individual Income Tax is not a flat tax. The tax rate here is progressive (3 rates, maximum rate is 50 %).

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

Territoriality and residence

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

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

Gross Income

There are seven sources of income:

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

The income from the first three sources (so called business income) is calculated in a manner similar to the treatment of income of a corporation (see above). The taxable income from the four other sources is determined by deducting from the gross income any expenses that are incurred to acquire, safeguard and maintain this income (so called *Werbungskosten*).

From the employee's gross salary social security contributions, kilometre and daily allowance (up to a certain limit) or distributions of the employer to a pension funds in favour of the employee are deducted. Non-recurring payment of salaries, in particular 13th and 14th salary (vacation and Christmas remuneration) enjoy a tax-free allowance of EUR 620,00 per year and excess amounts are also tax-advantaged depending on the amounts been paid.

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

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

Gains on the sale of other goods despite capital assets and real estate within one year are tax-free if below EUR 440. Losses cannot be deducted. After April 1st, 2012 gains on the sale of participations will be taxed on the new withholding tax regime (25 % withholding tax) regardless of the amount of holding and the holding period.

Deductions

As mentioned above expenses that are incurred to acquire, safeguard and maintain this income are deductible. Furthermore taxable income is reduced by:

- SPECIAL PERSONAL EXPENSES *(Sonderausgaben),* e.g. premiums paid into voluntary health, accident and life insurance programs, payments incurred to finance private house building and improvement, purchase of newly issued shares or profit sharing certificates. The maximum amount being deductable, generally, is EUR 2,920; only 25 % of the payments made are deductible with limitation; contributions to churches, contributions to charitable organisations, tax losses carried forward from previous years etc. are deductable, too.

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

Several deductible amounts stipulated by law (Absetzbeträge), e.g.: Sole earners: EUR 494, -- (with one child) + additional amount depending on the number of children). Sole earners with children and no spouse or partner: EUR 494, -- + additional amount depending on the number of children). Employees: EUR 54,--.

Tax credits

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

Other taxes

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

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→ Belgium

Belgian business law firm focusing on Corporate and Commercial Law, IP/ICT, Labor law, Real Estate, Public law, Commercial mediation. CORBUS was founded with a straightforward mission: to build a law firm from the client's perspective: specialized, personal, fast and practical services, at competitive and transparent rates. The brand name CORBUS refers to core business and business law, with a focus on what really matters for its clients.

→ Foreign Investment Law

Belgium one of the world's most attractive countries for foreign investments. Belgium has notched up second place, behind Hong Kong and ahead of Singapore, in the 2012 global Foreign Direct Investment (FDI) Attraction Index published by the United Nations Conference on Trade and Development (UNCTAD) (Source: www.business.belgium.be)

As regards the contribution of FDI and foreign affiliates to the economy (in terms of value added, employment wages, tax receipts, exports, R &D expenditures and capital formation), Belgium is also second in the world, behind Hungary and ahead of the Czech Republic.

One State, three autonomic regions

Belgium is a federal State consisting of three regions: Brussels, Flanders and Wallonia. Flanders and Wallonia are among the most attractive regions in Europe, while Brussels is in the top 10 major European cities in terms of infrastructure, quality of life and human resources. The regions have a substantial degree of autonomy, making the Belgian State one of the most advanced in the world. The regions' responsibilities include: trade, economy, employment, industrial zones, agriculture, environment, etc.Each region conducts a dynamic, made-to-measure economic policy and can provide you with free and confidential professional assistance with carrying out your business project.

Tax benefits

All commercial companies in Belgium are subject to corporation tax. The nominal corporate tax rate is 33.99%. For small and medium-sized enterprises (SMEs) with a taxable profit not exceeding € 322,500, the tax rate drops to 24.98%. Legal mechanisms make it possible to lower the nominal rate. Various tax incentives for individuals and companies make Belgium one of the most attractive places to locate and do business.

Ruling

Belgium's tax legislators are aware of the increasing importance of upfront legal certainty for existing and potential investors. Accordingly, Belgian tax legislation provides economic players with a generally applicable advance 'ruling' practice. The procedure is simple, rapid, efficient and free of charge. The ruling is an advance decision that is issued within three months and is legally binding for up to five years.

Notional interest deduction

One of the most innovative measures is the 'notional interest deduction'. This is a tax deduction for venture capital which alleviates the differences in tax treatment between finance raised through borrowed capital and finance raised through equity capital. The system allows companies to deduct from their tax base a notional interest charge (not stated in the accounts) corresponding to a specific percentage of their 'adjusted' equity capital.

Tax Shelter

Tax Shelter is a tax incentive designed to encourage the production of audiovisual works and films. The system allows companies wishing to invest in the production of an audiovisual work to benefit from a tax exemption on retained profits worth up to 150% of the capital actually invested.

Dividend withholding tax exemption

The withholding tax exemption on some dividends is also very popular with investors. This new exemption extends the European Parent-Subsidiary Directive between the EU Member States and Switzerland to all countries that have a double tax treaty with Belgium, such as Hong Kong and the United States.

Using Belgium as their holding location for investments in Europe allows corporate investors from treaty countries to repatriate European profits without paying dividend withholding tax and without a limitation on profits.

Reduced wage costs

The Belgian tax system also offers attractive conditions for employers, including lower wage costs for foreign executives and researchers. 'Expat' employees posted to Belgian entail real, but reasonable, additional costs for their employer, company or relevant legal person. Fortunately, however, employers do not have to pay tax on the remuneration of these foreign executives. There is also a substantial exemption from payment of wage tax for researchers.

R&D

There are various tax incentives for research & development:

- Partial exemption from payment of wage tax for researchers
- Tax exemption on allowances and capital and interest subsidies awarded by regional institutions to support corporate R&D
- Tax deduction on patent income
- Increased investment deduction
- Tax credit for R&D

→ Corporate Law

Belgian company law is governed by the Code on Company Law (BCL) introduced by the Law of 7 May 1999. The accounting obligations and the requirements to draw up and publish annual accounts are currently still governed by the Law of 17 July 1975.

The law of 17 July 2013 to insert a book III entitled" freedom to provide services and general obligations of undertakings" in the new commercial code, compiles and structures these rules and will dissolve the law of 17 July 1975 However, it is not determined when this new law enters into force.

Following the example of the BCL, a Royal Decree of 30 January 2001 has combined all existing royal decrees that implemented the BCL. Included are the Royal Decrees dealing with accounting issues and those implementing the Law of 17 July 1975:

- the Royal Decree of 8 October 1976 on the annual accounts of companies and some articles of the two Royal Decrees of 12 September 1983 implementing the Law of 17 July 1975;
- the Royal Decree of 6 March 1990 dealing with companies' consolidated accounts.

All of these laws and decrees are referred to hereinafter as the accounting law.

Specific sectors or specific activities are governed by separate legislation and regulations, such as the Law of 22 March 1993 on the control of credit institutions and the Law of 9 July 1975 on insurance companies.

Any type of Belgian company can be incorporated without prior governmental or judicial consent, except in the case of a regulated business such as banking, management of estates, insurance and finance leasing. The formation of a pure holding company is not subject to any special requirement or authorization. However, if the company's statutory purpose includes the management of, or the provision of advice with respect to, third party assets *(beleggingsondernemingen/entreprises d'investissement),* it falls under the regulations of the Law of 6 April 1995 on financial transactions and financial markets. In that case, the company must obtain prior authorization to exercise such activities from the {CBFA}. CBFA authorization is granted only where several conditions are satisfied, including:

- a minimum paid-up capital of EUR 250,000;
- effective management is exercised by at least two individuals (no legal entities);
- CBFA is satisfied as to the capacity and suitability of the main shareholders; and
- specific regulations with respect to the general organization (e.g. infrastructure, administration, accounting, control, structure of the group, etc.) are complied with.

There exist various types of companies in Belgium. The 2 most common types are:

NV/SA, a private or public company with limited liability and the most commonly used type of company for larger dealings. A NV/SA is defined in the BCL as a company whose share capital is divided into shares of stocks (actions) and whose shareholders are only liable to the extent of their contribution to the share capital, which must be a minimum amount of EUR 61,500.

BVBA/SPRL; a closely held limited liability company. A BVBA/SPRL is defined in the BCL as a company that is formed by one or more partners who only commit their own contribution and in which the rights of the shareholders can only be transferred under specific conditions. The minimum share capital is EUR 18,600.

The basic requirements must be evidenced in an authenticated (notarial) deed. An abstract of this notarial instrument must be deposited with the Court's Clerk *(griffie)* of the Commercial Court and must be published in the annexes of the Belgian Official Gazette *(Belgisch Staatsblad/Moniteur belge (BS/MB))*

The founders of a company are jointly and severally liable for the proper subscription of the capital and for the minimum share capital requirement. It is also possible that the founders, in the event of a bankruptcy within 3 years following incorporation, are held liable for the company's obligations regarding the financial plan.

In order to escape such liability, however, it is possible, under certain conditions, that the founder(s) appear in the deed of incorporation not as incorporator(s), but as subscriber(s) to the issued shares (Art. 450 {BCL}). In this case, the deed must then explicitly appoint one or more other founding shareholders, having together at least one third of the company's share capital, as incorporators of the company.

Shareholders

The founders/incorporators of an {NV/SA} or {BVBA/SPRL} may be individuals or legal entities, residents or non-residents, Belgian nationals or foreigners. At least two persons are needed for the incorporation of an {NV/SA}. In contrast, a {BVBA/SPRL} may be incorporated by one single person who must be an individual (Art. 212 {BCL}). If the sole incorporator of a BVBA is a corporate entity, the incorporator is jointly and severally liable to interested parties for all obligations entered into by the company as long as there is only one shareholder (Art. 213 BCL).

After the incorporation of an NV/SA, the number of shareholders may not drop below two for any period longer than 12 months. If after such period, there is still only one shareholder, the sole shareholder will be held jointly and severally liable for the debts of the company until either (i) a second shareholder is found, (ii) the company is transformed into a BVBA/SPRL, or (iii) the company is liquidated dissolved (Art. 646 BCL).

In case a legal entity becomes the sole shareholder of an BVBA/SPRL and no new shareholder has joined the company within 12 months or it has not been wound up, the sole shareholder shall be considered to be a joint and several guarantor of any obligations of the company arising after he acquired all the shares until a new shareholder has joined the company or until the publication of its winding-up (Art. 213 BCL).

Incorporation

The {NV/SA} and the {BVBA/SPRL} are created by a notarial deed. Under the terms of the law governing language requirements, this deed must be drawn up and executed in Dutch, French or German, depending on the location of the company's registered seat.

Before the incorporation, a financial statement must be presented by the founders to the notary (Arts. 215, 440 and 657 {BCL}). The financial statement consists of a provisional budget to show that the share capital is sufficient to ensure the normal activity and functioning of the corporation during 2 years. This statement is retained by the notary, but is not published. In the event that the corporation is declared bankrupt during its first 3 years of operation, this financial statement may be subpoenaed by the Commercial Court. The Court may then hold the founders (wholly or partially) liable for debts of the corporation if the amount of the share capital was clearly inadequate to satisfy the corporation's requirements for the planned activities for the first 2 years.

Before the incorporation the amount of the paid-in share capital must be paid into a separate bank account to be opened in the name of the company being incorporated. A certificate of the bank evidencing that the funds have been paid in and are available for the company's use must be delivered to the notary.

The company obtains legal personality as from the date the abstract of the notarial deed of incorporation is filed with the Clerk's Office of the Commercial Court (Art. 2(4) {BCL}). In the absence of the deposition of the notarial deed, the company will be treated as a commercial partnership, with the resulting effect that all of its partners can be held severally liable for the obligations entered into by a partner (Art. 52 BCL). If the excerpt of the notarial deed of incorporation is not published in the Belgian Official Gazette, the document itself may not be used against third parties unless the company proves that such third persons had knowledge of it (Art. 76 BCL).

Foreign companies with a branch in Belgium, and those who have appealed to Belgian public savings can only initiate and continue legal proceedings if their deed of incorporation is filed with the Clerk's office of the commercial court (Art. 58 BCL).

Certificate of professional knowledge

At the time of registration of the company with the Trade Register, the managers of certain companies as defined below must submit a certificate evidencing their capacity and professional knowledge of the business to be conducted by the company. This applies to so-called small and medium-sized enterprises (SMEs) which are defined as follows by the Law of 10 February 1998 on the promotion of independent entrepreneurship:

- the average number of employees on an annual basis does not exceed 50;
- not more than 25% of the shares representing the share capital or to which voting rights are attached are held by one or more enterprises, other than SMEs; and
- the annual turnover does not exceed EUR 7 million or the total of the annual balance sheet does not exceed EUR 5 million.

This condition does not apply with respect to activities that have already been regulated based on the Law of 1 March 1976 with respect to the regulation or protection of certain professional titles and the exercise of certain intellectual professions (for example accountants, real estate brokers, etc.).

Capital requirements

The minimum share capital for an {NV/SA} and is EUR 61,500.

The share capital must be fully subscribed and 25% of each share of stock must be paid up (note, however, that the legal minimum share capital of EUR 61,500 must always be fully paid up). The remainder may be claimed by the company in accordance with its financial needs.

The directors are jointly liable to third parties, notwithstanding any contrary stipulations, for the full amount of the share capital that was not validly subscribed, the amount of the legal minimum share capital that was not paid up and for the 25% of the share capital exceeding the legal minimum that was not paid up. They are further jointly liable for paying up the shares representing a contribution in kind, if those shares were not paid up within 5 years following the contribution (Art. 610 {BCL}).

The share capital must be fully subscribed and 25% of each share of stock must be paid up. The remainder may be claimed by the company in accordance with its financial needs. A legal reserve must be established as follows. At least 5% of the net profits of the company must be credited annually to the reserve until it reaches 10% of the share capital. This reserve may not be distributed, but may be converted into share capital (Art. 319 BCL).

The minimum capital requirement for a {BVBA/SPRL} is EUR 18,550, which must be fully subscribed (Art. 214 BCL). The incorporators shall be jointly and severally liable to interested parties, notwithstanding any contrary stipulation, for any difference between the minimum capital required and the issued amount (Art. 229(1) BCL). At least EUR 6,200 must be paid up at the time of incorporation. Shares representing contributions in kind must always be fully paid up. Shares in cash must be paid up for at least 20%, except if paid in upon incorporation for the minimum capital requirements as indicated above.

If a BVBA/SPRL has only one partner, the Law of 14 June 2004 (regarding the obligation to pay up the share capital in a BVBA/SPRL with only one partner) now sets forth that at least EUR 12,400 of the share capital must be paid up within 1 year (instead of EUR 6,200).

A BVBA/SPRL that already had only one partner the day the new law became effective (2 August 2004), must make sure that at least EUR 12,400 of the capital is paid up at the latest on 2 August 2005. If the BVBA/SPRL, however, accepts a second partner within the year, or if the BVBA/SPRL is put into liquidation within the year, the capital must not be paid up (and can remain EUR 6,200. The law further states that the sole partner is liable for all the obligations of the company until the capital is paid up for at least EUR 12,400 (or a second partner is appointed if the company is put into liquidation).

Duties and fees

The contribution of share capital to a company is subject to a one-time capital duty of 0.5% on the value of the contribution, whether made in cash or in kind. The contribution of a branch of activity or of all assets and liabilities by a company established within the European Union is

fully exempt from capital duty. Pursuant to Art. 117(3) of the Registration Tax Code (Reg. TC), an exemption from capital duty is available for the contribution of substantial participations in EU-based subsidiaries.

Formation expenses

NOTARIAL FEES: The cost of the notarial deed required to incorporate the company varies according to the amount of work involved and the size of the company's capital. For example (based on 2003 figures available):
Incorporation of {NV/SA} (in Euros):

SHARE CAPITAL	FEE/DUTIES	REGISTRATION	EXPENSES	TOTAL (%)
61500	458.00	307.50	637.00	1,400.50 (2.28%)
100000	671.74	500.00	637.00	1,810.74 (1.05 %)
400000	1569.78	2000	637.00	4,206.78 (1.05%)

Incorporation of {BVBA/SPRL}:

SHARE CAPITAL	FEE/DUTIES	REGISTRATION	EXPENSES	TOTAL (%)
18500	105.74	92.75	552.00	750.49 (4.05%)
100000	461.13	500.00	552.00	1,513.13 (1.51 %)
400000	111549	2000	552.00	3,667.49 (0.92%)

In addition, fees and costs related to specific acts connected with the incorporation may be charged, such as the fees payable for registering the company (EUR 130, plus EUR 70 per additional office or establishment), the publication expenses (publication of excerpt of incorporation deed in the Belgian Official Gazette : EUR 202.31 per publication, EUR 126.55 for changes).

The publication of the annual accounts is subject to charges of EUR 415.82 or EUR 391.62 if the accounts are submitted on paper or on disk, respectively (reduced to EUR 190.76 and EUR 166.56 respectively for the simplified accounts.

Vat

The cost for registration with the VAT authorities is EUR 60.50 when done via a officially recognized counter *("erkend ondernemingsloket").* If the company decides to register itself, no cost is to be taken into account.

Management

NV/SA: The NV/SA is managed by a board of directors *(raad van bestuur/conseil d'administration)* which must be composed of at least three directors *(bestuurders/administrateurs)* who may be Belgian or foreign individuals or legal entities (Art. 518 {BCL}). The number is reduced to two if the company has only two shareholders.

BVBA/SPRL: The {BVBA/SPRL} is managed by one or more managers *(zaakvoerders/gérants)* who may or may not be shareholders (Art. 255 {BCL}). They are appointed either in the articles of association or by the shareholders for the entire life of the BVBA/SPRL, unless the articles or the shareholders stipulate otherwise.

Powers of management

NV/SA: The powers attributed to directors of an NV/SA are attributed to them collectively. Consequently, the directors can in principle only act as a board. The board of directors is in principle authorized to perform all activities reasonably connected with the statutory purpose of the company and which have not been explicitly reserved by the law to the shareholders' meeting (Art. 522(1) {BCL}) (the so-called residual powers of the board of directors). Although the articles of association can limit this authority of the board of directors (limitation in amount or in tasks), the company will not be entitled to invoke such limitations against third parties (Art. 522(1) BCL). These limitations can only lead to the liability towards the company of the directors violating them. Worded differently, the company will be bound by the obligations entered into on its behalf by the board of directors, notwithstanding the fact that by entering into such obligations the board violated the limitations contained in the articles of association.

As mentioned above, the powers of the directors are also limited by the statutory purpose of the company. It must be noted, however, that the company will also be bound by the obligations entered into on its behalf by the board of directors, notwithstanding the fact that by entering into such obligations the board violated the statutory purpose of the company as included in the articles of association (Art. 526 {BCL}). There is only one exception to this rule. The company will not be bound in case it can establish that the third party knew (or should have known) that the board was violating the statutory purpose of the company. The publication of the articles of association as such does, however, not constitute sufficient proof thereof.

Since the board of directors is a collective body, individual directors are in principle not entitled to act in the name of the company. The articles of association may, however, appoint one or more directors who are authorized to represent the company (Art. 525 {BCL}). Such provision (i.e. one (or two) signature clause) must be published.

In 2010 a new law was adapted concerning the amendment of the existing rules of proper management in quoted companies and government affiliated companies. This law fits in a

broader approach on corporate governance with soft law instruments which have gone into effect in the past decade.

BVBA/SPRL: In case several general managers have been appointed, they will only have to act as a board if the articles of association contain a provision in this sense. Each general manager may perform whatever shall be necessary or useful for the realization of the statutory purpose object of the company, save to the extent of the powers reserved by law to the shareholders' meeting (Art. 257 {BCL}). Although the articles of association can limit this authority of the general manager, the company will, as with an {NV/SA}, not be entitled to invoke such limitations against third parties (Art. 257 BCL). These limitations can only lead to the liability towards the company of the manager violating them.

The company shall be bound by the acts of the general manager even if such acts are beyond its statutory purpose, unless it proves that the third party was aware thereof or, taking into consideration the circumstances, could not have been unaware thereof. Again, the publication of the articles of association will not as such constitute sufficient proof of such awareness (Art. 258 BCL).

Each general manager can represent the company in its dealings with third parties and at law as plaintiff or as a defendant (Art. 257 {BCL}). The articles of association may, however, contain a signature clause (e.g. stipulating that the company can only be validly represented by two or more managers), which can be invoked by the company against third parties provided that the clause has been duly published (Art. 257 {BCL}).

Organization and functioning of management

NV/SA: Generally, the day-to-day management of the {NV/SA} is carried out by one or more managing directors *(afgevaardigde bestuurder/administrateur délégué),* or by one or more managers *(directeur-generaal/directeur général)* who are authorized to represent the NV/SA for that purpose. Managing directors are members of the board who are appointed by the board itself or by the articles of association. Managers are not members of the board of directors and, until recently, could only be appointed via special proxies (if allowed by the articles of association) are appointed in accordance with the articles of association.

A change in the BCL (the Law of 2 August 2002 on corporate governance), however, institutionalized the general practice that existed in larger companies of working with management committees *(directiecomités).* Before the change in law, the managers working in these committees always had to be appointed via a special proxy, the content of which needed to be very precise. The board was further not allowed to delegate all or nearly all of its competences to the managers. Practice, however, showed this was most often the case.

Art. 524 bis {BCL} now provides that the board of directors can delegate most of its competences to a management committee *(directiecomité)*. An exception is made for general strategic decisions and for decisions for which only the board of directors is competent, pursuant to specific articles in the BCL.

The same law (the Law of 2 August 2002 on corporate governance) provided that the existing rules regarding a conflict of interest of a director with a transaction envisaged by the company are also to be applied to the management committee. These rules provide that a director, when having a direct or indirect financial interest which conflicts with the decision or transaction envisaged by the company, must inform the other directors before the board takes the decision. If the company is a public company, the director with a possible conflict of interest is further not allowed to participate in the deliberation of the board of directors regarding the decision or transaction envisaged (Art. 523 {BCL}). The company can ask for a nullification of the decision of the board made in breach of the above-stated rules. These rules now also apply to the management committee (Art. 524 ter BCL).

The Law of 2 August 2002 further obliges listed companies to install a committee of (at least) three independent directors *(comité van onafhankelijke bestuurders)*. Every decision or transaction made in execution of a decision made by a listed company (1) in its relation with an affiliated company (its subsidiaries excluded), or (2) in the relation between its subsidiary and a company affiliated with this subsidiary (the subsidiaries of its subsidiary excluded), needs to be submitted to the said committee. The committee drafts a report of the decision or transaction envisaged and presents it to the board of directors. The board takes a decision, bearing in mind the rules regarding a possible conflict of interest as set out above (Art. 523 {BCL}).

An exception is made for the day-to-day transactions, provided they are at arm's length conditions, and for decisions or transactions not exceeding 1% of the net equity of the company (based on its consolidated accounts). The company can ask for a nullification of the decision of the board made in breach of the above stated rules.

BVBA/SPRL: In the case of a BVBA/SPRL, generally the managing director manages the day-to-day affairs of the company.

Dismissal

The directors of an {NV/SA} may be removed from office at any time by a simple majority vote of the shareholders' meeting (Art. 518(3) {BCL}). This so-called ad *nutum* rule is an imperative provision. Any provision in the articles of association that deviates from this ad *nutum* rule is, therefore, null and void. The conditions for dismissal of members of the management committee are determined by the board of directors (e.g. a prior notice of 3 months). If nothing is stipulated, the members can be removed from office at any time.

Unless the articles of association provide otherwise, the manager(s) of a BVBA/SPRL who was appointed in the articles of association, can, only be dismissed by changing the articles of association and for serious reasons. A general meeting must be convened before a notary public during which the dismissal can be decided, since the dismissal causes a change in the company's articles of association (and changes in the articles of association can only pass before a notary public). The "serious reasons" are not required in case the shareholders agree unanimously to change the articles of association and to replace the manager. This will of course be impossible if the manager is a shareholder himself.

The manager(s) of a BVBA/SPRL who was not appointed in the articles of association, may be removed from office at any time *(ad nutum)* by a simple majority vote of the shareholders' meeting, unless otherwise agreed.

Transfer of shares

Possibility to transfer shares

NV/SA: TThe shares are in principle freely transferable, irrespective of their form (i.e. registered, to bearer or dematerialized). The articles of association or any other convention can, however, provide certain restrictions to this transferability. Such limitations on the transfer of shares must be limited in time and may not be contrary to the interests of the company (Arts. 510 and 657 {BCL}).

Such limitations on the transfer of shares will in most cases consist of an acceptance clause and/or a pre-emption right. If this is the case, these clauses may not prevent the transferability of the shares for more than 6 months from the moment that they are invoked.

The same rules apply to provisions in the articles of association or in any agreement restricting the transferability of warrants and convertible bonds. Shareholders' agreements which violate these rules are void (Arts. 551 and 657 BCL). Profit sharing certificates can in principle not be transferred before the tenth day after the filing of the second annual accounts since their issuance (Arts. 508 and 657 BCL).

The Royal Decree of 8 October 2008 has changed the rules concerning shares of a NV. Most important change of this Royal Decree is the fact that the rules on acquisition of own shares are made less rigid. The so called 'financial assistance is no longer prohibited, but made possible under certain circumstances (control by the society Board and against reasonable conditions, preliminary approval by the General Meeting , duty of report by the Board, susceptible for payment and payment of a fair price by the third party). Other changes include the deposit in kind which no longer needs an preliminary expertise and the buying of own shares which is possible for up to 20% (in the past: 10%).

BVBA/SPRL: Unless the articles of association provide for more stringent provisions, the shares may not be transferred during life or after the death of a shareholder, other than with the consent of at least one half of the shareholders, holding 75% of the share capital, less the rights in respect of which the transfer is proposed (Art. 249 {BCL}). Unless the articles of association provide otherwise, such consent shall, however, not be required if the shares are transferred:

- to a shareholder;
- to a spouse of the transferor or the testator;
- to blood relatives in the direct ascending or descending line; or
- to other persons permitted by the articles of association.

Heirs and legatees of shares who cannot become shareholders because they are not permitted pursuant to the above-mentioned rules, shall be entitled to the value of the transmitted shares (Art. 252 {BCL}).

Unless the articles of association provide otherwise, interested parties may appeal to the competent court, in summary proceedings, against a refusal of consent with respect to a transfer among the living (Art. 251 BCL).

Control of transfer of shares - prior authorization

In the case of a public takeover bid or a private transfer of a controlling participation in a Belgian public company, prior disclosure of the identity of the offeror and the conditions of the offer as well as notification of the {CBFA} may be required.

Compulsory transfer

Arts. 334 and 636 of the {BCL} regulate the possibility for certain shareholders of a non-public {NV/SA} and of a BVBA/SPRL to file a demand with the courts in order to force another shareholder to transfer his shares (and other convertible securities in his possession) to the initiators of the procedure. This demand cannot be made by the company itself, nor by its subsidiary. The initiator of this procedure will have to establish that he has legitimate reasons (e.g. serious default to fulfill certain obligations, abuse of majority or minority position, etc.) to demand this compulsory transfer.

Similarly to the procedure described above, Arts. 340 and 642 of the {BCL} stipulate that every shareholder, who has legitimate reasons thereto, can file a demand with the court in order to force other shareholders, to which these reasons apply, to purchase his shares. In this case, his personal interest is taken into account more than in the procedure described above (since he is willing to give up his shares). No minimum percentage of voting rights/shares is required. By way of so-called squeeze-out proceedings, a shareholder who, alone or in consent with others, owns 95% of the securities with voting rights, can force the shareholders who own the

remaining 5% of the securities to sell him all of their shares (Art. 513 {BCL}). For public companies, these squeeze-out proceedings make it possible to end their listing on the stock exchange. Special rules, however, apply.

Records

Each year the directors must prepare the inventory and the annual account which consists of a balance sheet and a profit and loss account with an explanatory memorandum *(toelichting/annexe)* (Art. 92 {BCL}). These documents must be drawn up in accordance with the regulations set forth under the Accounting Law and any other special law which may govern the relevant company (e.g. the Royal Decree of 1 September 1986 on annual accounts and the consolidated accounts of portfolio holding companies and the Royal Decree of 17 November 1994 on annual accounts of insurance companies).

While the Accounting Law does not require a directors' report (all necessary information must be contained in the explanatory memorandum), company law does require directors to draw up an annual report in which account is given of their policy during the year (Art. 95 BCL).

In addition, company law requires the board of directors to draw up special reports owing to special events during the book year (e.g. conflict of interest of a director (Art. 525 BCL); redemption of own shares (Art. 328 BCL); or decrease of the net value of the company (Arts. 535 and 633 BCL)). These documents must be submitted to the statutory auditor(s) at least 1 month before the annual shareholders' meeting.

→ Tax Law

This chapter outlines the Belgian tax system. The analysis in this chapter will be helpful to understand its basics. However it is important to stress the complexity of the Belgian regulation, especially because of the division of taxation powers between the different authorities (federal, regional and local) and the fact that the regulation is ever changing. It is therefore advisable to consult an expert when making a major decision.

PERSONAL INCOME TAX

Residents

An individual's liability to tax is determined by his residence. Belgian legislation qualifies two major categories as being a Belgian resident; namely individuals who have established :

- their domicile in Belgium; or
- their seat of wealth.

The "domicile" and the "seat of wealth" do not have the same meaning. An individual can have his domicile abroad, but when his seat of wealth can be located in Belgium, he will still be qualified as a Belgian tax resident.

The term "domicile" is taken to mean the place where the taxpayer effectively and enduringly resides, where his family lives and where personal contacts are maintained. In principle, it clearly comes down to a factual analysis. The seat of wealth is the place where the taxpayer manages his assets or where the centre of his business activities is located (not necessarily the place where his property or assets are situated).

The burden of proof that a taxpayer is a Belgian resident, is placed on the Tax Authorities. However The Belgian Income Tax Code (BITC) lays down an opposable legal presumption that an individual has his domicile or the seat of wealth in Belgium when he is registered in the population register of the municipality where he resides. Belgian residents are taxed on their worldwide income. However, reservations must be made for the application of the different conventions for the avoidance of double taxation closed by the Belgian State.

The taxable income consists of the total net income, i.e. the sum of the net income of the following four categories :

- real estate income;
- income from moveable property;
- earned income;
- miscellaneous income.

The total net income is taxed after the deduction of several expenses. It mainly concerns alimony, gifts, expenses for child care, expenses related to the sole and private residence of the taxpayer, etc. Each taxpayer is also entitled to an exemption of 6,800 EUR (income year 2012; basis amount : 4,095 EUR) of the taxable income. This standard allowances can vary depending on the personal situation, like the number of dependant persons. The income tax is levied at progressive rates. The tax bands are adjusted annually.

BASIS AMOUNT IN EUR	RATE	INDEX I.J. 2012
Up tp 5,705	25%	Up to 8,350
5,705 - 8,120	30%	8,350 - 11,890
8,120 - 13,530	40%	11,890 - 19,810
13,530 - 24,800	45%	19,810 - 36,300
over 24,800	50%	Over 36,300

According to Belgian tax law, employers must deduct professional withholding taxes from salaries paid to employees and directors. Self-employed individuals should prepay the personal income tax they estimate will be payable on their income to avoid an increase in tax.

For each income year (for personal income taxes the income year falls together with the calendar year) the Belgian tax resident needs to file an income tax return. In principle it should be filed before the 30th of June of the year following the income year.

Non-residents

An individual who has not established his domicile or the seat of his wealth in Belgium, is only taxable on income received from Belgian sources. Depending of the type of income, the non-resident has to file a non-resident income tax return. The due date is usually put back to September (or later) of the year following the income year. However, in some cases, the paid withholding tax or real estate tax will be final.

CORPORATE INCOME TAX

Resident companies

All Companies, associations and organizations with a legal personality are subject to Belgian corporate income tax if they are engaged in a business or profit-making activity and have their registered office, main establishment or place of effective management in Belgium. However the BITC also sets out a number of exceptions, among which inter-municipal associations. Further there are exceptions to be find under the double tax treaties.

Belgian legal persons that are not subject to the corporate income tax, are subject to another type of tax, namely the tax on non-profit organizations. For each income year the resident companies need to file an income tax return, in principle at last by the end of the period of six months from the date of closure of the financial year. However, the Belgian tax administration can deviate from this rule.

Corporate tax rates

The tax base for corporate income tax is determined on an accrual basis and consists of worldwide business income minus allowed deductions. It is assumed that all income received by a company is, in principle, business income.

As a general rule, business expenses incurred or borne by the company during the taxable period in order to obtain or safeguard taxable business income are considered tax deductible. Expenses are deductible if they are justified properly and if the payee can be identified. Therefore, the income tax base is based on the financial statements of the company with some adjustments (e.g. disallowed expenses, notional interest deduction, tax losses carried forward, etc.)

The standard tax rate is 33.99% (including an austerity surcharge of 3%).

Under certain conditions (e.g. taxable income does not exceed EUR 322,500 and at least 50% of the shares in the Belgian company are held by one or more individuals) small and medium-sized companies can benefit from a reduced progressive tax rate :

- 24.98% on income up to EUR 25,000;
- 31.93% on income between EUR 25,000 and EUR 90,000;
- 35.54% on income between EUR 90,000 and EUR 322,500;
- (33.99% on income over EUR 322,500).

Non-resident companies

Companies not residing in Belgium can be subject to the Belgian corporate income tax under the condition that they carry on business activities in Belgium trough a permanent establishment (PE). The tax base is formed by the profits attributable to the PE. It concerns the profits resulting from an activity carried out by or trough the PE. The tax regime applicable to the PE's is mainly the same as that of resident companies. Non-residents also need to file an income tax return. The procedure is similar to the one for the resident companies.

Capital gains and losses

Any capital gain when selling fixed assets is in principle subject to tax. However, if certain conditions are met, this taxation can be spread over time. Besides it, capital gains realized on shares are generally not taxable with respect of certain conditions (including a minimum holding period of one year of the freehold).

On the other hand, capital losses are deductible if they relate to fixed assets used for business purposes. In line with the for mentioned exemption concerning capital gains realized on shares, capital losses incurred on shares are non-deductible, with the exception of certain specific situations (e.g. capital losses due to the entire division of share capital and this to the extent of the loss of paid capital represented by those shares).

Transfer pricing

Transfer pricing (TP)-rules apply to both international and domestic transactions. The concept of TP is based on the rule that companies in the same business group must perform their business transactions "at arm's length". This means that a company must be able to demonstrate that the prices at which it trades with affiliated companies are comparable to the prices and terms that would prevail in similar transactions between unrelated parties. If a Belgian tax-resident company or a Belgian PE is found not to have transacted business "at arm's length", the Belgian tax authorities can, subject to conditions:

- add to its tax base the advantage granted to an affiliated company (although such permanent tax differences can be offset by, e.g. tax losses);
- challenge the deductibility of tax losses (or other deductions) up to the amount of abnormal or gratuitous benefits received from an affiliated company.

The "at arm's length-criterion" is assessed, based on the facts and circumstances of the transaction in question. It is recommended that taxpayers maintain relevant, comprehensive and reliable information to support their TP-policy. Furthermore taxpayers also have the possibility to request for an advance ruling from the Belgian tax authorities.

The Belgian tax authorities have adopted the OECD TP-guidelines. These guidelines indicate that taxpayers should prepare and retain documentation identifying:

- the legal structure and activities of the group;
- the nature, terms (including prices) and quantities of the relevant transactions;
- the arm's length nature of the prices charged. The company must be able to demonstrate that the prices at which it trades with related parties are comparable to those at which it trades with independent parties.

Notional interest deduction

The notional interest deduction (NID) is a relative new, innovative and powerful measure in international tax law. It enables all companies subject to Belgian corporate tax to deduct from their taxable income a fictitious interest calculated on the basis of their net equity. In line with the idea behind de NID regulation, the 0.5% registration duty on capital contributions has been abolished.

The main purpose of the NID is to reduce the tax discrimination between debt and equity financing. The interest paid in the case of loan capital is deductible, while with equity capital the dividends are taxable. The measures also intend to generate (I) a general reduction of the effective corporate tax for all companies subject to Belgian corporate tax and (II) a higher return after tax on investment. For tax year 2013 (income year 2012) the fictitious interest is 3.0%, for small and medium-sized companies it is 3.5%.

Thin-cap rule

Since the first of July 2012 a general thin-cap rule has entered into force. The new rule prescribes a 5/1 debt-equity ratio. For the purposes of the thin-cap rule, equity is defined as the sum of the taxed reserves at the beginning of the taxable period and the paid-up capital at the end of the taxable period. On the other hand debt is defined as:

- all loans, whereby the beneficial owner is not subject to income taxes, or, with regard to the interest income, is subject to a tax regime which is substantially more advantageous than the Belgian tax regime;
- all loans, whereby the beneficial owner is a member of the same group as the debtor.

It is important to underline that the law foresees that for short term financing transactions realized within the scope of a framework agreement on centralized treasury management, netting can take place for thin-cap purposes between interest paid and interest received, to the extent that they relate to the centralized treasury management. This mitigation does not apply to interest received from banks and group companies which are not subject to corporate income tax or which are located in a tax heaven.

Fairness tax

As from tax year 2014, Large companies are subject to a "fairness tax" on their distributed dividends. This tax is a separate assessment of 5%. The tax is only applicable if during the taxable period, dividends have been distributed by the company and the taxable profit has been offset against current year NID or carried forward tax losses.

The taxable basis is determined by the difference between the gross dividends distributed and the taxable result that is effectively subject to the nominal corporate tax. Withholding Taxes (dividends, interests and royalties)

Dividends

Belgian companies are in principle subject to withholding tax of 25% when paying dividends. However, generally a reduced rate of 21% applies (other reduced rates are possible when certain conditions are met).

Based on the implementation of the EU Parent-Subsidiary Directive of 23 July 1990, in principle a withholding tax exemption applies to dividends distributed by a Belgian tax-resident company, if the recipient company :

- is established in Belgium, another EU Member State, or a state with which Belgium has entered into a double tax treaty that foresees in the exchange of information necessary for the carrying out of the domestic laws of the contracting states;

- has a direct holding of at least 10% in the capital of the Belgian distributing company;

- maintains this holding for an uninterrupted period of at least one year or commits to holding it for a minimum period of one year.

Interest

In principle, interest payments are subject to a Belgian domestic withholding tax of 21%, however Belgian domestic law provides for numerous exemptions. By implementing the EU interest and Royalties Directive, a conditional withholding tax exemption is available on interest payments between two associated companies established in the EU. Companies are associated when:

- one of the two companies has had a direct or indirect holding of at least 25% in the capital of the other; or

- a third EU tax-resident company has had a direct or indirect holding of at least 25% in the capital of each of the companies.

A uninterrupted holding period of at least one year also has to be respected. Given that it concerns a holding period and not a waiting period, the tax exemption even applies when the one year-period is not reached yet on the moment the payment is made. However the condition still must be fulfilled afterwards.

Royalties

Belgian domestic tax law defines royalties very broadly. This type of income is generally subject to a 25% withholding tax, unless an exemption applies. In the event of a cross-border payment of royalties, the withholding tax rate may be reduced if a double taxation treaty applies or on the basis of the implementation in Belgian tax law of the EU Interest and Royalties Directive.

Inheritance and Gift Tax

Inheritance and gift tax is charged on the transfer of assets by inheritance or as a gift. The tax rate varies between 3% and 80%. The rate depends on three factors :

- the value of the assets inherited or bestowed;
- the degree of family relation;
- the competent region (Flanders, Wallonia and Brussels).

Belgian Tax Law foresees certain exemptions and reductions (e.g. free bestowal of family businesses, with respect of certain conditions).

Value-Added Tax

An individual or legal entity whose economic activity consists of supplying goods or services, is subject to value-added tax (VAT). The supply of goods and services within Belgium, the importation of goods into Belgium from outside the European Union, and the intra-Community acquisition of goods in Belgium are all subject to VAT. However, there are certain exemptions.

The application of Belgian VAT is limited to those supplies of goods and services that take place in Belgium. In order to determine the place of these supplies, the VAT code stipulates certain rules.

Belgian VAT-law sets out four VAT rates, 0%, 6%, 12% and 21%, the last one being the most commonly used. The amount of tax payable by persons liable to VAT is set off against the input VAT (i.e. VAT paid to suppliers), that way the actual tax burden is carried by the end-consumer. In principle the person liable to VAT must file a VAT return each month. Under certain conditions the VAT return can be submitted quarterly. A non-resident taxable person who has a permanent establishment for VAT purposes in Belgium, is treated as a resident for tax purposes.

Property Taxes

An immovable withholding tax is imposed on deemed income from immovable property located in Belgium. The tax is levied on the cadastral income of the property at rates ranging from 1.25% up to 2.5%, depending on its location. In Flanders real estate transfer is subject to a registration fee at a rate of 10% of the tax value of the immovable property. In Wallonia and Brussels the rate is 12.5%.

Double Tax Treaties

Belgium has entered into various agreements with foreign jurisdictions designed to avoid and eliminate double taxation. Most of these treaties are based upon the OECD Model Double Taxation Convention on Income and on Capital.

→ Labour Law

The importance of employment law in Belgium cannot be underestimated. The right to work is a fundamental right which is embedded in the Belgian constitution. It can be explained by the favorable position of the employee that has historically grown since the industrial revolution. Therefore employment law is nowadays extensively regulated in different kind of regulations: Statutes, Royal Decrees and collective bargaining agreements but also work regulation on the company level and individual agreements. Part of this regulation covers individual employment law (i.e. individual rights of the employees), the other part regulates collective employment law (i.e. joint committee).

Individual employment law

CATEGORIES OF EMPLOYEES: Traditionally, Belgium is one of the few countries who distinguishes different categories of employees according to the nature of their work. So-called

blue collar workers work primarily with their 'hands', white collar workers on the other hand perform 'intellectual labour'. In 2011, The Constitutional Court has decreed that the status of blue and white-collar workers need to be harmonized, urging the government to eliminate the discrimination between the two types of workers.

During its meeting of 27 September 2013, the Belgian Council of Ministers approved a draft act regarding the unified statute for white and blue-collar workers. Overview of some main principles of the unified statute:

- one unified system of termination rules, which shall apply to all workers;

- abolishment of the possibility to include a probation period in the employment agreement. Today, the length of the probation period is a lot shorter for blue-collar workers, than for white-collar workers;

- abolishment of the so-called *'carenz day'*. The *carenz day* is part of the blue-collar worker statute, that states that the blue-collar worker shall not receive any compensation for his first day of illness;

- motivation of dismissal. The employer has currently no explicit legal obligation to give the underlying motivation of a dismissal decision, but will be sanctioned if the judge statutes that the dismissal of the blue-collar worker was arbitrarily.

The draft act shall now be submitted to the Council of State for review and, in a later stage, will be subject to debate in the Belgian Parliament. In the next months, Belgian individual employment law will change substantially concerning these matters.

THE EMPLOYMENT CONTRACT: In principle the mutual consent between parties is sufficient to have a valid employment contract. Even though parties are in principle free to determine the content of the contract, the contractual terms nonetheless may not conflict with the mandatory provisions of Belgian law. Most provisions which protect employees are deemed to be mandatory and are mainly fixed by statute or by collective bargaining agreement concluded at the level of the industry to which the company belongs. They concern termination of the employment contract, working time, working hours and rest time, minimum wages, annual leave and so on.

Also the requirement of form is in principle free: there is also no legal requirement to receive a written employment contract when it concerns a full time contract for an indefinite period. It is, however, self-evident that it is best to have a written agreement, with certain specific stipulations, such as the trial clause and the covenant of non-competition. If the parties wish to deviate from the legal provisions, the work rules, or the individual normative rules of a collective bargaining agreement,1 they must do so in writing.

For all other employment contracts, a written employment contract is required: these are mainly fixed-term contracts or contracts for a defined job of work, for part-time employment, for home working or with a student. In the absence of a written contract in those cases, the employee is deemed to have been hired for an indefinite period. To qualify an agreement as an employment contract the following elements have to be present: one party, the employee, agrees to work under the authority of the other, the employer, for a definite or indefinite period of time.

The essential characteristic of an employment contract is by consequence the element of authority. In the absence of that element, the parties will not be submitted to employment law and one will conclude to self-employment. The key aspect of such "authority" of the "organizational authority" in the sense that one person is assigned the power to direct another person.

SUSPENSION OF THE EMPLOYMENT CONTRACT: Some facts or circumstances lead to the suspension of the employment contract in which case the employee temporarily cannot deliver work performances but the employment contract still stands without loss of pay (in most situations). In this way the legislator wants to strive to a higher permanence of employment and security. A few suspension grounds are discussed:

- Maternity leave. Every pregnant woman is entitled to pre and post-natal leave. The duration of pre-natal leave is 6 weeks (and 8 weeks when multiple birth). Moreover from the 7th day before the expected date of childbirth, the employee must cease all activity and the employer may not, under any circumstances keep the employee at work. The post-natal leave is 9 weeks (11 weeks when multiple birth).

- "Absence". Each employee has the right to be absent for family happenings, to fulfill his citizen duties or his civil duties and if he has to appear for the Court. If a child is born for example, the employee has the privilege to be absent for 10 days.

- Career break. To enable a better combination of work and family life, there is a possibility in Belgian law to take a career break. The duration of the career break longs over a whole career from 3 months up until 1 year. The condition to take a career break is a seniority of minimum 12 months.

- Inability to work. If an employee can't do his usual work because of sickness or an accident the employment contract is suspended, with guaranteed salary for a certain period. In order to be entitled to the guaranteed salary, the employee has to give notice immediately of his/her sickness or accident and at request of the employee, must subject himself to a medical checkup.

THE TERMINATION OF THE EMPLOYMENT CONTRACT: Belgian labour law lays down specific regulations and procedures for terminating employment:

- Expiry of the term for fixed-term contracts
- Resolutive/dissolving conditions

- Completion of work in respect of which the contract was concluded for contracts concluded for specific work
- Dismissal
- The agreement of the parties
- The death of one of the parties
- A force majeure having a long-term impact

We will discuss the possibilities for dismissal. The general rule is that an employment contract for indefinite time can be terminated unilaterally at any time by either party.

In first instance employer and employee can end the employment contract by giving notice. Notification of the start date and the length of the notice period must be in writing and sent by recorded delivery mail or served by a bailiff. In the sole case of notice given by the employee, it may be served by a simple letter handed to the employer. The length of the notice period differs between blue-collar and white-collar workers according to whether termination takes place during or after the probationary period and depending on whether notice is given by the employee or by the employer. The calculation of a notice period of a white collar employee can be complex and is often the subject for a dispute. If notice is not given and the contract is terminated immediately, the party terminating the contract is liable to the other party for a severance payment (compensation in lieu of notice).

An employee can also be dismissed for serious cause, immediately and without notice or indemnity. A serious cause is defined as "any fault that makes any collaboration between employer and employee immediately and definitively impossible". In case of a dismissal for serious cause, there are formalities and strict terms that have to be respected.

Collective labour law

To decrease the amount of conflicts and strife between employers and employees, Belgian collective labour law provide a whole system of social dialogue. Social dialogue is situated on 3 levels in Belgium: national-, sector and company level.

On the national level we find the Central Economic Council who is advising the government about social and economic matters. The National Labour Council is also an advising institution on the highest level and negotiates collective bargaining agreements on the highest level.

On industry and sector are the joint (sub) committees (about 150) which enables the workers 'and employers' organizations to agree upon collective agreements on working conditions for the underlying jurisdiction employers and employees to settle bargaining agreement for their specific sector. Last there is the company level with a Work Council, a Committee for Prevention and Protection at Work and the union delegation.

A Works Council is a joint committee at enterprise level designed to foster consultation and collaboration between employer and employees. Every four year elections take place: the employees of a company elect their representatives in the Work Council. Elections for Works Councils are mandatory in the private sector in enterprises employing at least 100 employees. The Works Council has different tasks as well on technical matters as on economic and social matters. A Work Council has the right to all information about the company which might have impact on the working conditions.

Elections for a Committee for Prevention and Protection are mandatory in enterprises normally employing at least 50 employees. The committee plays an advisory role and is also closely involved in the recruitment and dismissal of prevention officers.

The Union Delegation is a body representing union members at the enterprise level. They defend the interest of the employees regarding industrial relations. The union delegation also has the authority to conclude collective bargaining agreements. The Union Delegation consist out of members who are also employees at the enterprise and who are appointed by the unions or elected.

COLLECTIVE ACTION. Belgian statutory law does not recognize the right to strike. However, in 1991 Belgium ratified, the European Social Charter, which contains in Article 6, 4 the right to strike and to lock-out, and this right is guaranteed through an established case law of the domestic highest courts.

The fact that there is a freedom to strike does not, however, mean that all forms of strike action are acceptable. In Belgium, there is no legal action possible against a trade union which engages in an unlawful strike, for example a strike which contravenes a peace obligation. Due to their lack of corporate capacity, trade unions cannot be sued for compensation. However, the individual employee who participates in an unlawful strike is guilty of faulty behaviour, which may justify the breaking of his labour contract without compensation for the lack of a term of notice. Legal strikes only suspend the execution of the individual labour contract, and are no longer considered to be sufficiently serious to justify the breaking of the individual labour contract without notice or indemnity.

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→ Chile

ESTUDIO JURÍDICO OTERO was founded by Mr. José A. Otero B. in July 21st, 1923. From the return of Mr. Miguel Otero L. in 1957 from United States, after having received the Degree of Master in Comparative Law, the Firm started to develop its international practice, advising a vast variety of international and multinational companies in their businesses in Chile and also Chilean companies and customers doing business outside the country, in the United States and Europe, inclusively.

Nowadays, we are a legal team with 90 years of history. We have been able to renew ourselves continuously, adapting us to the new requirements and technologies in the world of business and law, but maintaining our ideals, traditions and history. Each generation of lawyers of our firm has continued the mission of providing legal advice to our clients, always understanding the meaning of their business and fully integrating each of their goals and needs. Thus, we support our work proposal on mutual trust and close and personalized relationships, where prompt responses are a duty for us.

ESTUDIO JURÍDICO OTERO has been recognized for its practice and experience in important international law publications, such as Chambers and Partners, Best Lawyers, Legal 500, Corporate INTL and Global Law Experts, among others.

Principal Areas of Practice

InESTUDIO JURÍDICO OTERO we render integral legal advise, based on quality services and multiple experience of our lawyers. Our professional services cover all legal aspects required in corporative and business activities, such as: Civil, Commercial, Corporate, Contracts, Financing, Mergers and Acquisitions, Foreign Investments, Energy, Environmental, Constitutional Law, Administrative Law, Antitrust and Trade Regulations, Consumer Law, Privatization, Infrastructure and Real States, Water and Sanitary Services, Labor and

Employment Law, Tax Law, Telecommunications, Information Technology, Intellectual Property, Copyright, Technology Law, Internet and Cyberspace, Licensing, Privacy, Communication and Media, Commercial Arbitration and Litigation.

We also have extensive and proven experience in litigation of various kinds (including regulated markets), both in arbitration as regular and special courts, Courts of Appeal and Supreme Court. ESTUDIO JURÍDICO OTERO had been recognized for its vast experience by international and relevant law publications such as Chambers and Partners, Best Lawyers, Legal 500, Corporate INTL and Global Law Experts, among others.

Our Culture

Every attorney working in ESTUDIO JURÍDICO OTERO had been individually trained in such way that their working system, legal approach and performance permanently reflect a highly qualification, personalization and efficient service. We hold prompt solutions to every requirement, highlighting the vision in order to prevent and anticipate events. To achieve that goal, we understand and get familiar with our clients' activities so as to deliver an opportune and useful assistance that includes legal advice with business sense.

Client Support

An integral and complete legal vision, efficient, personalized and high quality services are our permanent commitments. Thus, we based our professional offer on the mutual trust with all of our clients. Our attorneys work exclusively for the Law Firm and therefore our clients receive immediate and personal assistance from any one and all of them.

Membership

In ESTUDIO JURÍDICO OTERO Ltda. we are members of ILP Global (International Lawyer Partners), an association that is currently formed by law firms from Chile, Ecuador, Mexico, Perú and Spain, sharing and maintaining a common philosophy, project and working methodology. The Association seeks without losing the identity, idiosyncrasy and features of members' legislations, complying with clients' needs under different jurisdictions and working under a uniform criteria and procedures.

Additionally, our firm is member of E-Iure (www.e-iure.com) a network of international practice law firms. Currently, it has members in 17 counties around the world, mainly from Europe and Latin America. Likewise, ESTUDIO JURÍDICO OTERO is the only Chilean firm member of the Employment Law Alliance, the largest world network of lawyers specialized in employment law and labor issues in United States, over more than 300 cities and 144 countries around the world.

→ Chile, platform country for the Latin American region

Chile has specific comparative advantages that make it the best place for foreign corporations to develop new business and expand their operations and sales in Latin America. Key among them is a stable and transparent legal framework for foreign investment, characterized by clear, non-discriminatory and non-discretionary rules. These principles are embodied both in the 1980 Political Constitution and in all laws, including the Foreign Investment Statute, known as Decree Law 600 (D.L. 600).

All the rights guaranteed by Chile's legal framework are further protected by Bilateral Investment Treaties (BITs). As of January 2008, Chile had signed 52 BITs, 39 of which were in force at that time. In addition, Chile's Free Trade Agreements (FTAs) with Canada, Mexico, South Korea, China, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and the United States include specific chapters on investment-related issues, including dispute-settlement mechanisms that are similar to those used in BITs.

Since May 7, 2010, Chile became a member of the Organization for Economic Cooperation and Development (OECD), an international cooperation organization of 31 states, which aims to coordinate their economic and social policies. It is considered that the OECD brings together the most advanced and developed countries in the world, for its members represent 70% of the global market.

Though there are other mechanisms that can be used by foreign investors, such as Chapter XIV of the Central Bank's Compendium of Foreign Exchange Regulations, more than 81% of materialized foreign investment between 1990 and 2004 entered the country through D.L. 600, with a total of US$ 53.6 billion. Based on constitutional principles, the Foreign Investment Statute guarantees non-discriminatory and non-discretionary treatment of foreign investors. The former assures all people, regardless of their nationality, "to be treated by the State and its bodies in economic matters without arbitrary discrimination". Therefore, foreign investors enjoy the same rights and guarantees as local investors. The principle of non-discretionary treatment governs the activities in every economic sector and entails the existence of clear, well-known and transparent rules, which assure foreign investors they will be treated fairly and impartially.

Main Foreign Investors' Rights

Foreign investors in Chile can own up to 100% of a Chilean-based company, and there is no time limit on property rights. They also have access to all productive activities and sectors of the economy, except for a few restrictions in areas such as the fishing sector, air transport and mass media. In the case of fishing, restrictions are subject to the rules of international reciprocity. The State has a very minor productive role in Chile. Only a few strategic activities - such as exploration and exploitation of lithium, liquid and gaseous hydrocarbons deposits in coastal waters under national jurisdiction or located in areas classified as important to national security, and the

production of nuclear energy - are restricted to the State. However, under certain circumstances, foreign companies can invest even in these sectors.

Any foreign individual or legal entity, as well as Chileans with residence abroad, can invest through D.L. 600. Under this mechanism, investors enter into a legally binding contract with the Chilean State, which cannot be modified unilaterally by the State or by subsequent changes in the law. However, investors may, at any time, request the amendment of the contract to increase the amount of the investment, change its purpose or assign its rights to another foreign investor.

D.L. 600 guarantees investors the right to repatriate capital one year after its entry and to remit profits at any time. In practice, the one-year capital lock-in has not represented a restraint since most productive projects - in areas such as mining, forestry, fishing and infrastructure - require more than a one-year start-up period. Once all relevant taxes have been paid, investors are assured access to freely convertible foreign currency without any limits on the amount, for both capital and profit remittances. In addition, they are guaranteed the right of access to the formal exchange market. The repatriation of all capital invested is devoid of any tax, duty or charge up to the amount of the originally materialized investment. Only capital income over that amount are subject to the general regulations contained in Income Taxation Act and the Tax Code.

It should be noted that the Central Bank has the right to restrict access to the formal exchange market - made up by banks and other authorized dealers - if adverse macroeconomic conditions make this necessary. However, D.L. 600 investors are exempt from these restrictions and their right to access the market in order to repatriate profits or capital is not affected. The D.L. 600 contract acknowledges as foreign investment:

- Freely convertible currency that can be exchanged at the most favorable rate that foreign investors can obtain from an entity authorized to operate in the Formal Exchange Market.

- Tangible assets, in any form or condition brought into the country according to general import regulations, without exchange coverage. The value of these goods will be determined using general procedures applied to imports. These tangible assets include, among others, machinery or equipment used in productive processes.

- Technology, in any form susceptible to be capitalized, which will be appraised by the Foreign Investment Committee according to its real international market value, within 120 days after the foreign investment application is submitted. If the appraisal is not carried out, the value assigned shall be that estimated by the investor in an affidavit. In previous cases, independent consultants have performed this task.

- Credits associated to foreign investment: The general regulations, terms, interest and other modalities of foreign credit contracts, as well as surcharges related to total costs to be paid by

the debtor, including commissions, taxes and expenses, shall be those authorized by the Central Bank of Chile.

■ Capitalization of foreign loans and debts, in freely convertible currency, whose contract has been duly authorized by the Central Bank Under D.L. 600. Investors can increase the capital of the company which received the investment through both the capitalization of credits made under Chapter XIV and the credits derived from current imports and pending payments.

■ Capitalization of profits transferable abroad: D.L. 600 allows capital increases of the company receiving the investment through the capitalization of transferable profits.

Foreign investors may request a maximum time-limit of three years to materialize their contributions. Under article 11 bis of DL 600, investments of not less than US$ 50 million for industrial or non-mining extractive projects can request a time-limit of up to eight years. In the case of mining projects, the time-limit is eight years but, if previous exploration is required, the Foreign Investment Committee may extend it to up to twelve years.

Special Advantages for Foreign Investors

Although Chile's Constitution is based on the principle of non-discrimination, D.L. 600 offers some tax advantages for foreign investors. These are not "tax breaks" or "tax holidays", but are intended to provide a stable tax horizon, acting as a form of "tax insurance". D.L. 600 offers several different tax options, but basically allows the investor to lock into the tax regime prevailing at the time an investment is made.

Invariability of Income Tax Regime

All Chilean companies have to pay a First-Category Tax (or Corporate tax) equivalent to 20% Under Chile's Common Tax Regime, and a 35% tax is currently levied on distributed or remitted profits abroad entitled to be used as a credit to against the first category tax paid.

Interests paid to non-residents are also subject to a 35% additional withholding tax. However, interest on loans granted by foreign banking or other financial institutions is subject to a 4% tax, provided that excess indebtedness provisions do not apply and other Income Taxation Act are fullfiled. Under DL 600, a foreign investor can opt to lock into an effective fixed overall tax rate of 42% on taxable income for up to ten years, or - under article 11 bis of DL 600- for up to twenty years in the case of industrial and extractive investments of US$ 50 million or more.

The investor, thereby, acquires immunity from any tax increases in the Common Tax Regime that may occur during that period. The lock-in can be waived at any time, but an investor cannot subsequently revert to the guaranteed 42% rate. The First-Category payment of 20% can be set against tax returns under both the Common Tax and Invariable Tax Regimes.

Invariability of Indirect Taxes

D.L. 600 states that foreign investments brought into the country in the form of tangible assets are subject to the general Value Added Tax taxation (VAT) regime and customs regulations. However, foreign investors are entitled to include a clause in their contracts giving them access to a regime that freezes VAT (currently at 19%), as well as import tariffs on capital goods for the project, at their rate at the date of the investment. This special regime applies throughout the period authorized for carrying out the investment. Additionally, imports of some of these capital goods such as machinery or equipment are exempt from VAT in the case they are not produced in Chile and are on a list compiled, prepared and published by the Ministry of Economy's Foreign Trade Department. The current list was approved by Decree 204 of the Ministry of Economy, published in the Official Gazette *("Diario Oficial")* on December 12, 2002, and is available at the Ministry of Economy's website, www.economia.cl

Foreign investors who sign a D.L. 600 contract are exempted from VAT on other technology imports, providing they appear on this list compiled by the Foreign Trade Department. The products currently listed include accounting and data processing machines, TV cameras, lasers and magnetic resonance imaging diagnostic equipment (MRI), among several others.

Special Regime for Large Projects

Under article 11 bis of D.L. 600, investments in new industrial or extractive activities, including mining, are entitled to additional tax benefits, providing they have a value of at least US$ 50 million. Currently, the Foreign Investment Committee is revising its policy regarding article 11 bis, and new contracts under this regime are not being approved at this time. This policy is subject to change in the future.

New Legislation for mining projects

On 16 June, 2005, Law 20.026 was published in the Official Gazette. It establishes a specific tax on mining activities, which came into force on 1 January, 2006. The Law amends Decree Law 600 by adding a new Article 11 ter.

That article establishes a regime of invariability for the aforementioned tax, for those investors that sign a new foreign investment contract related to projects with a value of no less than US$ 50 million. In order to opt into this special regime, investors with existing foreign investment contracts must not have made use of the special invariability regimes set out in articles 7 and 11 bis of DL 600, or they must renounce those regimes at the time of opting into the rights under article 11 ter. The deadline for submitting a request to opt into the regime under 11 ter for investors with existing foreign investment contracts was November 30, 2005.

Foreign Investment Procedures

A foreign investor who wishes to invest through the D.L. 600 must submit an application to the Executive Vice-Presidency of the Foreign Investment Committee. Since June 6 of 2003, the minimum investment amount for a new project is US$ 5,000,000 (five million dollars) when investments consist of foreign currency and associated credits. The minimum amount is US$ 2,500,000 (two and a half million dollars) when the investment is in the form of tangible assets, technology, and capitalization of profits or capitalization of credits. The Foreign Investment Committee retains the right to modify both figures. Projects submitted to the Committee's consideration must involve a ratio between equity and associated credits of up to 25/75 respectively.

In the case of foreign currency, investors can execute their foreign exchange operation only when the contract has been duly signed. However, when submitting the application, they can request a special authorization to exchange their currency immediately. Any other type of capital contribution requires the Foreign Investment Contract to be duly signed.

Additional information

Most investment projects require additional permits and/or must fulfill other requirements besides those set forth in D.L. 600. All investment projects, both local and foreign, must comply with the country's local and sector-specific legislation, at the national, regional and municipal levels.

It is worth noting that, besides the Foreign Investment Committee's approval, some projects require additional information or authorization, which must be obtained from other competent authorities. Only as an example, we can mention that when an application for investments in the mining sector is presented under D.L. 600, the Foreign investment Committee asks the Chilean Commission of Copper (Cochilco) to issue a report on the project; the Fishing Superintendence reports on activities in that sector; the Banks and Financial Institutions Superintendence must authorize operations in the financial banking area; and the Securities and Exchange Commission reports on activities in the insurance and investment funds fields.

A concession granted by the Telecommunications Superintendence is required in order to install, operate and run public telecommunication services; intermediate telecommunication services through physical facilities and networks designed for this purpose; and radio sound broadcasting services. Complementary services, such as telephone banking or financial data over the telephone, do not require a concession or permit, although a technical ruling is required when equipment is connected to public telecommunications networks.

In the case of the environmental assessment of projects, it is based on the Environmental Assessment Service. Its main function is to introduce the use of modern technology and manage the environmental management tool called "System of Environmental Impact Assessment"

(SEIA), which is based upon the environmental assessment of projects adjusted as provided in the existing standard, promoting and facilitating citizen participation in the evaluation of projects. The role of this Service is to standardize the criteria, requirements, conditions, background information, certificates, procedures, and technical requirements of an environmental nature established by relevant ministries and other state entities, by establishing processing guidelines.

The modernization of the system aims to establish common criteria to evaluate each type of project, thus ensuring the protection of the environment in an efficient and effective manner.
In line with its commitment to free-market economic policies and free trade, Chile does not use tax incentives to support productive activities or to attract new investment. However, it does provide certain inducements for investments in some isolated geographic regions and new industries, particularly those in the technology field.

Investors can, for example, tap into government schemes to promote workplace training and to increase industrial productivity. All these schemes, in the form of grants and tax rebates, are available equally to both local and foreign investors and are part of a wider government strategy designed to increase competitiveness by extending the benefits of economic growth to all areas of the country, promoting education and training and encouraging technological innovation.

**Source: Foreign Investment Committee*

→ Bilateral Investment Treaties

In 1991, Chile became a signatory of the Washington Convention of 1965 that created the International Center for Settlement of Investment Disputes (ICSID). Since then, the country began to negotiate Bilateral Investment Treaties (BITs), a mechanism through which Chile provides additional protection both to inward and outward foreign investment flows. As of November 2005, Chile had negotiated 52 BITs, 39 of which were in force at that time.

In these agreements, each Contracting State commits itself to provide fair and equitable treatment to investments legally materialized in its territory by investors of the other Contracting State. They also guarantee the principles of National Treatment and Most Favored Nation status.

Moreover, BITs protect private property rights through the establishment of basic principles and minimum standards in case of expropriations. Likewise, they guarantee that any expropriation or measure with similar effect will be adopted in accordance with a law based on public good or national interest, in a non-discriminatory manner. They state that expropriatory measures must be accompanied by the provisions of prompt, adequate and effective compensation.

Through BITs, the Contracting States guarantee the free transfer of capital, of profits or interest generated by foreign investments, and, in general any transfer of funds related to investments. Some restrictions may apply, in accordance with national laws.

Additionally, these agreements establish a dispute settlement mechanism in case of disputes that might arise between an investor of a Contracting State and the other Contracting State. Basically, this mechanism assures that controversies will be settled through friendly consultations. If no agreement is reached, the investor will be entitled to submit, at his own decision, the case before the domestic jurisdiction of the host State of the investment or to international arbitration. In most BITs, this jurisdictional option is definitive.

The principle of subrogation is also included in BITs. This means that if one Contracting State - or an agency authorized by it - grants any kind of insurance against non-commercial risks to an investment in the territory of the other Contracting State, the latter shall recognize the rights of the former to subrogate for the rights of the investor in case it has paid the insurance.

The protection provided by these agreements applies both to investments made after the agreement comes into force as well as to those made before that date. These BITs, however, do not apply to disputes which arise prior to their entry into force or to disputes directly related to events which occurred prior to their entry into force.

Signed treaties need to be ratified by Congress before they can be in force. Treaties are in force in Chile once they are published in the Official Gazette (the Government's Official Registry of laws and decrees). List of investment treaties:

Americas

COUNTRY	SIGNED ON	STATUS*
Argentina	August 2,1991	In Force since February 27, 1995
Bolivia	September 22, 1994	In Force since July 21, 1999
Brazil	March 22, 1994	Not in force
Colombia	January 22, 2000	Not in force
Costa Rica	July 11, 1996	In Force since July 8, 2000
Cuba	January 10, 1996	In Force since September 30, 2000
Ecuador	October 23, 1993	In Force since February 21, 1996
El Salvador	November 8, 1996	In Force since November 18, 1999
Dominican Republic	November 28, 2000	Not in force
Guatemala	November 8, 1996	In Force since December 10, 2001
Honduras	November 11, 1996	In Force since January 10, 2002
Nicaragua	November 8, 1996	In Force since January 10, 2001
Panama	November 8, 1996	In Force since December 21, 1999
Paraguay	August 7, 1995	In Force since September 16, 1997
Peru	February 2, 2000	In Force since August 11, 2001
Uruguay	October 26,1995	In Force since April 22, 1999
Venezuela	April 2, 1993	In Force since May 17, 1994

List of free trade agreements

AGREEMENT	COUNTRY(IES)	SIGNED ON	DATE OF ENTRY INTO FORCE
Canada-Chile FTA	Canada	December 5, 1996	July 5, 1997
Chile-Mexico FTA	Mexico	April 17, 1998	August 1, 1999
Chile-Central America FTA	Costa Rica	October 18, 1999	February 14, 2002
	El Salvador	June 3, 2002 (Bilateral Protocol	
	Guatemala	August 5, 2010 (Bilateral Protocol)	
	Honduras	August 28, 2008	
	Nicaragua	Bilateral protocol under negotiation	
Chile-EU EPA	European Union	November 8, 2002	February 1, 2003
Chile-US FTA	United States	June 6,2003	January 1, 2004
Chile-Korea FTA	South Korea	February 15, 2003	April 1, 2004
EFTA	Iceland	June 26, 2003	December 1, 2004
	Liechtenstein		
	Norway		
	Switzerland		
Chile-China FTA	China	November 18, 2005	October 1, 2006
Pacific-4 (P-4)	Brunei	July 18, 2005	November 8, 2006
	New Zealand		
	Singapore		
Chile-Panama FTA	Panama	June 27, 2006	March 7,2008
Chile-Colombia FTA	Colombia	November 27, 2006	May 8, 2009
Chile-Peru FTA	Peru	August 22, 2006	January 1, 2009
Chile-Japan EPA	Japan	March 27, 2007	September 3, 2007
Australia-Chile FTA	Australia	June 30, 2008	March 6, 2009
Chile-Turkey FTA	Turkey	June 14, 2009	March 1, 2011

Agreements under negotiation

- Vietnam
- Thailand
- Malaysia

→ Double Taxation

Chile has double taxation treaties in force with several countries and a few to be eventually signed.

Status of double taxation treaties with Chile

Treaties in force:

- Argentina, March 7, 1986
- Belgium, July 17, 2010
- Brazil, October 24, 2003
- Canada, February 8, 2000
- Colombia, December 22, 2009
- Croatia, June 24, 2003
- Denmark, February 10, 2005
- Ecuador, October 24, 2003
- France, September 14, 2006
- Ireland, October 28, 2008
- Malaysia, October 2, 2008
- Mexico, February 8 2000
- New Zealand, September 4, 2006
- Norway, October 20, 2003
- Paraguay, October 2, 2008
- Peru, January 5, 2004
- Poland, March 27, 2004
- Portugal, October 28, 2008
- South Korea, October 20, 2003
- Spain, January 24, 2004
- Sweden
- Switzerland, August 6, 2010
- Thailand, August 9, 2010
- United Kingdom, February 16, 2005

Subscribed Agreements

- Russia,
- United States
- Australia

Agreements for which negotiations have been concluded

- South Africa

International transport agreements

- Germany (air and sea), September 11, 1978,
- United States of America (air), February 4, 1994,
- France (air), July 21, 1978,
- Panama (air), April 25, 2001,
- Singapore (sea), November 25, 1993,

- Switzerland (air), November 18, 2009,
- Uruguay (air), February 27, 1995,
- Venezuela (air and sea), April 18, 1994.

→ Conducting Business in Chile

In general terms, business in Chile are conducted and formalized through a company usually a Limited Liability Partnership, a Corporation (Close Held Corporation), the one-person limited liability company or as limited liability corporation (SpA), all of which can be a subsidiary of a a foreign entity, or through the incorporation of a Branch of a foreign corporation in Chile.

Chilean Law requires that only some and specific kind of businesses are conducted through corporations, such as banks, mutual funds and insurances companies. Among the types of business entities, please be aware that the Branch of a foreign entity presents a major difference to the other type of entities, as the incorporation of a Branch is formalized through the designation of an Agent who shall be empowered with broad managing and representation powers of attorney, and the foreign parent company is fully liable for the activities of its Chilean Branch. Its liability is not be limited to the capital allocated to the Branch in Chile and, moreover, the local IRS is empowered to assess the branch's taxable income if it considers that the accounting records are not appropriately reflecting that income. Moreover, although the Chilean Branch of a foreign company can deduct specific expenses incurred by the foreign parent company in connection with the Branch's activities that are necessary to produce the local Branch's income, there are some IRS rulings that state that payments made abroad to cover such expenses are subject to a 35% withholding tax. General unspecified charges are not deductible.

On the other side, Closed Held Corporations, Limited Liability Partnerships, One-Person Limited Liability Companies and Limited Liability Corporations shall be incorporated by means of a public deed, an abstract of which must be published in the Official Gazette and registered with the local Registry of Commerce. The corresponding bylaws are included in the public deed of incorporation.

In the case of corporations and limited liability partnerships, there must be at least two partners or shareholders, either natural or legal persons, national or foreign. One-Person Limited Liability Companies are incorporated by only one natural person but werecreated to allow small entrepreneurs to do business without jeopardizing all they personal equity. Limited Liability Corporations (SpA) may also be incorporated with just one shareholder, with its capital divided in stock. It was created mainly to promote capital risk investments.

The incorporation process takes approximately two to three weeks counted from the date we have been provided with the special powers of attorney to represent foreign partners or shareholders.

Similarities between a Closed Corporation and a Limited Liability Company and the Limited Liability Corporation

The main similarities between a Closed Corporation and a Limited Liability Company and the Limited Liability Corporation are the following:

LIABILITY: In both cases, said companies are liable up to the amount of the capital established in the bylaws. Also, the company´s partners and shareholders are liable only up to the amount of the contributions made and committed.

CONTROL: Neither of these companies are subject to specific control by any government agency, except for the authority of local IRS.

TAXATION: The income tax structure of corporations and limited liability companies is the same, and is divided into two stages: first, when income is accrued; and second, when profits are distributed to shareholders or partners. In the first stage, the tax rate is 20 In the second stage, the income generated by the partner or shareholder arising from profit distribution or payment of dividends, is subject to a personal progressive income tax (rate from 0% up to 40%) or, in the case of non-resident shareholders or partners, to a withholding tax at the rate of 35%. A tax credit against the tax paid in the second stage is granted for taxes paid in the first stage. In the case of non-resident shareholders or partners, the overall tax rate is 35%. Nevertheless, there are some differences regarding some issues that are described hereinafter.

Differences between a Closed Corporation and a Limited Liability Company and the Limited Liability Corporation

In general, we can appreciate that most of the differences between a Closed Corporation and a Limited Liability Company are due to the fact that the former emphasizes in capital and is a stock corporation and the latter emphasize the person in which the *"animus societatis"* is of the essence of these types of companies. Bearing this fact in mind, we can say that the main differences between them are the following:

MANAGMENT

Closed Corporation: A Board of Directors manages it and appoints the general manager (CEO) and other persons that are also proxies, all of whom are legal representatives of the corporation with the powers of attorney and limitations granted by the Board. Certain essential matters such as merger, termination, capital increases, as well as the sale of all or the majority of corporation´s assets as well other relevant company matters, must be decided upon by the Shareholders in an Extraordinary Shareholders Meeting. The annual report and balance sheet must be approved by the Shareholders Meeting. The Board is elected by shareholders and it must be comprised of at least three members. The directors do not need to be domiciled in Chile

and can be nationals or foreign. The corporation´s bylaws can determine the existence of back up directors, in similar number as official Directors, all of which can be compensated or not.

The Directors have the right to be duly informed; their duties cannot be delegated and are exercised collectively in a special and specific meeting. In the exercise of their duties, Directors must use the concern that persons usually use for their own business, and will severally and jointly be liable for damages caused to the company or the shareholders through fraudulent and tortuous acts.

Board Meetings must be held in the place indicated in the summons or otherwise in the Corporate Bylaws and directors must assist in person. However, it is possible to authorize Board Meetings in which one or more directors are connected by phone or video conference.

Limited Liability Company and Limited Liability Corporation: They are managed by the partners or by whomever they appoint for such purposes in its bylaws or through specific powers of attorney granted in a different public deed. This attorney will have the powers expressly granted to him. Therefore, the management of a Limited Liability Company is simpler as it does not require shareholders and/or board meetings, unless management is stipulated to be through a Board of Directors, which is exceptional.

Nevertheless, if the manager has been appointed in the company's bylaws, his removal must be done by amending such bylaws, fulfilling the same requisites required to incorporate the company (public deed which abstract must be registered and published).

CAPITAL

The law does not require a minimum amount of capital but it must be enough to allow the business entity to finance start-up costs. In both, Limited Liability Companies and Corporations the capital can be contributed at incorporation or within the term agreed to in the bylaws and in all cases before a three year term and in accordance to company needs.

Closed Corporation and Limited Liability Company by Stock: Its capital is divided in shares. The initial capital must be subscribed and paid in the period of 3 years for Close Held Corporations and 5 years for Limited Liability Company by Stock (SpA); otherwise the company's capital is reduced to the paid amount, except for bonds convertible into shares, all of the aforesaid pursuant to law. The law does not allow the shareholder to pay its stock with direct personal work for the corporation.

Limited Liability Company: Its capital is not divided into shares and the percentage ownership of the Company is represented by the percentage contribution to the company's capital. The initial capital must be paid in the period agreed in the bylaws. A partner can acquire an equity interest through his personal work for the company.

Assignment of interests

Closed Corporation: The procedure to transfer shares is simple and does not require significant formalities, nor the amendment of the corporation bylaws through a public deed.

Limited Liability Company: Ownership interests cannot be freely assigned by one partner to another partner, this being a modification of the company´s bylaws to be formalized through a public deed unanimously agreed by all partners. The deed of incorporation must be amended and an abstract must be published in the Official Gazette and registered with the local Registry of Commerce.

Profits

Closed Corporation: Dividends may only be distributed if profits exist in the respective commercial year. Furthermore, profits may only be distributed in proportion to the number of shares owned by each shareholder. The law states that annually, at least 30% of the yearly profits must be distributed as dividends, unless the shareholders unanimously agree not to distribute dividends, unless the share holders unanimously agree not to distribute.

Limited Liability Company: Partners may withdraw money even if there are no accumulated profits. Furthermore, if agreed by partners, profits may be distributed in a proportion different than the percentage ownership interests in the company.

Reinvestment

Profits generated by a Limited Liability Company can be reinvested by the partners of the same in other companies differing payment of taxes until such profits are withdrawn from these entities. This a very interesting tax planning tool that is specially used for Holding companies through which different investments can be materialized.

Delaying payment of personal progressive income tax or withholding tax

If a Limited Liability Company does not generate profits subject to first-stage taxation, payment of personal progressive income tax or withholding tax regarding profits withdrawn from the company will be delayed until the company generates profits subject to first-stage tax. In the case of limited liability companies, the withdrawal in excess defers the accrued terminal tax (*Impuesto Global Complementario* in case of individuals, or Additional or withholding Tax in case of individuals with no domicile or residence in Chile) until the generation of profits at the level the company. Once the company generates the annual profits, the final tax will be accrued *(Impuesto Global Complementario)* with a progressive rate of 0% to 40% with the right to use the Corporate Tax (20%) as credit against personal taxes stated above ot the Additional Withholding Tax.

Unique Tax on non-deductible expenses

Closed Corporation: Certain transactions, such as non-deductible expenses, presumed withdrawals corresponding to utilization of the company's fixed assets and loans of the company to its shareholders who are natural persons are subject to a unique tax of 35%.

Limited Liability Company: Non-deductible expenses are subject to the personal progressive income tax or, in the case of non-resident shareholders or partners, to a withholding tax. Please note that this provision is currently under revision at the National Congress.

Duration

Closed Corporation: Its duration may be indefinite.

Limited Liability Company: The duration may not be indefinite. Nevertheless, the partners may incorporate it for the period of time they agree to, with no legal limit, and it may be automatically extended.

Amendments

Closed Corporation: Amendments to the by-laws must be approved through an Extraordinary Shareholders Agreement and depending on the nature of the agreement, different voting majorities may be required.

Limited Liability Company: All partners must unanimously agree to amend the by-laws through a public deed.

Miscellaneous

It is important to highlight that corporations cannot maintain or purchase their own shares except in very specific cases only regarding publicly traded companies, provided the transaction is approved by 2/3 of the shareholders.

Stock Options exist in Chile only regarding open corporations and must be limited to 10% of a capital increase plus the amount of the capital increase not subscribed by shareholders in exercise of their preemptive rights. This is only a general approximation of the main similarities and differences between a Closed Corporation and a Limited Liability Company.

We must mention that the Limited Liability Corporation recently created offers great flexibility in its organization and operation, without many of the restrictions of the close corporations or the inconveniences of a limited liability company.

Taxation

See above. Conducting Business in Chile – Taxation. According to "DL 600" provisions, a fixed, overall tax rate of 42% can be agreed upon for a ten-year period. This fixed tax can be waived at any moment but the investor cannot subsequently return to the guaranteed 42% rate.

Royalties are subject to a withholding tax rate of 20%. There are other rates for specific cases. The tax rate for payments done to foreigner non domiciled or no resident in Chile for engineering services or technique advices is 15%.

There are some special tax regulations for Business Platform Companies, which are not applicable regarding countries that have double taxation agreements with Chile. The purpose of this special tax regime is to avoid double taxation for those companies incorporated in Chile which purpose is to invest in Chile and abroad and provided that the requisites and conditions stated in the law are duly fulfilled.

→ Labour and Employment Law

The Chilean Constitution (article 19 Nº 16) recognizes and protects the freedom to work. It stipulates that every person has the right to choose his/her job and to a fair salary. It also forbids any form of discrimination not based strictly on capacity or personal ability to perform a service. It also establishes the freedom to form unions, the right to social security and the prohibition on conditioning recruitment or job- permanence to a particular affiliation or union membership or other forms of organization (or non-membership to such organizations) and ensures the collective bargaining rights of all workers.

Labor laws in Chile are basically contained in the Labor Code, notwithstanding other regulations such us, in ex. Act number 16.744 regarding labor accidents. The Labor Code regulates labor relations between employers and employees and, although it is a private law regulation, it contemplates private public law which cannot be waived by the parties, especially for the employee.

Except in the case of matters not regulated by special laws or if a rule specifically states it, the Labor Code does not apply to people working for the State (whether centralized or decentralized agencies), for the Legislature or the Judiciary, or to any public employees subject to special rules (but only to the extent of those special rules).

The rights contained in the labor laws cannot be waived while the employment contract remains in force. Thus, each employee enjoys certain minimum inalienable rights, and any attempt to cause an employee to waive such rights is unenforceable. Notwithstanding of the aforesaid waive prohibition, these rights can be complemented by the additional rights and benefits granted by

the employer in the work contract, its annexes or subsequent amendments. The general principles contained in the Labor Code state that employment has a social function and every person has the freedom to contract and engage in the lawful employment he/she chooses.

The Labor Code defines the subjects of labor relations, which are the employer and the employee. It says that the employer is any natural or legal person who uses the intellectual or material services of one or more persons under an employment contract. The employee is any person who renders intellectual or material services as a dependant and subordinate under an employment contract.

As these definitions show, the basic aspects that determine whether a relationship is ruled by labor laws or is that of an independent contractor are subordination and dependency. Therefore, it is important to be careful in drafting and negotiating contracts because although the parties may have agreed to be ruled by civil, common or commercial contractual relationships, since labor rights cannot be waived, a court may determine that it is in fact a work relationship and thus subject to the rights and obligations we will refer to herein.

Hiring

DISCRETIONARY TERMINATION VS. LEGAL TERMINATION CAUSE: Employment stability is a governing and one of the most important principles in Chilean Labor Law, hence most of the employment relationships are permanent, unless otherwise expressly stated in each labor contract and always with certain limitations.

As a consequence, the employment contract may be terminated only on any of the legal grounds set forth in articles 159, 160 and 161 of the Labor Code and the employee shall be entitled to receive compensation per years of services, depending upon the reason for termination.

According to article 159, the employment contract can end by mutual agreement, by resignation of the employee, by the death of the employee, expiration of the term agreed in the contract, the conclusion of the task or work for which he/she was hired and by acts of God. In these cases, there is no severance payment and the employer must only pay the sums due to the worker in relation to employment until the date of termination of the work relationship.

Also, according to article 161of the Labor Code, the employer may unilaterally terminate the contracts of executive and senior officers. Also, if other employees who are not executive and senior officers or employees of the employer's exclusive reliance can be unilaterally terminated invoking business needs (financial or other), which shall be duly and adequately justified and accredited by the employer and fully described in the respective letter of dismissal. The basic procedure for this kind of dismissal is as follows:

- a formal written notice of the termination must be delivered to the employee not less than thirty days in advance of the effective date of termination, unless compensation is paid in lieu of such notice equivalent to the last monthly salary earned by the employee, with a maximum limit of UF 90.

- a compensation for years of service shall also be paid if the work contract has been in force for a year or more, equivalent to the last salary earned by the employee for each year of service or fraction over six months, with a ceiling of 330 days (11 years of service). The salary used in this calculation is limited by law to UF 90 monthly (90 Unidades de Fomento, an indexation unit, of approximately US$ 3,950).

The employer may choose to pay this compensation on the basis of salary actually paid to the worker in the event that this exceeds the limits established by law for the calculation.

Finally, article 160 of the Labor Code provides grounds attributable to misconducts of the worker that can end the contract without the employer's obligation to pay compensation (only sums due to the worker in relation to employment until the date of termination of the work relationship), such as: lack of integrity in the performance of duties; sexual harassment behavior; physical aggression against the employer or other employees; insults against the employer; immoral behavior affecting the company; holding negotiations with employer's competitors prohibited by the employment contract; unjustified absences; untimely abandonment of duties; reckless acts or omissions affecting employee's safety, the company or other employees; material damage intentionally caused to the company and breach of the obligations under the contract.

If the cause alleged by the employer in the formal letter of dismissal is considered unfair or inapplicable, the employee has 60 days to file a suit against his/her employer (notwithstanding administrative remedies with 90 days limitation) and the severance payment and sums due to him can be increased by 30% to 100% if the court sustains the employee's claim. If the court deems that the dismissal was anti-union conduct, then the employee will be entitled to recover his job and be paid the salaries he could have received during the time he/she was separated from his/her job or be paid 3 to 11 monthly salaries, plus payments for unfair dismissal.

In any case, once the labor relationship is terminated a settlement agreement should be signed. Such labor settlement must be signed and ratified by the employee before a Notary Public or other Faith Minister, for which compliance certificate must be exhibited by the employer crediting that Social Security and health obligations had been duly paid by the employer during the labor relationship and compensations due to contract termination.

If the parties agree to pay in installments the resulting amounts for the worker corresponding to the settlement agreement, the payment must include interest and adjustments and the agreement cannot be authorized by a notary public, but by a Labor Inspector.

DISCRIMINATION: The Chilean Constitution forbids any form of discrimination not based on capacity or personal adaptation. Article 2 of the Labor Code states that any form of discrimination violates labor rules. Discrimination consists of arbitrary distinctions based on race, sex, color, age, marital status, union membership, religion, political ideas, nationality or social origin and transgresses the principles of labor laws. No employer can condition the hiring of an employee to those circumstances.

Nor can an employer condition the hiring of an employee to the absence of economic, financial, bank or commercial obligations unless the employee will have power of attorney to act on behalf of the employer that involves at least general managing powers; or he/she will be in charge of collecting, administrating or safekeeping funds or valuables of any nature.

Finally, it should be noted that the Labor Code provides a special procedure to protect workers from discriminatory conduct and any violation of their fundamental rights guaranteed by the Constitution - whether during the labor relationship or with occasion of the dismissal- which may result in the appliance of fines between 6 to 11 monthly salaries to the affected employee.

EMPLOYMENT APPLICATIONS: The above-mentioned rules must be taken into account in employment applications and interviews, particularly the rules relating to nondiscrimination. In general, there are no express rules regarding convictions, but it is not considered illegal to request a certificate of criminal record for a potential employee.

Some positions require the exclusion of those individuals who have been convicted for crimes punishable by imprisonment of more than three years and one day. Medical examinations may be required of applicants if a particular health condition is required in the position to be filled.

EMPLOYMENT CONTRACT: According to article 7 of the Labor Code, the individual employment contract is an agreement where the employer and employee are mutually obliged, the latter to render personal services as a dependent and subordinate, and the former to pay a salary for such services. Article 8 also stipulates that any rendering of services under such circumstances makes the existence of an employment contract presumable. This legal presumption, which admits refutal, is one of the most important ones of our labor regulation.

Article 9 of the aforesaid Code states that the employment contract is a consensual one, but a written counterpart must be signed within 15 days after the employee started work or 5 days, if he was hired for a specific task, work or job that will take less than 30 days. The absence of a written contract shall mean that the terms and conditions are the ones declared by employee, and the employer will be subject to a fine. Article 10 of the law specifically describes the basic information that the contract should contain, such as date and place of the contract, identification of the parties, including the employee's nationality and date of birth, nature of the job, place where it must be done, salary and payment terms, work day and term of the contract.

ADVERTISING/RECRUITMENT: Any job offer made by any means, directly or through a third party, is considered in violation of labor rules if special discriminatory requirements are imposed regarding race, sex, color, age, marital status, union membership, religion, political ideas, nationality or social origin, unless it is related to the capacity of the people to perform their job.

EMPLOYMENT REFERENCES/BACKGROUND INVESTIGATIONS: There is no prohibition for employers to verify the references provided by a job applicant, being common practice to request for references and review of the same.

Compensation and benefits

MINIMUM WAGE: According to article 41 of the Code, wage or salary is any sum of money or kind appraisable in money that the employee receives for his work, excluding meal, transportation and travel allowances, family benefits and others. Article 42 states that it includes salary, overtime payments, commissions, and profit share.

The monthly salary that is agreed upon in the employment contract cannot be lower than the minimum salary established by law, which is updated yearly. The wages for part-time jobs cannot be lower than the minimum applicable (which is annually updated by law), calculated proportional to the normal workday. A percentage of company's annual profits must be distributed among employees in one of the following ways: (i) 30% of net taxable profits, with certain adjustments; or (ii) 25% of the annual salary, with a maximum of 4.75 minimum salaries per employee. The employer is free to decide which alternative to use every year.

The parties may agree to additional benefits to be provided to the employee above the legal minimum, which may or may not be considered as some of the legal benefits mentioned above. Notwithstanding, any benefits received by the employee might be considered as acquired rights even if not written in the employment contract.

MINIMUM AGE: Anyone over 18 years olds can celebrate any kind of employment contract, without requiring authorization. However, the Labour Code authorizes exceptionally children under 18 and over 15 to enter into employment contracts only for rendering light services which does not harm their health and development provided the express permission of a parent or, in their absence, their legal guardians that have taken over the child.

These employment contracts present some differences with ordinary employment contracts, such as prohibition to work in nightclubs or places where alcoholic beverages are sold or can work at night. Only in duly qualified cases, with the permission of their respective legal representative or the Family Court, may be permitted to under fifteen who celebrate employment contract with persons or entities engaged in theater, film , radio , television , circus or other similar activities.

SALARY PAYMENTS: Salaries shall be paid in Chilean currency. However, expatriate employees may be paid in foreign currency. According to article 44 of the Code, the salary can be set according to units of time, days, two weeks or month, or by piece, unit or job. In any case, the unit of time cannot exceed one month.

CHILD LABOR: Between the ages of 15 and 18, an employee needs his parents' authorization to work (maximum of 30 hours per month) and he cannot work in cabarets or places where alcoholic beverages are sold nor work at night. Persons between the ages of 15 and 16 can work only if they have the above-mentioned authorization, after finishing schoolwork and provided it is light work that does not affect their health.

HEALTH INSURANCE AND SOCIAL SECURITY BENEFITS: Employees must finance their retirement pension through the contribution of the 11,14% to the 11,54% of their monthly salary, which is to be retained by the employer. Men may retire at the age of 65 and women at the age of 60. Contributions are made to pension funds managed by private entities (AFP), subject to control by government superintendence.

Death and disability pensions are financed with retirement funds and insurance plans. These contributions are paid to the same pension fund to which retirement contributions are made. Regarding health benefits, employees may choose between a public health system, financed by a contribution of 7% of the employee's salary, or a private system under which the employee affiliates to a private health insurance company (ISAPRE). The minimum contribution is similar to that of the public health system.

All these social security benefits are withheld by employers from employees' salary and paid to the corresponding entities. Such contributions are a tax deduction for employees and are calculated against a salary that is limited to 66 Unidades de Fomento (approx. US$ 2,939). However, the employee can agree to deposit an amount above the legal limit.

Work accident and occupational disease benefits are financed by employers through a basic contribution equivalent to 0.95% of monthly salaries. Expatriates who have a professional or technical degree may obtain a waiver of social security contributions, provided they are enrolled abroad in a social security system that provides benefits at least similar to those existing in Chile. The exemption does not include work accident insurance contributions. For said exemption to operate, they will need a certificate from the social security institution abroad and placing on record in the contract or an annex that they have chosen that option.

WORKDAY, WORK WEEK AND OVERTIME: Article 22 of the Labor Code establishes a general maximum work week of 45 hours that cannot be divided into less than 5 or more than 6 days. The work day cannot exceed 10 hours. Special rules apply to special jobs such as crew on fishing ships that do not involve continuous work during the day, or drivers.

A maximum of two hours per day of overtime can be agreed, and that time must be paid with a 50% surcharge. The agreement must be in writing and for no longer than 3 months. The purpose must be solely to attend to temporary needs of the company, and may therefore not be contracted on a permanent basis.

Attendance and completion of work schedules and shifts must be controlled by means of a special book or clock. The work day must be divided in two in order to allow at least 30 minutes for lunch. This time will not be considered time worked. The above-mentioned time limit is not applicable to top levels of the organization, such as vice-presidents, managers, executives, administrators and others who render similar services or work without direct superior supervision.

Time off, vacation, leaves of absence

DAYS OFF: Every Sunday and holiday must be a day off, except for activities for which there is special authorization to work on those days. The work shift or work week can be divided up to include Sundays and holidays only for certain specific jobs. A shift can run for two continuous weeks only for jobs distant from urban areas. The companies expressly authorized to work on Sundays and holidays must give the employee a day off in compensation for every Sunday and/or holiday worked, but at least two days off in the respective month must be granted on Sunday. In case that more than one day off is accumulated in the same week, the parties can agree to payment of the days off that exceed one per week. Payment cannot be less than the overtime salary (50% surcharge).

VACATIONS: Employees with more than one year in the company have the right to a paid holiday of fifteen working days per year. Ten of these days must be taken consecutively, and the remaining five as agreed by the parties. Vacations can be accumulated only for up to two consecutive years. The employer can only compensate vacation time by a cash payment when the work relationship ends.

LEAVES OF ABSENCE: In case of illness or accident, the employee is entitled to a paid leave for the period indicated in the corresponding medical certificate. Pregnant women are entitled to six weeks of paid leave before delivery and 24 or 30 weeks of paid leave after. (see letter F, maternity protection). In both cases, the employment contract remains in force, but the employer suspends payment of salary and the employee instead receives compensation from the health insurance company. As a general rule, employees cannot be terminated while their leave of absence is in force.

DAY CARE AND CHILD BENEFITS: If a child younger than 1 year needs attention at home due to a sickness of concern, the working mother or father has the right to request a special leave of absence, based on the corresponding medical certificate. Any company employing more than 20 women of any age or marital status must have a special place where mothers can feed and leave their children younger than 2 years old. The company can instead pay the expenses of

day care directly to the child care service chosen by the mother. Mothers breast feeding their babies, have the right to use an hour of their work shift to feed them.

OCCUPATIONAL HEALTH AND SAFETY: The Labor Code imposes upon the employer the obligation to observe health and safety standards in the workplace, to implant measures to prevent accidents, and others alike. Every company, establishment, job or economic unit, whether commercial or industrial, that has more than 10 employees, needs to adopt Internal Health, Safety and Hygiene Regulations that must set down the prohibitions and obligations imposed upon employees in regard to their jobs, permanence and life in the respective company or establishment. Every employer must also pay special work accident and occupational disease insurance for each employee. The amount of the payment depends on the risks associated with the job, and the basic rate is 0.95% of the salary.

MATERNITY PROTECTION: In Chile, the working woman is specially protected, by the mere fact of her motherhood, without requiring prior authorization or any other formality. The only requirement is that the employee must present a medical certificate attesting to the pregnancy and formalities associated with a medical license for the payment of leave periods that the law provides. The maternity leave protects working women from the beginning of her pregnancy until one year after the expiration of the postnatal leave. This protection prevents the employer from terminating the employment contract during this period, except for certain causes and with the court previous approval.

There are also pre- natal and post- natal rest periods. The first one consists of a resting period prior to the birth, which lasts six weeks before the delivery. The doctor or matron in charge of the care of women determines the date of birth for possible effects of prenatal leave. The second leave (post- natal) consists of a rest period after the birth which lasts for 12 weeks.

Since October 2011, entered into force in Chile postnatal parental leave, which lasts for 12 weeks after the regular postnatal period (12 weeks) has ended, with a subsidy ceiling of 66 UF with gross. If the employee exercises the right of reinstatement for half a day, the postnatal parental is extended to 18 weeks from the completion of regular postnatal leave.

If both parents are employees either of them, at the option of the mother, could enjoy the postnatal parental leave, from its seventh week, for the number of weeks that the mother indicates. Therefore, postnatal parental permission may be entitled to the father, with a cap of 6 weeks if the mother chooses not to be reinstated half day, or for 12 weeks if she chooses to do so.

GROUNDS FOR TERMINATION: See previous paragraph about hiring and discretionary termination vs. legal termination cause.

Nationality and work visa

NATIONALITY: If a company has more than 25 employees, 85% must be Chilean. If it has less than 25 employees, there is no limitation. The calculation of this percentage must consider all of the company's employees in the country and exclude technical specialists who cannot be replaced by Chilean personnel. An employee is considered Chilean if he/she has a Chilean spouse or children or is a widow or widower of a Chilean or has lived in the country for more than 5 years.

WORK VISA: In order to work in Chile, expatriates require a visa subject to an employment contract. For such purposes, an application must be filed before the Ministry of Foreign Affairs. The employee must register with the International Police and obtain a foreigner's identity card and a taxpayer identity card.

Intellectual property/fair competition/non-competition covenants

INTELLECTUAL PROPERTY: Chilean copyright law (Law Number 17.336 on Intellectual Property) provides in its Article 8, second paragraph, that in the case of computer programs, their copyright holders will be the natural or legal persons whose employees have developed them in performing their regular duties, unless otherwise stipulated in writing.

It states furthermore in its third paragraph that with respect to computer programs developed on behalf of a third party, their copyrights will be deemed as assigned to said third party, unless otherwise stipulated in writing.

Other rules regarding intellectual property must be expressly agreed upon by the parties, respecting the rules of copyright and intellectual property (regulated by Chilean law N º 17.336 on intellectual property and N º 19.039 on industrial property). Rules on intellectual property law are also protected by penalizing conducts violating said rules in the Unfair Competition Law which protects competitors, consumers and, in general, any person whose legitimate interests are affected by an act of unfair competition (Law No. 20.169).

NON-COMPETITION COVENANTS/ NO SOLICITATION OF EMPLOYEES AND CUSTOMERS: There are no express rules regarding the issue, but such covenants are not expressly prohibited and are usually set down in employment contracts. Nevertheless, their enforcement may be limited by antitrust laws and constitutional rights that grant the freedom to work, according to the specific circumstances of each particular case. In any case, a request like this is valid only during the work relationship, as later on it may be deemed as a threat to freedom to work, unless there is some financial compensation during the term of this covenant.

Personnel administration

REQUIRED POSTINGS: Except for the cases mentioned in the paragraphs above and for the Internal Health, Hygiene and Safety Regulations, as a general rule the law does not require notices to the employees to be posted or published.

REQUIRED TRAINING: Labor law does not mandate employment-related training for employees or managers, except for the specific degrees required to perform certain jobs (architects, lawyers, physicians, etc.). Nevertheless, there are various tax regulations and incentives to encourage employers to pay for employee training.

PERSONNEL RECORDS: The employer must keep folders with the data and information of his workers comprising employment documents such as employment contracts, receipts for payment of salaries and pension contributions, and vacations, among others. The law allows this kind of information to be kept by the employer on a centralized basis, off the Company's premises.

MEALS ANS REST PERIODS: See previous paragraph about workday, work week and overtime.

PAYMENT UPON DISCHARGE OR RESIGNATION: An employee whose employment is terminated must be paid all wages due and owing, including all accrued and unused vacation time, and legal compensations, as appropriate in each case. This must be done simultaneous to signature of the discharge.

EMPLOYMENT REFERENCES: As has been previously mentioned, there are no rules regarding this matter. Nevertheless, it is common practice to request and give employment references.

RECORD KEEPING: Law No. 19,628 governs the treatment that public bodies and individuals give to personal data that are stored in registers or databases, whether electronic or not. To process personal data, the individual should be authorized by: (i) Law N ° 19.628 (data issuing or collected from publicly available sources or processed by a public body), (ii) another law, or (iii) if the owner of the data expressly agrees to it (expressly, informed and in writing). Likewise, the purpose of said treatment must be permitted by law, if the information is of a commercial, financial, banking or economic nature, or is included in listings stating only the activity, occupation, education, degrees, address and date of birth.

This authorization is not necessary if the company needs the data for internal reasons. However, the law requires employers to maintain secrecy of all information and worker's private data obtained during the employment relationship. Bear in mind that an act is currently pending in Congress regarding protection of personal data, which among other things amends in which cases the consent of the employee is necessary to use such data. Besides, a new regulation regarding international transfer of personal data is to be included in the same act.

Privacy

Article 5 of the Labor Code expressly states that employers must exercise their rights within the limits established by the Constitution, specially observing the rights and respect for privacy of the workers.

DRUG TESTING: Although the parties may agree in the Work Contract that the Employer may conduct procedures for alcohol and drugs prevention, it is usual and recommended that everything related to these matters is duly established in the Internal Health, Safety and Hygiene Regulations. Although there are no specific laws on the subject, the labor authority (Labor Inspection) has determined that drug testing and alcohol consumption controls can only be carried out to the extent that they respect as territorial and temporal limits, the times the employee remains within the Company. Also, the employer must take care that these drug tests are conducted randomly (to avoid complaints of discrimination or harassment) and their results should be kept respecting the privacy of the employee. Therefore, the results of the tests carried out should be kept and treated as confidential information in accordance with the provisions of Act 19,628.

Consequently, the employer may not intervene in any conduct that may be considered as part of the worker's private life. Additionally, procedures to take drug and alcohol tests must be done respecting the dignity, privacy and honor of the worker and with impartiality, in terms of being applicable to all workers without distinction, or to part of them, randomly chosen. Te results of the controls must be kept and treated as confidential in accordance with the provisions of Law 19.628.

OFF-DUTY CONDUCT: Employers may not discharge or discriminate against an employee for engaging in lawful conduct outside of the workplace or after the workday. There are no specific rules regarding medical information, searches, lie detector tests, fingerprinting, surveillance and monitoring.

EMPLOYEE INJURIES/WORKER COMPESANTION: See previous paragraph about occupational health and safety.

Unemployment

Chile has an unemployment insurance system. This insurance establishes benefits for employees who lose their job, and it is financed by the employee, by the employer and by the Government, depending on the duration and kind of contract. This law entered into effect October 1, 2002.

APPLICABILITY: This insurance is applicable to workers who meet the two requirements below:

- He/she must be a worker under employment contract.
- The worker must be subject to the Labor Code.

EMPLOYEES EXCLUDED FROM THE INSURANCE: The insurance does not apply to the following types of employment:

- Servants (working in a private residence)
- Employees hired under an apprenticeship agreement
- Employees under 18 years of age
- Independent workers.
- Pensioners receiving a total disability or old age pension

REPORTING OBLIGATION: The employer must communicate the commencement or termination of the employee's services to the Corporation Manager of the Unemployment Insurance within 15 days of the occurrence. A breach of this duty will be fined in the amount of 0.5 UF (US$ 20 approximately).

Collective Labor Relations and Collective Bargaining

The Labor Code recognizes the right of employees to form unions, which may in turn join federations, confederations and headquarters. The law has ruled in depth on all the requirements, benefits, etc. of these unions and strongly punishes anti-union practices within the company. The law has set down rules on collective bargaining and states that it is the procedure whereby one or more employers negotiate common working and salary terms for a fixed period of time with one or more unions or employee groups. The collective bargaining can include more than one company, but in such case, all the parties must agree on it (especially the employers).

A company must be in business for at least one year before there can be any collective bargaining. If the employer refuses to accept the collective bargaining agreement proposed by the employees, they may invoke their constitutional right to strike. Both collective bargaining and the right to strike are ruled in depth in the Code, and, under certain circumstances, the company may replace the employees during the strike.

Collective bargaining agreements cannot last less than 2 and no more than 4 years.
An impasse in collective bargaining can be submitted to mediation or arbitration if the parties decide to do so in order to try to reach an agreement.

Immunity

conditions, positions in the unions or maternity, the law considers a special immunity by which their employment contract cannot be terminated unless a court authorizes it. The dismissal does not take effect until the authorization is granted, unless the court authorizes a provisional separation during the trial. In this case, if the authorization is denied, the employee must be reincorporated to his job and he is entitled to receive salary for the time he was separated from his job. The following employees enjoy this privilege:

- women, from the time they become pregnant to one year after the maternity leave ends;
- employees who participated in the creation of a union, from 10 days before the respective meeting until 30 days after it was held (it cannot last more than 30 days);
- candidates to a position in the union, as of the time they report the date of the election to such election;
- members of the board of the union, from the time they are elected to six months after their position ends;
- the employees' representative on the Hygiene and Safety Committee, upon election;
- employees in collective bargaining, from 10 days before the presentation of the collective contract proposal to 30 days after it was signed or until the parties are notified of the arbitral award;
- employees who have a leave of absence for sickness, work accident or occupational disease, while it lasts, except if the termination is based on one of the causes established in article 160 of the Labor Code.

Employers must also maintain the job of any employees called to serve in the army, for the entire period of the recruitment to 1 month after they are discharged.

Settlement (resolution) of labor disputes

The Labor Code establishes the Labour Courts are the only tribunals with jurisdiction to rule any dispute arising between employer and employee. The procedure generally establishes a written claim and rebuttal, a preliminary hearing in which is offered and the judge proposes conciliation bases; a trial hearing itself, in which the evidence is redered before the judge.

Chilean labor law establishes as the only remedies against a ruling a general annulment and ruling unification. Labour disputes may not be submitted to arbitration, except in certain cases of collective bargaining, with certain limitations

Labor Harassment / Mobbing

In Chile, the image of labor harassment has been recently defined by law published on the official gazette on August 8 2012. Labor harassment or mobbing -a term known this type of aggression- is defined as any conduct that constitutes harassment or repeated aggression exercised by the employer or by one or more workers, against one or more other employees, by any means, and that results for those affected or their impairment, abuse or humiliation, or that threaten or harm their employment status or employment opportunities.

The fact that the employer incurs in mobbing behaviors entitles the employee to sue his constructive dismissal before the Courts of Justice.

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→ Czech Republic

Established in 2010 BÁNYAIOVÁ VOŽEHOVÁ, S.R.O., ADVOKÁTNÍ KANCELÁŘ, has the flexibility of a boutique firm, combined with the advantage that most of its lawyers have extensive experience from large global law firms. This allows us to offer our clients the best combination of the understanding of the local market and a global approach. We provide high quality complex legal services to both foreign and Czech legal entities as well as individuals at reasonable costs. We are most forthcoming to our clients and always try to find a solution that best fits the needs of the client. We are members of a unique network of law firms called E-IURE which is based on combination of high quality law firms and trustful relationship among them.

Practice areas

Our team is lead by partners with extensive and long-time practice in international law firms who have vast experience with working on projects and transactions reaching to various areas of law. We provide legal service mainly in the following areas:

- Mergers and acquisitions
- Real Estate
- Competition Law
- Bankruptcy
- Banking and finance
- Foreign investment/joint ventures
- Commercial and corporate law
- Dispute Resolution
- Labor Law
- Capital markets and securities
- IP and IT

The Czech legal system is expecting major changes in 2014. As of 1 January of 2014, the whole Czech private law is expected to be rewritten as more than two hundred regulations shall be cancelled and substituted by the new Civil Code, Act on Business Corporations and related implementing regulations.

The change being so fundamental has its supporters and opponents. The Czech Republic is awaiting extraordinary elections in autumn 2013 and it cannot be completely excluded that the winner might be prone to postpone the effectiveness of the new regulations, or even discard it completely. At the moment of drafting of this compendium, it is not sure what the Czech private law will look like in 2014. The main acts, i.e. the Civil Code and the Act on Business Corporations are adopted and should become effective as of 1 January 2014; however, many related implementing regulations including tax amendments have not been approved yet and may not be before 2014. The outline of the Czech law below, therefore, summarizes only the bases of the regulation which should remain unchanged even despite the fundamental changes ahead.

→ Corporate Law

Types of Companies and Liability of Shareholders

Under Czech law, general partnership, limited partnership, limited liability company, joint-stock company, European Company and European Economic Interest Grouping are considered commercial companies or corporations. Besides these, the Czech law knows also cooperatives as additional legal form.

All companies and cooperatives are registered in the Commercial Register held by regional courts. Individual entrepreneurs may also be registered in the Commercial Register, otherwise if they hold a trade license, they are registered in the Trade Register.

JOINT-STOCK COMPANY (in Czech: *akciová společnost*): The joint-stock company is a separate legal entity the share capital of which is apportioned to certain number of shares. Shareholders are not liable for liabilities of the company. The statutory minimum share capital is € 80.000. At least 30% of the share capital must be paid in by the date of application for registration in the commercial register. Joint-stock company is the corporate form adopted by larger companies with the major advantage that its shares can be transferred rather easily and, theoretically, be listed on a stock exchange, making it relatively easy to raise capital from the public.

LIMITED LIABILITY COMPANY (in Czech: *společnost s ručením omezeným*): The second form of corporations under Czech law is the limited liability company, which is the corporate entity most commonly used for enterprises in the Czech Republic. The minimum share capital of a limited liability company should be lowered to CZK 1.00, i.e. € 0.04, as of 2014 (from CZK 200,000 applicable in 2013). The liability of shareholders for liabilities of the company is limited to the amount of the aggregate of their unpaid contributions according to the state of registration of contributions payment in the Commercial Register at the moment they have been invited by the creditor to pay. It is easier to establish and administer than the joint-stock company, and its bylaws may more easily be adapted to the requirements of the shareholders.

Local and foreign corporations and partnerships as well as individuals may become shareholders of a limited liability company. It is established by executing a memorandum of association or a foundation deed before a notary. The memorandum of association needs to include the essentials set out in the applicable regulations. The limited liability company is established by registration into the Commercial Register, where the memorandum of association becomes part of the Collection of Documents which is publicly accessible, mostly even online.

GENERAL PARTNERSHIP (in Czech: *veřejná obchodní společnost*): General partnership is a company of at least two persons who participate in its business and administration of its assets and are liable jointly and severally for its liabilities.

LIMITED PARTNERSHIP (in Czech: *komanditní společnost*): Limited partnership is a company in which at least one partner is fully liable for all debts and at least one partner whose liability is limited to the amount of its unpaid contribution.

COOPERATIVE (in Czech: *družstvo*): A cooperative is an association of unlimited number of persons established to provide mutual support for its members or third parties or for business purposes. Cooperatives are not so often used for business purposes and if they are, it is in traditional sectors such as food industry. A special type of cooperative is a housing cooperative established to provide for housing needs of its members.

BRANCHES: A foreign company not interested in doing business through a separate Czech legal entity may establish a branch. The branch has to be registered in the Commercial Register. Although contracts may be signed in its name, a branch is not a separate legal entity. For registration the court will request evidence of the existence of the foreign company.

Business may be also conducted through a silent partnership or a civil-law association which, however, are not considered separate legal entities.

Share Capital

As mentioned above, the statutory minimum share capital is € 0.04 for the limited liability company and € 80.000 for the joint-stock company. It has to be subscribed in full. Contributions can be made in cash or in kind. The share capital of a limited liability company is divided into ownership interests which are not issued in the form of certificates. Each shareholder holds a share corresponding to the amount of the original contribution, if not agreed otherwise. A share in a limited liability company may be transferred by assignment or inheritance. The contractual transfer can be made conditional upon the consent of the General Meeting of the company.

The share capital of a joint-stock company is divided into shares issued in the form of certificates. Shares may not be divided. They may be issued as bearer shares, which are owned

simply by the person who holds them, or registered shares, in which case the name of the owner is registered in the company's share register. Bearer shares can, however, only be issued as book-entry securities. Additionally, shares can be issued as ordinary shares or preferred shares. Bearer shares enjoy free transferability. The corporation is not allowed to restrict in any way their transfer, whereas registered shares might be bound by stipulations of the statutes providing that a transfer requires the consent of the company or its body.

Corporate Governance

Shareholders decisions are made through shareholder resolutions passed in General Meetings in case of joint-stock companies and limited liability companies and partnersmeetings in case of partnerships. The formal bodies of a joint-stock company are the General Meeting, the Board of Directors and the Supervisory Board. An individual cannot simultaneously be a member of both the Board of Directors and the Supervisory Board. The General Meeting is the supreme body of a joint-stock company. It must be held at least annually no later than 6 months from the end of the company's financial year. In cases of a sole-shareholder, it fully acts in the capacity of the General Meeting.

A simple majority vote is sufficient for most decisions, e.g. when electing and reappointing members of the Board of Directors and the Supervisory Board, as well as approving financial statements and profit allocations, unless mandatory law or the statutes require a greater majority as may be the case for amendments to the bylaws or increases or decreases in capital, or change of the corporate form.

The statutory body of a joint-stock company is the Board of Directors. Members of the Board are elected by the General Meeting, unless the company's by-laws entrust this power to the Supervisory Board. The Board oversees the day-to-day operations of the company and is responsible for maintaining proper accounting and reporting procedures. Board members act and sign on behalf of the company, within the guidelines approved by the General Meeting or as stated in the statutes.

A joint-stock company must have a Supervisory Board elected by the General Meeting. The Supervisory Board monitors the activities of the Board of Directors and the performance of the company, as well as reviews the financial statements and the proposed allocation of profits or compensation for losses.

The system of Board of Directors and Supervisory Board is designated as the dualistic system and has been the only possible until recently. The new Act on Business Corporation that is to become effective as of 1 January 2014 introduces also the monistic structure with a Managing Director and the statutory body and a Management Board as the supervisory body which, however, determines the basic goals of business management. It is also possible to concentrate the powers of the two bodies into one person.

The General Meeting is also the supreme statutory body of a limited liability company and possesses rights similar to those of the General Meeting of a joint-stock company. The General Meeting must be held at least annually no later than 6 months from the end of the company's financial year. Again, in cases of a sole-shareholder, it fully acts in the capacity of the General Meeting. The General Meeting appoints one or more Executives, who are the statutory body of the company. No Board of Directors is required. A Supervisory Board may be established for a limited liability company, but it is not mandatory. If established, it must have at least three members.

→ Real Estate Law

Types of Owernship

A natural or legal person may be the sole owner of real estate or several owners may hold the real estate jointly. In case of general co-ownership, each co-owner owns an ideal (not physical) part of the real estate. Under Czech law, each ideal part of real estate is treated as if it were owned by a sole owner, so the co-owner can dispose with its share, i.e. can sell or encumber it without the consent of other co-owners. However, the owner is limited by the statutory pre-emptive right of other co-owners. All decisions related to disposal of the real estate as a whole must be made jointly by all co-owners. In questions of use and administration, the co-owners decide by majority.

Special cases of joint ownership are the joint ownership of spouses and flat co-ownership. Each of the spouses owns the whole real property in joint co-ownership, but in case of extraordinary disposals, he or she should obtain the consent of the other spouse with such disposal. Flat co-ownership is a special legal institute which allows for ownership of separate parts of buildings. The ownership of a building is usually transformed to flat co-ownership by a legal act of the owner or co-owners. The building is then divided into two types of premises - units (which may be either of residential or non-residential nature) and so called common premises which include all bearing structures, windows, balconies, etc. A natural or legal person that becomes owner of a unit, becomes at the same time a co-owner of the common premises and of the plot underneath the building. The share on the common premises and on the plot is inseparably connected with the ownership of the unit, i.e. it cannot be transferred separately.

Property Register

In order to provide publicity to legal relations related to real estate, the Property Register discloses main legal relationships concerning land and certain constructions. Property Register is kept by cadastral authorities. Every person is entitled to inspect the Property Register; the Property Register is even, in a limited extent, available online free of charge on www.cuzk.cz.

The Property Register is divided into sections by cadastral areas and each owner has its own ownership portfolio in the Property Register.

An ownership portfolio is made up of several sections: Section A provides information about the owner, Section B provides information on the registered real estate, in Section B1 other rights in the benefit of the real estate are registered (such as easements), Section C provides information about liens on the real properties such as mortgages or other encumbrances (e.g. easements) or limitations in disposition, Section D may contain other relevant information, usually not directly related to ownership title and its limitations, Section E lists the acquisition titles based on which the ownership title to the real properties was registered to the Property Register, Section F provides information on the quality of agricultural land. Units are registered on two ownership portfolios. One is a separate ownership portfolio of the unit and one of the real property it forms part of.

Any change to the legal relations concerning real estate registered in the Property Register is marked in the relevant ownership portfolio on the day following the day the relevant application was delivered to the relevant cadastral authority to assure the highest possible publicity. The tendency is to protect those who acquire any right relying on the contents of the Property Register; however the real owner has its ways to protect its ownership right against fraud.

Transfer

Real estate properties can only be transferred by written agreements. The signatures must be on the same document and should be notarized (otherwise, the competent cadastral authority will have to verify the authenticity of the signatures personally). If the property is registered in the Property Register, the transfer becomes effective by the registration in the Property Register. Such registration is made based on application of any of the parties to the contract. The registration is subject to a fee.

Payment of the purchase price is usually secured through escrow (notarial, bank or with an advocate), the monies being released after registration. Transfer of real estate is subject to a 4% transfer tax.

Mortgages and Charges

Mortgages or liens are rights in rem over real estate securing payment to a creditor (usually, but not exclusively a bank). The creditor of a lien on real property is, in case of default with payment by the debtor, entitled to claim compulsory enforcement through sale of the real property, usually in public auction. Establishing a mortgage over real property requires the same requisites as its transfer. The lien expires once the secured receivable is repaid. Real Properties may also be charged by pre-emptive rights obliging the owner to make the first offer for sale to the entitled party from the pre-emptive right.

Easements, on the other hand, oblige the owner of the encumbered real property to suffer certain action of the entitled party or even provide certain performance. Easements can be established in favor of a real property or a person (natural or legal).

Restrictions on Acquisition

Under Czech law, there are no more distinctions between Czech and foreign buyers of real estate. Any legal or natural person is entitled to buy real estate. Restrictions on transfer may be imposed either by agreement of the parties (i.e. a pre-emptive right), by applicable legal regulations (pre-emptive rights of co-owners or of a flat tenant in case of first transfer, etc.) or decisions of competent bodies (preliminary injunction of a court, commencement of enforcement in execution against a debtor, etc.)

Legal Protection for Buyers and Sellers

Czech law gives no special protection to buyers or sellers of real properties. Those involved in property transactions will usually use a solicitor to represent their interests. It is the job of the buyer's solicitor to ensure that the property being bought is free from undisclosed restrictions or obligations and that it is validly transferred.

Restrictions on Development

To allow for development, the land must be designated for construction in the applicable zoning plan. Zoning plans are prepared by local authorities and specify how different parts of their areas are to be used and developed. Before land can be developed, obtaining planning and building permit from the building authority under the corresponding public law regulations is required. Some types of minor development are permitted without planning permit. Obtaining the permits may be complicated or prolonged by owners of neighboring plots as they often misuse the protection of their rights provided by construction laws.

Agricultural land is subject to special protection and its development requires special permit and payment of a fee.

Leases

Czech law distinguishes between leases for private housing accommodation (flat leases) and leases for business purposes. Regulation of flat leases is highly protective on tenants. The possibilities of landlords to terminate the leases are limited. The housing market is deformed by a high number of lease agreements concluded for indefinite period of time in the past without any indexation clause. The civil code now includes a procedure how to achieve the increase of the rent to market level.

On the other hand, terms of lease contracts for business premises may differ from the provisions stipulated by law. In both cases, proper specification of the subject of lease is essential for the validity of the contract.

→ Labor Law

Employment and other Labor Law Contracts

An employee can work for an employer either based on an employment contract or based on agreements for work performed outside employment, the latter being only for limited volume of time (max. half the standard working hours in average). Any dependent work above the scope of half the standard working hours in average must be performed within an employment relationship based on an employment contract which must be executed in writing, but the lack of the written form cannot be interpreted in detriment of the employee. Employment for unlimited period of time is preferred; possibilities of temporary contracts are limited. Generally, the temporary employment should not exceed three years and can be repeated only twice. Probationary period of up to three months can be agreed.

Employment termination

Employment can be terminated by mutual consent, by notice, by immediate termination and by termination in the probation period. The grounds for unilateral termination by employer are limited to those listed in the Labor Code. Certain termination grounds entitle the employee to receive severance pay up to three times his/her average monthly salary depending on the duration of his/her employment with the employer. In case of termination by notice, the employment terminates after expiry of two-month (or longer, if agreed) notice period which commences running on the first day of calendar month following the month in which termination notice was served upon the employee.

Stricter conditions apply to collective dismissals. Special conditions apply to employees holding specific positions in upper management. If agreed in the employment contract, they may be recalled from the position/resign at any time without any reason. However, their employment does not terminate by recall/resignation, and subsequently they must be either offered another job position, or their employment relationship can be terminated by notice for redundancy reasons.

Collective Bargaining Agreements

Collective bargaining is carried out on a national or industry-wide level as well as on a regional or local level. Collective Baragaining agreements apply only to those employers who are members of the respective employer organization and to those employees on behalf of which the trade union concluded the agreement.

Works Councils

Works councils can be formed in all companies and have from 3 to 15 members. The members are elected for three years and need not be union members. The rights of the works council range from information rights to codetermination rights in organizational, social and other matters.

Wages, Salaries, Bonuses, Working Hours, Holiday and Vacation

Wages of non-governmental employees may be agreed in the employment contract or determined by the employer. The wages must always respect the minimum wage determined by governmental regulation (currently approx. EUR 340 per month). All discrimination in pay is prohibited. Besides the basic wages, the employee may become entitled to different premiums for overtime work, work on holiday, during weekend, at night or in difficult conditions.

The maximum work-week is 40 hours. A compulsory rest period of at least 0.5 hours applies to employees working over 6 hours (4.5 hours for young employees). These breaks are not included in working hours.

Overtime work may be ordered by the employer up to 8 hours a week and 150 hours a year (more can be agreed). In case of overtime work, the employee is entitled to compensation amounting to his/her average earnings, plus a premium payment of 25% of his/her average earnings; alternatively, employer and employee may agree that the employee will be provided with time off instead of the premium. Wages of managing employees may be agreed already reflecting the potential overtime work (then no premium is paid).

Employers must provide four weeks of annual paid holiday as a minimum, five to governmental employees. Collective bargaining agreements as well as individual employment contracts usually increase the number of vacation days (often up to 25 days or more per year). An employee is entitled to receive vacation pay equal to his or her average salary during vacation. The Czech Republic has the following public holidays: New Year's Day (January 1), Easter Monday, Labor Day (May 1), Liberation Day (May 8), Cyril & Methodius Day (5 July), Jan Hus Day (6 July), Statehood Day (September 28), Czechoslovak Independence Day (October 28), Struggle for Freedom Day (November 17), Christmas (December 24-26).

Health and Social Security

The Czech Republic has a compulsory social security system that provides for retirement pensions, contribution to state employment policy and illness allowances. Health insurance is paid separately. All the contributions are paid partly by the employer and partly by the employee. The employer withholds the employee's share of the contribution from his wages.

→ Tax Law

Czech Republic's tax system is broadly based upon other taxation systems in the EU. The regulations were drawn up at the beginning of 1990's and came into force in 1993. Value-added tax and excise duties were adjusted in 2004, upon Czech Republic's EU accession. Tax laws are subject to frequent amendments. The vast amendments of Czech private law should also generate amendments of the tax system, however, the amendments have not been passed yet and the upcoming elections can markedly affect their final shape.

INCOME TAXES

Income taxes for both individuals and legal entities are regulated by Act no. 586/1992 Coll., as amended. Income tax is levied on the worldwide income of Czech residents and on foreign entities whose place of management/control is located in the Czech Republic. For non-resident entities, only income which is generated in the Czech Republic is subject to tax.

Individual taxes

Individuals who are physically present in the Czech Republic for 183 days or more in a calendar year or who have established a permanent home in the Czech Republic are treated as tax residents and are generally subject to taxation on their world-wide income in the Czech Republic. Individuals who spend less than 183 days in a calendar year in the Czech Republic and do not have a permanent residence in the Czech Republic are treated as tax non-residents. They are liable to taxation on their Czech-source income, however, only subject to the provisions of the respective double taxation treaty.

The flat tax rate of 15% was applicable for the tax period of 2013 and will probably remain for 2014. However, voices calling for progressive tax are heard on the political scene. The following types of income are subject to individual income tax:

- INCOME FROM DEPENDANT ACTIVITIES AND FUNCTIONAL BENEFITS - includes all income arising from employment, membership relationship, or a similar kind of relationship in which the taxpayer is obliged to follow his employer's instructions and income paid to executive directors and members of statutory bodies of entities. In addition to the basic salary, cash allowances and bonuses, employment income also includes non-cash benefits provided to employees (e.g. company cars used for private purposes).

- INCOME FROM BUSINESS ACTIVITIES AND OTHER SELF-EMPLOYMENT - consists of income from business activities and professional services, less deductible expenses. Different lump-sum expenses can be deducted for defined groups of individuals;

- CAPITAL GAINS - Capital gains are defined as the difference between the proceeds from the sale of an item and the cost of its acquisition plus any improvements. In the Czech Republic, capital gains are taxed as ordinary income. The sale of securities is exempt from taxation if the shares have been held for a period of more than 6 months and the individual had less than a 5% direct share in the company in the 24 months preceding the sale. The sale of other securities is exempt if the holding period exceeds five years;

- INCOME FROM LEASES;
- OTHER INCOME.

The taxable period for personal income tax purposes is the calendar year. Personal income tax returns must generally be filed by 31 March following the end of the tax year. This is extended to 30 June if a qualified Czech tax adviser prepares the return and the relevant power of attorney is filed with the Financial Authorities before 31 March.

Income tax prepayments are generally required either quarterly or semi-annually during the year based on the previous year's tax liability. Payment of any residual tax due must be made by the respective tax return filing deadline. Special rules apply for payroll tax withholdings on taxable income derived from employment.

Corporate Income Taxes

Corporate income tax is levied on the worldwide income of Czech legal entities and on foreign entities whose place of management/control is located in the Czech Republic. For non-resident entities, only income which is generated in the Czech Republic is subject to corporate tax.

Czech general and limited partnerships are, for corporate income tax purposes, treated as fiscally transparent entities. The profits of a general partnership are not taxed at the company level, but at the level of the partners. Also, profits which are attributable to the general partners of a limited partnership are taxed at the partners' level, whereas profits which are attributable to limited partners are taxed at the company level.

The corporate income tax rate of 19% was applicable for the tax period of 2013 and will probably remain for 2014. However, increase of the tax rate can be expected soon. Investment funds, mutual funds and pension funds are subject to 5% tax. Corporate income tax is generally payable on trading results (profits or losses) as reported in financial statements after an adjustment of various assessable/non-assessable and deductible/non-deductible items has been carried out.

Generally, the taxable period for Czech corporate income tax purposes is the calendar year or the financial year. Calendar year tax returns for corporate income tax must generally be filed by 31 March following the end of the tax year. This is extended to 30 June if a qualified Czech

tax adviser prepares the return and the relevant power of attorney is filed with the financial authorities before 31 March or the company is required to have a statutory audit.

Corporations may decide, with the approval of the financial authorities, to adopt an accounting and tax period that is different from the calendar year. In such cases, the tax return is required to be filed within 3 or 6 months of the end of the taxable period, depending on the conditions outlined above. Special rules apply for filing in the case of liquidations, mergers and transformations.

Value-added tax

VAT is primarily regulated by Act no. 235/2004 Coll., as amended, which is a transposition of the European Union directive no. 2006/112/ES. VAT is generally chargeable on:

- Supplies of goods and services and the transfer of immovable property effectuated by a taxable person for consideration during the course of his economic activities with a place of supply in the Czech Republic.

- The import of goods into the Czech Republic (administered by the customs authorities, unless VAT is applied directly through a VAT return).

- The intra-community acquisition of goods for consideration effectuated by a taxable person in the course of his economic activities or non-taxable legal person in the territory of the Czech Republic.

- Intra-community acquisition of new goods meant for transport for consideration effectuated by a non-taxable person.

There are two tax rates, standard and reduced. The standard tax rate covers most goods and services, while the reduced rate applies primarily to food-stuffs and pharmaceuticals. In 2013 the standard rate stood at 21 % and the reduced rate at 15 %; with regard to pre-election declarations of the political parties, these rates might change.

Real estate related taxes

The real estate tax is imposed on real property. The tax rates depend on the type/purpose of the building or land, the size and desirability of the locality and the size of the building or land. Real estate tax returns must be filed by 1 January of a calendar year. Real estate tax is payable by 1 May (in full) or 30 November (in several instalments) of the current year depending on the amount of the tax liability; several types of exemptions are available.

Transfer of real estate is subject to transfer tax amounting to 4% of the purchase price. The tax is payable within three months of the month of registration of the transfer.

Road tax

Road tax only applies to vehicles that are used, or intended for, business. Vehicles used exclusively for private needs are exempt. The tax for passenger cars is calculated from the car's engine capacity, for heavy-goods vehicles it depends on the number of axles and the total weight.

All advance payments are generally due by April 15, July 15, October 15 and December 15, respectively. The law also sets a toll for the use of highways, applicable to all vehicles – passenger and freight, used for business or private travel. The fee for heavy-goods vehicles is charged per kilometer travelled, using an electronic system; passenger cars pay a fixed sum. Extension of the electronic system to all vehicles and some other types of roads is being considered.

Inheritance tax, Gift tax

The gift and inheritance taxes are generally payable by the recipient (donee, hier) at progressive rates of 1% to 40% depending on the tax base, as well as the nature of relationship between the donor and gift recipient; several types of exemptions are available, especially for relatives. Inheritances and gifts should be taxed within income tax in the future.

Environmental taxes

Taxes referred to as environmental are governed by Act no. 261/2007 Coll., as amended, and are introduced in accordance with EU regulations. They include natural gas tax, solid fuels tax and electricity tax.

Excise duty

Goods subject to excise duties are mineral oils, alcohol, alcoholic beverages and tobacco products. Similar to the value-added tax, excise duties are also harmonised with European Union's regulations. These taxes are administered by customs authorities.

Tax administration

Tax administration is regulated by Act no. 280/2009 Coll., the Tax Code, as amended. The administration is carried out by the tax authorities and, in some cases, customs authorities under the Ministry of Finance of the Czech Republic. Tax returns may also be filed electronically via data boxes *(datová schránka)*.

Within Czech law a data box is defined as a special-type electronic repository, established based on Act no. 300/2008 Coll., as amended, intended for the delivery of electronic documents. The law requires the setting up of data boxes for all public authorities, all natural or legal persons engaged in business activities, as well as for some other types of entities; other natural and legal persons are entitled to have data boxes established free of charge. Communication via data boxes is a full-fledged substitute to the delivery of documents using traditional mail service and is fully respected by the Czech legal system.

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→ Denmark

KLAR ADVOKATER is a Danish commercial and litigation firm based in Copenhagen. We combine traditional attorney's virtues such as high ethics, discretion, thoroughness and thoughtfulness with clear, comprehensible and qualified counseling customized to the client's needs. Our client base comprises listed international business enterprises as well as small and medium-sized companies and start-up companies.

Several of our lawyers have worked as in-house legal counsel at large international companies. Such experience gives us a unique insight into the clients' needs and expectations from their external legal counsel. It is our constant aim that KLAR would also be our preferred law firm if we were the clients.

Practice Areas

KLAR Law Firm provides legal services within most areas of business law, but our primary focus areas are:

- Competition, Procurement & EU
- Corporate & Commercial
- Employment & Labour
- Litigation & Arbitration
- Mergers & Acquisitions
- Real Estate

The name

The Danish word KLAR means *"ready"*, *"comprehensible"*, *"clear"*, *"transparent"* and *"prepared"*. It is our mission to always provide advice to our clients that is KLAR in every sense of the word:

- We are fast and easily accessible
- We give qualified and lucid advice
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- Transparent work processes – our clients have online access to check on the status of their cases and we are happy to work on the case together with our clients and at their offices
- Our work always makes a clear difference to our clients

For more information please visit our website www.klaradvokater.dk.

→ Corporate Law

In Denmark one can choose between a range of different legal entities for one's business. These vary from small entities with no share capital to companies with a minimum share capital of DKK 500.000. The most common entity types are the ApS (Private Limited Company) and A/S (Public Limited Company) entities. However many small businesses with only one owner operate as personal one-man businesses.

The two tables below illustrate the most common entity types, and list the most relevant characteristics of each type. Table 1 describes types of limited liability entities and Table 2 describes other types of entity forms, including a limited partnership. Each type of entity is further described below the tables.

Table 1	A/S (Public Limited Company)	P/S (Limited Partnership Company)	ApS (Private Limited Company)
Use	Middle-sized and large companies (may be listed on the stock exchange, though this is not mandatory)	Small and middle-sized companies – primarily used for consultancy companies	Small and middle-sized companies
Minimum capital requirement	DKK 500,000 (only 25 % of the total capital has to be deposited)	DKK 500,000 (only 25 % of the total capital has to be deposited)	DKK 80,000 (only 25 % but not less than DKK 80,000 has to be deposited). (The minimum share capital is DKK 50,000 from around January 2014)
Liability	Limited to the value of the share capital	Limited to the value of the share capital of the mother company and the capital of the general partner	Limited to the value of the share capital
Management	Either: A Board of Directors with minimum 3 persons and an Executive Board with minimum 1 person Or: A Board of Supervisors with minimum 3 persons and an Executive Board with minimum 1 person	Either: A Board of Directors with minimum 3 persons and an Executive Board with minimum 1 person Or: A Board of Supervisors with minimum 3 persons and an Executive Board with minimum 1 person	Either: A Board of Directors and an Executive Board with minimum 1 person Or: An Executive Board with minimum 1 person
Change in articles of association	Depends on what is agreed in the articles of association. If nothing is agreed: 2/3 of the submitted votes and 2/3 of the share capital represented on the general meeting. Some extensive changes requires a higher number of votes	Depends on what is agreed in the articles of association. If nothing is agreed: 2/3 of the submitted votes and 2/3 of the share capital represented on the general meeting. Some extensive changes require a higher number of votes	Depends on what is agreed in the articles of association. If nothing is agreed: 2/3 of the submitted votes and 2/3 of the share capital represented on the general meeting. Some extensive changes require a higher number of votes.

Change in articles of association	Depends on what is agreed in the articles of association. If nothing is agreed: 2/3 of the submitted votes and 2/3 of the share capital represented on the general meeting. Some extensive changes requires a higher number of votes	Depends on what is agreed in the articles of association. If nothing is agreed: 2/3 of the submitted votes and 2/3 of the share capital represented on the general meeting. Some extensive changes require a higher number of votes	Depends on what is agreed in the articles of association. If nothing is agreed: 2/3 of the submitted votes and 2/3 of the share capital represented on the general meeting. Some extensive changes require a higher number of votes.
Share classes	Different classes (A-, B-, C- etc.) One class can have no right to vote while other classes do.	Different classes (A-, B-, C- etc.) One class can have no right to vote while other classes do.	Different classes (A-, B-, C- etc.) One class can have no right to vote while other classes do.
Shareholders agreement	Valid inter partes but cannot override mandatory corporate law. Not valid against third parties	Valid inter partes but cannot override mandatory corporate law. Not valid against third parties	Valid inter partes but cannot override mandatory corporate law. Not valid against third parties
Accounting	Annual audit may be mandatory, depending on company's turnover	Annual audit may be mandatory, depending on company's turnover	Annual audit may be mandatory, depending on company's turnover
Company tax	Corporate income tax 25 %*	All income is taxed as personal income / income in the shareholder companies	Corporate income tax 25 %*
Tax on capital gains	27 % up to DKK 48,300 42 % in excess of DKK 48,300	Either: Personal income tax if a person is partner Or: Corporate 25 %* if a company is partner	27 % up to DKK 48,300 42 % in excess of DKK 48,300
Registration	Must be registered with the Danish Business Authority	Must be registered with the Danish Business Authority	Must be registered with the Danish Business Authority
Legislation	The Danish Companies Act	The Danish Companies Act	The Danish Companies Act

Table 2	**I/S (Partnership)**	**K/S (Limited Partnership)**	**Branch**
Use	Small companies (at least two owners who can be either private persons or limited liability companies)	Small companies (at least two owners, either private persons or limited liability companies)	Used for representing the head office when this is located in another country (mainly in the EU)
Minimum capital requirement	No minimum requirement	No minimum requirement	No share capital (No minimum requirement)
Liability	Unlimited, joint and several liability	Limited to the value of the share capital of the general partner company/companies. Joint and several liability if there is more than one.	The head office of the branch is fully liable according to the rules of its country
Management	No regulation, if nothing is agreed each partner can legally enter into binding obligations on behalf of the partnership.	Management is regulated by the general partner/partners. If nothing is agreed, all general partners can legally enter into binding obligations on behalf of the partnership together.	No requirements
Change in articles of association	Method of changes is as agreed upon in the articles of association	Method of changes is as agreed upon in the articles of association	No articles of association
Share classes	Can be agreed upon in the articles of association	To be agreed upon in the articles of association	No share capital
Shareholders agreement	Valid inter partes but cannot override mandatory corporate law. Not valid against third parties	Valid inter partes but cannot override mandatory corporate law. Not valid against third parties	No shareholders agreement
Accounting	No requirements	No requirements	A copy of the financial statements of the head office must be filed
Company tax	All income is taxed as personal income / income in the shareholder companies	All income is taxed as personal income / income in the shareholder companies	Corporate income tax 25 %*
Tax on capital gains	Personal income tax	Personal income tax	The branch is taxed as a Danish company by 25 %*
Registration	No requirements	No requirements	No requirements
Legislation	Executive Order on the Act on Certain Commercial Undertakings	Executive Order on the Act on Certain Commercial Undertakings	The Danish Companies Act

Choice of legal entity

Before starting a business the preferred type of legal entity must be considered. The choice can depend on many different factors but the most common factors are one or more of the following:

- Liability
- Taxation of the company and the owners
- Is it sufficient to establish a branch (foreign companies only)
- Start-up capital and running costs (share capital, registration costs etc.)
- Overall reputation in the market

Types of companies

As earlier mentioned there are several different types of legal entities. The types most commonly chosen for medium-sized and large companies are either a private limited company (ApS) or a public limited company (A/S). These two types of company are regulated by the same rules but differ in some aspects, as described below:

A/S (PUBLIC LIMITED COMPANY): Most large companies in Denmark (and all stock-exchange listed companies) are established as an A/S (Public Limited Company), which is a well-reputed entity type. The total required share capital is minimum DKK 500,000, though it is possible not to deposit more than 25 % of the total share capital. The shareholders' liability is limited to their investment in shares. An A/S must have either a Management Board or a Board of Supervisors with at least three members. Furthermore the A/S must have an Executive Board with at least one member.

An A/S pays 25 %* in corporate taxes based on the company's yearly profit. The shareholders return on shares and share premiums are subject to taxation as follows: In 2012 the first DKK 48,300 are taxed by 27 % and share income exceeding DKK 48,300 is taxed by 42 %. An A/S is obliged to publish its annual accounts and may be subject to annual audit depending on its turnover.

APS (PRIVATE LIMITED COMPANY): Many small and middle-sized companies chose to run their business as an ApS, which requires a share capital of DKK 80,000 (the minimum share capital will be reduced to DKK 50.000 as a result of changes to the Danish Companies Act. These changes will come into force around January 2014). The shareholders' liability is limited to their investment in shares. An ApS must have a Management Board and/or an Executive Board.

The lower amount of required share capital makes this entity type very attractive to founders who either cannot or will not tie up more capital than necessary, but who still want to limit their liability risks. An ApS pays 25 %* in corporate taxes based on the company's yearly profit. The

shareholders return on shares and share premiums are subject to taxation as follows: In 2012 the first DKK 48,300 are taxed by 27% and share income exceeding 48,300 is taxed by 42 %. An ApS is obliged to publish its annual accounts and may be subject to annual audit depending on its turnover.

A/S (PUBLIC LIMITED COMPANY) VS. APS (PRIVATE LIMITED COMPANY): An A/S is subject to the same rules as an ApS but differs mainly concerning the following conditions:

Minimum share capital
- A/S: DKK 500,000 (only 25% has to be deposited)
- ApS: DKK 80,000

Shares for public subscription (e.g. on a stock exchange)
- A/S: Yes
- ApS: No

Management
- A/S: Management Board/Board of Supervisors + Executive Board
- ApS: Management Board and/or Executive Board

P/S (LIMITED PARTNERSHIP COMPANY): A P/S is a hybrid between an A/S (Limited Liability Company) and a I/S (Partnership). This corporate structure is primarily chosen by companies owned by people who work in the company (partners), such as law-firms accountants and other consultancy companies. By choosing the P/S the liability is limited to the shareholders' share capital, which is required to be at least DKK 500,000 in total. However, at least one participant acts as a general partner whose liability is unlimited (he is liable with his all of his/her personal capital), and there is also at least one limited partner, whom is only liable with his value of shares in the P/S. Both the general partner and the limited partner can be a physical person or an ApS or an A/S. Usually the general manager is either an A/S or an ApS because these companies have a limited liability.

The P/S does not pay corporate taxes, but instead the owners' (who can be either physical persons or companies) profit is taxed as income, for which reason the owners can deduct their profit from the P/S from other negative income. A P/S is obliged to publish its annual accounts and may be subject to annual audit depending on its turnover.

P/S (LIMITED PARTNERSHIP COMPANY) VS. A/S (PUBLIC LIMITED COMPANY): A P/S is subject to the same rules as an A/S but differs mainly concerning the following conditions:

Shares for public subscription (e.g. on a stock exchange)
- A/S: Yes
- P/S: No

Taxation

- A/S: The company is taxed by 25 % - the shareholders are taxed with 27 % up to DKK 48,300 and with 42 % in excess of DKK 48,300
- P/S: Personal income tax if a person is partner (income is deductible in negative income)

Or: 25 % corporate tax if partner is an A/S or an ApS (income is deductible in negative income)

Ownership and influence

- A/S: Owned by shareholders only
- P/S: Owned by shareholders and a general partner, who may have a significant influence on the company's management.

Both A/S ApS and P/S are required to file their articles of association with the Danish Business Authority and any changes have to be filed within 14 days from the decision date.

I/S (PARTNERSHIP): An I/S can be the easiest way to start a business that will have more than one owner. An I/S can be owned by either physical persons, by companies or by a mixture of persons and companies. All owners, be they persons or companies, are liable for any claims. However, if the owner is a limited liability company, e.g. an ApS (private limited company) this owner will only be liable with the share capital of the owner company. On the other hand, when the owner is a physical person they are liable with their whole personal capital. As well as having unlimited liability, the owners of an I/S are joint and several liable towards any claims.

The income of an I/S is taxed in the same way as a P/S (Limited Partnership Company): as either personal income (when the owner is a physical persons) or as corporate income (when the owner is a company). An I/S is not obliged to submit a registration to the Danish Business Authority regarding its start-up. However the I/S business is obliged to submit a VAT registration if turn over reaches or exceeds DKK 50.000 a year. Finally, an I/S is not obliged to publish its annual accounts.

K/S (LIMITED PARTNERSHIP): A K/S (Limited Partnership) is an entity type used primarily by investment companies. A K/S has at least one general partner and one limited partner. In a K/S the general manager/managers are liable with all of their capital and the limited partners' liability is limited to their investment in the K/S. Both the general partner and the limited partner can be a physical person or an ApS or an A/S. Most often, the general manager is either an A/S or an ApS because these companies have a limited liability.

The K/S does not pay corporate taxes, but instead the owners' (who can be either physical persons or companies) profit is taxed as income. This means that the owners can deduct their profit from the K/S from other negative income. If there are more than 10 participants in the K/S, it is not possible to deduct positive income from negative income.

BRANCH: A company from another country in the European Economic Area can establish a branch in Denmark instead of establishing an actual company. A branch is doing business at the risk and responsibility of the foreign company and is threfore not a legal entity in and of itself. A branch is taxed as a limited company at a rate of 25 %* but does not require any share capital to start up. A branch is obliged to mention the word "filial" (meaning "branch") and the full name of the company for which it is doing business in its name.

The Central Company Register (CVR)

CVR is the government's master register for company details and contains information about all companies in Denmark. The CVR contains information about all companies with a duty to register as well as associations that voluntarily have elected to register. All companies in the CVR register have a unique identification number – a CVR number. A CVR number always has eight digits. To search for a Danish company visit www.cvr.dk

** The corporate tax rate at currently 25 % is reduced to 24.5 % in 2014, 23.5 % in 2015 and 22 % in 2016.*

→ Foreign Investment

Foreign investment is encouraged in Denmark and it is attractive due to, among others, relatively low corporate taxes, a competent workforce, a flexible labour market and a reliable currency. Denmark is a world leader in cleantech, information and communication technologies (ICT) and life sciences. English proficiency is in the world's top three. Four out of five Danes speak English and half the Danes speak German.

The Danish currency – the "krone". Denmark is a member of the European Exchange Rate Mechanism II. This implies that the Danish krone's currency is locked to the Euro at a currency at 1 Euro = 7,46038 DKK (1 DKK = 0,13404 Euro). The currency rate of the Danish krone may vary +/- 2.25 % from that of the Euro.

Registration of investment

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

Danish companies must submit a registration to the Danish Business Authority and to the tax authorities before starting the operation. Further, the management must be registered with the Danish Business Authority (please see the chapter about Corporate law for further information). With regard to investments in Danish real estates, there are some restrictions

on what types of estates foreigners are allowed to buy (please see the chapter regarding Real Estate for further information).

Setting up a business

It is easy to set up a business in Denmark. A standard company takes only a few hours to register with the Danish Business Authority and the tax authorities before it is up and running.

Foreign employees

Nationals of other countries within the EU or European Economic Area (EEA) are allowed to work and live in Denmark without obtaining a work permit or other permissions. However, restrictions on the free movement of workers may apply to workers who have joined the EU within the last 7 years. At the moment such restrictions apply to Bulgaria and Romania, who both joined the EU on 1 January 2007.

Nationals of countries outside the EU or EEA will need a visa and/or a work permit to enter Denmark and to work in Denmark depending on inter alia the applicant's country of residence, educational background and the type of work to be performed in Denmark.

→ Labour Law

There are three different categories of employees in Denmark, namely salaried employees ("white-collar"), non-salaried workers ("blue-collar") and executive officers. It is important to determine the status of the employee in order to know the applicable legal framework.

All employees (except for executive officers) are subject to a number of statutory rules that determine the standards of protection of the employees. Further, collective bargaining agreements also play an important role when determining the rights and obligations of the employer and employees. Below is a brief overview of some of the main statutory acts and obligations which employers must know when employing persons in Denmark.

Collective Bargaining Agreements

More than 2/3 of Danish employees are members of a trade union, and many collective bargaining agreements are in force within the Danish labour market. The collective bargaining agreements typically apply to specific areas of work, e.g. office work, the type of industry, etc. The collective bargaining agreements contain terms such as wages, working hours, notice periods, pension, overtime payment, etc. A collective bargaining agreement will only apply if the employer has entered into an agreement with the relevant employers association or trade union. It is voluntary for the employer to enter into a collective bargaining agreement, but in

practice it may prove difficult to refuse if a trade union presents such a request, as the employer will then probably face industrial action initiated by the trade union.

The Employers' and Salaried Employees Act

The Employers' and Salaried Employees Act will normally apply to employees who work within business and office areas for more than 8 hours per week. The act contains a range of mandatory rules for the protection of the salaried employees.

The employment of salaried employees may at the same time also be governed by a collective bargaining agreement.

Executive officers

The Employers' and Salaried Employees Act does not typically apply to executive officers of a company, unless otherwise agreed in the employment contract, collective bargaining agreements, or other acts protecting the employees. The reason for this is that an executive director is considered an employer and not an employee per se. As a consequence thereof, the employment contract between a company and its executive officers typically contains detailed provisions on the rights and obligations of the executive officer.

The Employers' Obligation to inform the Employees of the Employment Terms

According to the Act on the Employers' Obligation to inform the Employee of the Employment Terms, the employer is legally obliged to inform its employees of all essential employment terms. Such information must be provided in writing, typically in the employment contract or as an amendment to the contract. The statute specifies a number of terms that the employee must be notified of the list of terms is not exhaustive, so the employer must consider the character of all terms of employment and subsequent changes therein when determining whether a written notification is required. If the employer does not comply with the obligation to inform the employee of the essential employment terms, the employer may become liable to pay a compensation of up to 20 weeks salary.

Wages and Working Hours

Danish law does not specify any minimum wage. However, minimum wages are often prescribed in collective bargaining agreements. The Danish wage levels are typically rather high compared to other jurisdictions, including the wages levels of other member states of the European Union.

The most common number of working hours in the employment contract and collective bargaining agreements is 37 or 37½ hours per week including small breaks but excluding lunch

breaks. As there are no statutory rules in Denmark for working hours, the working hours and terms for overtime are to be agreed upon in the employment contract or in a collective bargaining agreement. However, the average working week in Denmark should not exceed 48 hours.

Holiday

The Danish Holiday Act applies to all employees in Denmark except executive officers. Under the Holiday Act, employees are entitled to 25 days holiday each year. Whether the holiday is paid by the employer or not depends on whether the employee has been employed during the preceding year. The Danish holiday system is rather complex with several mandatory rules for the protection of the employees. The employer may be liable for payment of a fine if the rules are not complied with.

Maternity, Paternity and Parental Leave

Employees who become parents have the following rights:

- Women are entitled to absence from work from 4 weeks before the expected birth with a statutory right of payment of 50 % of the salary during this period.
- Women are entitled to 14 weeks maternity leave after the child is born with a statutory right of payment of 50 % of the salary in this period.
- Men are entitled to take a total of 2 weeks of paternity leave at the same time as the mothers 14 weeks of maternity leave with no statutory right of payment of a salary.
- After the first 14 weeks, each parent is entitled to parental leave for 32 weeks which may be prolonged by up to 14 weeks.
- The parents are jointly entitled to up to 52 weeks parental pay from the government in connection with each childbirth.

The rules on leave in connection with childbirth are very flexible for the parents, who to a wide extent determine how they wish to divide the parental leave between them. Employment contracts or collective bargaining rules often give the parents further rights of absence and compensation than the statutory rules.

If an employer choses to terminate the employment of a pregnant employee or an employee on a leave, the employer has the burden of proof that the pregnancy or birth had no influence on the decision. In practice this burden of proof can be very difficult to satisfy. In case of unjustified termination of the employment, the employer will be liable to pay the employee a compensation, which will amount to at least 6 to 9 months' salary.

Non-discrimination

It is prohibited to discriminate, directly or indirectly, on the grounds of gender, race (and skin colour), sexual orientation, age, handicap, religion (and religious beliefs), political beliefs or

national, social or ethnic origin. Non-compliance with the law is punishable by a payment of a fine or by paying compensation to the employee (or job applicant).

Termination of employment

The Danish rules on termination of the employment relationship are relatively lenient from an employer's perspective when compared to many other jurisdictions. The notice period will normally be determined by the Employers' and Salaried Employees Act, an applicable collective bargaining agreement or the individual employment agreement. Depending on the duration of the employment, the notice period of salaried employees is 1-6 months. It is possible to agree on a longer notice period than what is prescribed in the Employers' and Salaried Employees Act. If the employee has been employed for more than 12, 15 or 18 years he or she is entitled to an allowance of respectively 1, 2 or 3 months' salary.

After one year of employment a dismissal must be reasonably justified by the company's or the employee's circumstances. If a court determines that the dismissal is unjustified, the employer may be liable to pay compensation of up to 6 months' salary to the employee. If the employer makes essential changes to the terms of employment, it may be considered a dismissal and the employer must comply with the applicable requirements for dismissals. The salaried employee may resign with one month's notice regardless of the duration of employment. It is possible to agree on a longer notice period. The notice periods contained in collective bargaining agreements vary, but are often shorter than these of the Employers' and Salaried Employees Act.

Collective Redundancies

The Collective Redundancies Act may be applicable when employees are made redundant, depending on the number of affected employees. This act requires that the employer is obligated to inform and consult the employees before contemplated redundancies become effective. The procedure varies depending on the number of affected employees.

Many collective bargaining agreements also contain rules on redundancies. If the employer is party to a collective bargaining agreement with rules on redundancies, such rules will prevail instead of the statutory rules.

Transfers of undertakings

The Danish Transfer of Undertakings Act, which implements the EU Acquired Rights Directive, protects employees' rights in the event of a transfer of a business or part of a business. In the event of a transfer of a business or undertaking, the general principle of Danish law is that the employment rights and obligations of the employees of the business or the part of the business being transferred will automatically be transferred to the new owner of the business who will automatically assume those rights and obligations instead of the vendor.

As a result, the main rule is that the vendor will be released from employer obligations and any claims made by the employees that date back to the period before the transfer. These will have to be presented to the new owner. If the new owner decides to make essential changes to the employees' employment terms, it may be considered as a dismissal and the new owner must comply with the applicable requirements for dismissals.

→ Real Estate Law

Types of real estate

In Denmark one can either own or rent real estate, regardless of whether it is for business or private purposes. However, there are exceptions in regard to holiday houses. The most relevant rules for foreign businesses are described in general in the following chapter.

Ownership restrictions

Foreign persons who are not citizens of the European Economic Area (EEA) or foreign companies who are resident in Denmark or in an EEA country, or have previously resided in Denmark or an EEA country for a minimum of five years, are allowed to buy real estate without restrictions. Citizens of EU and EEA countries can buy real estate in Denmark irrespective of the residential period. Further, companies legally registered in an EU and EEA country that are establishing a business in Denmark (e.g. a branch) can also buy real estate irrespective of the residential period.

A subsidiary company established and registered in Denmark by a foreign parent company can freely buy property. Other foreign persons or companies are only allowed to buy real estate in Denmark with the approval of the Ministry of Justice. However, only Danish residents are allowed to buy holiday houses in Denmark. This means that a non-Danish citizen must acquire and maintain their residency in Denmark in order to purchase and own a holiday home. However, the residency requirement is not applicable to foreigners who inherit real estate in Denmark. Furthermore, Danish and foreign companies are not allowed to own holiday houses without the approval of the Danish Nature Agency. Because of this, it is not possible for foreigners to buy e.g. holiday houses through a Danish company.

Use restrictions

RESIDENTIAL PROPERTY: As a general rule homes are only for residential use. However, the owner can obtain an approval for full or partial business use. Furthermore, the majority of the residential property in Denmark is subject to a residence requirement. This means that if a residential property is not occupied by the owner, the owner is obliged to enter into a lease agreement with a tenant. If the property is left empty by the owner, the municipality in question

may find a tenant and force the owner to enter into a lease agreement. The purpose of this rule is to maintain a population certain population standard in each municipality. Residential property must be used year round. However an approval for temporary use can be obtained if certain requirements are met.

HOLIDAY HOUSES: Holiday houses may not be used as year-round residences. However, senior citizens may, if certain conditions are met, obtain permission for year-round use.

COMMERCIAL PROPERTIES: Commercial properties may not be used for residence purposes. Contrary to residential properties, there is no requirement to use the property and it may be left empty by the owner.

FARMS: Farms are subject to detailed regulation concerning residence. They are mixed properties, since the farmhouse shall be used for residence and the rest of the property is a commercial property. As a general rule, the owner or tenant is obliged to live at the farm as well as to use it for farming.

District Plans

The Danish Planning Act ensures an appropriate development in all parts of Denmark by planning future infrastructure, the use of different districts, preservation of urban areas etc. The act sets the ground rules which public authorities must follow for district planning.

Denmark is divided in to four levels of districts.

NATIONAL LEVEL: A national district plan includes the whole country and must be enacted by the government. In practice there is more than one national district plan to simplify the preparation and enacting process.

REGIONAL LEVEL: Denmark is divided in to five regions, which each have their own regional district plan. A regional district plan must be enacted by the county.

MUNICIPAL LEVEL: Denmark is divided in to 98 municipalities, which each have their own municipal district plan. Municipal district plans must be enacted by the relevant municipality.

LOCAL LEVEL: Besides municipal levels, each municipality can enact local district plans. On a very detailed level such district plans are used to determine how specific properties can be used.

Besides being divided in to four planning districts, Denmark is divided in to the three land-use zones. All real estate can be assigned to one of these zones, and each zone restricts real estate usage in a different way.

CITY ZONES: The city zones can be used for everything except from holiday houses.

LAND ZONES: As a main rule land zones can only be used for farming, forest management and for gardens centres.

HOLIDAY HOUSE ZONES: As a main rule holiday house zones are not allowed to be used for permanent residences.

PLANNING PERMISSIONS: Managing of planning permissions is handled by the municipality. Permission has to be given before the construction can begin. In case that no permission has been given, the municipality can demand that the building is demolished.

Mortgage financing

The Danish mortgage credit system is unique in several aspects. The loan limits for home loans financed through issuing Danish mortgage bonds are set at 80% of the market value and it is possible to issue Danish mortgage bonds with maturities of up to 30 years, which greatly reduces the annual user costs of ownership housing. A loan-to-value ratio of 80% and maturity of up to 30 years are the usual terms for residential properties, while the loan-to-value limit for commercial properties is 60% and 40% for clean sites with no properties.

Additionally, the introduction of more flexible mortgage-loan options has been instrumental in reducing the costs of housing ownership. These loan options include interest-only mortgage financing, mortgage financing with floating interest rates and mortgage financing with capped interest rates. The floating interest rate mortgage loans are based on non-convertible mortgage bonds, where the interest rates are adjusted to market interest rates at pre-defined intervals.

Registration in the Danish Land Register

In Denmark, real property (land) is typically purchased pursuant to a purchase agreement, followed by a deed of transfer, which is entered in the Danish land register. This register shows the identity of the owner, all registered mortgages and other rights and obligations such as purchase options, owner's bankruptcy etc. In most cases, all other burdens and easements such as right of way, local restrictions on construction etc. will also appear in the register.

The property register system also serves as an easy and dependable way of providing security to lenders, as the ranking of priority of lenders will appear clearly on the property's list of mortgagees. As is the case for transfer documents, the registration of the mortgage will protect the mortgagee's rights to the property against subsequent purchasers and against the mortgagor's other creditors.

Commercial Leases

Commercial leases are subject to the Danish Business Lease Act, which allows for a high degree of contractual freedom. Almost all terms and conditions of commercial leasehold are subject to the parties' negotiations, including terms and conditions regarding rent, adjustment of rent, maintenance obligations, right of assignment, subletting, etc. However, with respect to the landlord's termination and payment of damages/compensation, the Danish Business Lease Act gives the tenants a high degree of protection.

DURATION: Under the Danish lease law, there are only few restrictions in regards to the duration of a leasing contract. The majority of all commercial leases in Denmark run for an indefinite period of time.

FIXED-TERM LEASE CONTRACTS: Fixed-term leasing contracts are not common in Denmark. A fixed-term leasing contract may not be terminated under the term, unless otherwise agreed to. However, a fixed-term lease is not valid under Danish law unless the fixed-term is based on the landlord's situation. Consequently, a fixed-term may be set aside if the fixed-term is not found to be warranted by the landlord's own situation at the time when the lease contract was entered into.

THE RENT: The parties are entitled to agree how the rent is to be determined and paid. Typically, rent is paid in advance on a monthly or a quarterly basis. It is also commonly agreed that the annual rent shall be adjusted every year, e.g. in accordance with changes in the official Danish 'Net Price Index' or a certain percentage thereof, or that the annual rent shall be increased by a fixed percentage.

ADJUSTMENT TO THE MARKET RENT: According to the Business Leases Act, the rent may be adjusted on the basis of the 'market rent'. Such adjustments cannot take place until four years after commencement of the leasing agreement. These adjustment provisions in the act can be set aside by an express individual agreement in respect to both parties' access to claim such rent adjustments. It may also be agreed that only the landlord (or the tenant) is entitled to claim adjustment to market rent.

TAXES AND CHARGES: The landlord pays all taxes and fees pertaining to the property. Unless otherwise agreed, such taxes and fees are included in the rent to the effect that either party may claim adjustment of rent if the taxes and fees are changed.

OPERATING COSTS: Normally, the tenant, in addition to rent on account, pays for the supply and use of heating and hot water based on consumption. Usually, the tenant also pays all expenses for supply of electricity/power to the leased premises and is registered with the relevant utility companies as an independent user.

It is typically agreed that the tenant shall pay the leased premises' proportional (based on area) share of taxes and fees pertaining to the entire real property and other operating costs such as expenses for janitors, snow clearing, various building maintenance etc.

SUBLEASE AND ASSIGNMENT: The tenant is not entitled to sublease the leased premises without the prior consent of the landlord. However, the lease agreement often contains provisions regarding the tenant's right to sublease. It follows from the Business Lease Act that the tenant is entitled to allow another tenant carrying out the same type of business as stated in the lease agreement to take over the lease contract on equal conditions, a so-called 'assignment' (as opposed to subleasing). According to the Act, the landlord is entitled to reject such assignment, if he has substantial and reasoned grounds for doing so, such as the incoming tenant's financial position or lack of business experience. The parties can agree that the provision in the Business Lease Act regarding assignment shall not apply. In such case, the tenant cannot assign the lease contract without the prior discretionary consent of the landlord. Further, the parties can agree on other assignment conditions as stipulated in the Act.

USE AND CONSTRUCTION: Unless otherwise agreed in the lease agreement, the landlord is responsible for ensuring the legality of the agreed use of the property and the construction and furnishing of the premises, e.g. asbestos in the walls. However, it is often agreed that the tenant, apart from being responsible for the legality of his actual use and furnishing of the premises, also is responsible for any order issued from public authorities after the date of commencement.

ALTERATIONS: As a general rule, unless otherwise agreed the tenant is not entitled to make alterations of the premises during the lease period apart from certain usual changes without the landlord's consent. Further, unless otherwise agreed in the lease agreement, the landlord is only entitled to claim re-establishment upon vacating the premises for alterations carried out during the lease period and approved by the landlord if the landlord at the time of approval has specifically reserved the right to claim re-establishment.

TENANT'S TERMINATION: The tenants may terminate a lease without stating any particular reason. However, it is quite normal that the parties agree that the lease cannot be terminated within a certain period of time. If this is the case, the tenant cannot terminate the lease during this period.

LANDLORD'S TERMINATION: It is also quite normal that the landlord must comply to a non-termination period. Furthermore, irrespective of an agreed non-terminability period, the landlord is only entitled to terminate the lease if the termination is based on specific reasons specified in the Business Leases Act, of which the relevant are:

- If landlord wishes to use the leased premises himself and the termination is deemed reasonable based on an evaluation of the situation of both parties.

- If the leased premises must be vacated due to a demolition of or an alteration of the building. However, if the premises in question are to be leased again after the rebuilding or alteration, the landlord is obliged to offer the tenant to lease premises of the same nature as those terminated in connection with the termination

- If other strong reasons make it particularly important for the landlord to terminate the lease

DAMAGES AND COMPENSATION TO THE TENANT DUE TO THE LANDLORD'S TERMINATION: According to the Business Lease Act, a tenant may claim damages incurred as a result of the landlord's termination. In addition, tenants who are business protected may claim compensation for loss of goodwill.

The Danish environmental law

SOIL CONTAMINATION: Under the Soil Contamination Act the Regional authorities are under an obligation to register/map all (potentially) contaminated areas in Denmark, with the exception of lightly contaminated sites. Registration can be made on level 1, if an area is likely to be contaminated due to the historic use, or on level 2, if it is known that an area is contaminated.

A registration in itself does not imply a liability or an obligation to remediate. Instead, a registration implies a number of restrictions relating to the use of the area in question. A registration does not in any way restrict the current use of the registered area, but a change of the current use, to a use considered 'sensitive' (a 'sensitive' use would be a use that potentially exposes people to the contamination) requires a special permit from the authorities. Similarly, commencement of building and construction sites on a registered area that situated within an area with special drinking water reserves requires a special permit. Such permits may be conditioned upon the prior exercise of contamination investigation and/or remediation. The costs incurred in this respect must be paid by the owner/builder.

ENVIRONMENTAL LIABILITY: The Soil Contamination Act /The Environmental Protection Act authorise the environmental authorities to issue administrative orders requiring investigative or remedial actions to be taken in relation to soil and ground water contamination. Such requirements may be issued to the polluter. Basically, a polluter is any party who, for commercial or public purposes, operates or operated the company or uses or used the plant from which the contamination originated. This requires that the contamination must have been released entirely or in part during the period of operation in question. Where a contamination can be attributed to more than one polluter, administrative orders may be issued to all of them.

→ Tax Law

Corporate Residence

As a main rule European companies and foreign companies which have a management effectively placed in Denmark or that carry on business activities through a branch in Denmark are subject to corporate tax in Denmark.

Different Company Types

LIMITED LIABILITY COMPANIES: Most Danish limited liability companies, such as A/S (Public Limited Liability Company) and ApS (Private Limited Liability Company) are subject to corporate taxation.

PARTNERSHIPS AND LIMITED PARTNERSHIP COMPANIES: In most cases partnerships and limited partnership companies are transparent in terms of tax which means that only the owners/partners are subject to tax and not the company itself.

BRANCHES: Foreign companies with a branch in Denmark are, with regard to the income deriving from the branch, subject to corporate taxation in Denmark. Income from a Danish company's foreign branch is under certain conditions not subject to Danish corporate taxation.

CORPORATE TAXATION

Danish corporation tax is currently set at a flat rate of 25 %*. Business expenses and deprecations are tax deductible, which means that only the corporations' net income is to be taxed. Furthermore, Danish companies can carry losses forward for an unlimited period, so that these can be deducted from later positive net incomes.

Depreciation

As a main rule companies' expenses are tax deductible. Machinery and equipment used for the operation of the company is depreciated with 25 %. However the depreciation of assets with a long life span, such as airplanes, ships etc. is being gradually reduced from 25 % to 15 % in the period from 2008 until 2016. Infrastructure facilities are depreciated with 7 % and buildings are as a rule depreciated by up to 4 %. Goodwill and other intangibles are depreciated equally over 7 years.

Tax Returns

Companies are obliged to submit a tax return for each fiscal year. However, small and medium-sized companies are exempted from this obligation and only have to submit financial and operating data via the tax authorities' homepage (www.skat.dk). An English version is also

available. Furthermore, companies are obliged to pay taxes on account, which are charged every 20 March and 20 November.

Capital gains

Capital gains from a subsidiary or group company are exempted from tax. As a main rule capital gains deriving from bonds and debts owned by a company are taxed as corporate income tax at a rate of 25 %*. Shareholders who are not resident in Denmark are as a main rule not subject to Danish tax for capital gains on shares in Danish companies. (* The corporate tax rate at currently 25 % is reduced to 24.5 % in 2014, 23.5 % in 2015 and 22 % in 2016).

Dividends

As a main rule, a parent company is exempted from tax on dividends from a subsidiary or group company. If the parent company is a foreign company, it is usually a condition for the tax exemption that the distributing company is not able to deduct the dividends from its taxable income.

Joint Taxation

Danish companies are taxed jointly with their Danish group companies or branches. Negative income of one company or branch can be deducted in positive income of another affiliated company or branch. It is optional for a Danish company to choose whether to be jointly taxed with a foreign affiliated company/branch or not. If the companies choose to be jointly taxed this taxation must include all companies and branches within the group globally and joint taxation must typically apply for a 10-year period.

Transfer Pricing

The Danish rules on Transfer Pricing are based one the OECD Transfer Pricing Guidelines. Transactions between affiliated companies must comply with the arms-length principle which implies that products or services must be transferred at the relevant market price. Some groups may be subject to documentation requirements.

Thin Capitalisation

If a group's controlled debts exceed DKK 10 million and the debt to equity ratio exceeds 4-to-1 at the end of the fiscal year, thin capitalisation rules may apply.

CFC Taxation

Financial companies (companies where more than 50 % of the income is financial and where at least 10% of the assets are financial) controlled by a Danish company are subject to CFC

Taxation. If a company holds the majority of the voting rights in a subsidiary company it is considered as a controlling company. According to the CFC taxation, the total income of the subsidiary is subject to Danish tax.

Double Taxation Relief

If a company is subject to taxation in both Denmark and another country, double taxation may be relieved in accordance with a tax treaty, if such a tax treaty has been entered into between Denmark and the other relevant country. If a company is subject to double taxation in Denmark and a country with which Denmark has not entered a tax treaty with, a tax credit may be granted according to specific Danish rules.

PERSONAL TAXATION

Income taxes

Persons who are tax liable in Denmark pay up to 55,4 % in income taxes depending on their level of income and right to tax deductions. As an indicator of the taxation level all income up to DKK 423,804 per year are taxed with approximately 42 % and income exceeding DKK 423,804 are taxed with a marginal tax rate at approximately 55 %.

Relaxed taxation of foreigners

In spite of the high level of income tax in Denmark, foreigners who move to Denmark to work may apply for favourable income taxation. In Danish this taxation is called *"Forskerordningen"* (i.e. the "scientist arrangement") and contains a flat rate income tax at 32 %. In return for this low income tax level the employee has no tax deductions at all and can only be subject to these special rules for a period of up to 60 months.

In this context, the term "scientist" has a is relatively broad definition and also includes other professions, e.g. professional footballers. However, there are numerous requirements that have to be met for the person to be subject to these rules. One of the requirements is that the employee's fixed gross salary must exceed DKK 69,300 (approx. EUR 9,300) per month.

Taxes on personal dividends and/or capital gains

Shares owned by persons who are tax liable in Denmark, dividends and/or capital gains will be taxed with 27 % of an amount up to DKK 48,300 and with 42 % of amounts exceeding DKK 48,300.

→ Foreign Investment

Foreign investment is encouraged in Denmark and is attractive due to several factors, including relatively low corporate taxes, a competent workforce, a flexible labour market and a reliable currency. Denmark is a world leader in clean technology, information and communication technologies (ICT) and life sciences. Denmark is among the world's top three countries in English language proficiency. Four out of five Danes speak English and half of all Danes speak German.

The Danish currency – the "krone"

Denmark is a member of the European Exchange Rate Mechanism II. This means that the Danish krone's currency is locked to the Euro at a currency at 1 Euro = 7,46038 DKK (1 DKK = 0,13404 Euro). The currency rate of the Danish krone may vary +/- 2.25 % from that of the Euro.

Registration of investment

As a main rule there are no requirements for foreign investors to register or obtain the authorities' permission for making investments, and there are no restrictions on the foreign ownership of. Danish shares or bonds. Danish companies must submit a registration to the Danish Business Authority and to the tax authorities before the start of operations. Furthermore, the management must be registered with the Danish Business Authority (please see the chapter about Corporate law for further information). With regard to investments in Danish real estate, there are some restrictions on what types of properties foreigners are allowed to buy (please see the chapter regarding Real Estate for further information).

Setting up a business

It is easy to set up a business in Denmark. A standard company takes only a few hours to register with the Danish Business Authority and the tax authorities before it is up and running.

Foreign employees

Nationals of other countries within the EU or European Economic Area (EEA) are allowed to work and live in Denmark without obtaining a work permit or other permits. However, restrictions on the free movement of workers may apply to workers who have joined the EU within the last 7 years. Currently, such restrictions apply to Bulgaria and Romania, who both joined the EU on 1 January 2007.

Nationals of countries outside the EU or EEA will need a visa and/or a work permit to enter and work in Denmark. The type of visa or work permit required depend on inter alia the applicant's country of residence, educational background and the type of work to be performed in Denmark.

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→ Germany

Since its foundation some 35 years ago in Cologne, at the economic and geographical heart of Germany, JUNGE SCHÜNGELER WENDLAND has been mainly focusing on advising enterprises and corporations and their respective operations on corporate, business, labour and trade law both in Germany and abroad. Over the years, these core competences have been consequently expanded to other fields like Bankruptcy and Creditors rights, M&A, Tax Consulting, Trademark & Patent Laws, Contracts, Inheritance Law, Non-Profit Organizations, Insurance Law, Banking and Capital Markets Law, Real Estate and Construction Law.

Being strongly business-oriented from the outset, JUNGE SCHÜNGELER WENDLAND has developed a philosophy of pragmatic "deal making" instead of "deal breaking." We consider the law to be just another tool to achieve and increase the economic success of our clients. In an increasingly complex and specialized economic environment, this approach requires profound knowledge about national and international tax systems and jurisdictions. In addition to the extensive know-how on this subject provided by the several tax advisors in our own ranks, a very close cooperation with the renowned OFM Oebel Fröhlich Michels GmbH auditors and tax consultants puts us in a position to offer tailor-made solutions to our clients' wide-ranging needs and requirements, from very specific legal advice to the elaboration of their financial statements.

Anticipating the far reaching impact of globalization and European integration, JUNGE SCHÜNGELER WENDLAND readily responded to its clients' growing expectations of an international service by joining several international networks and developing close ties to a large number of individual correspondents worldwide and nationwide years ago. We therefore are well prepared to meet any challenge in our field, relying traditionally on cooperation on a nonexclusive basis, choosing German and international correspondents alike in response to the specific requirements of each case. Due to its international alignment and its strongly developed approach to international teamwork, JUNGE SCHÜNGELER WENDLAND is able to provide truly international service for its clients both in Germany and abroad.

As a team of highly qualified and internationally trained lawyers, tax consultants, paralegals and professionals, we are fully committed to giving our clients outstanding care and advice and meeting their needs, expectations and objectives by providing them with the most effective, efficient and high standard of legal services.

The principal areas of the firm's practice are:

- Corporate including M&A
- Commercial and Trade Law
- Labour Law
- Trademark & Patents Law
- Tax Consulting
- Contracts
- Real Estate and Construction Law
- Insurance Law
- Banking and Capital Markets Law
- Non-profit organizations
- Inheritance Law

→ Foreign Investment Law

Registration with Government, authorities and permits

Germany offers an attractive environment for foreign investors. At first, there are solid and strong infrastructures. Furthermore, Germany has a high degree of social stability. There are also stable political and economic conditions. Foreign investors may find the highest level of legal security, reliability and transparency there.

The German government and industry actively encourage foreign investment in Germany. There is no limit on the percent of equity foreigners may own, or on the size of their investment. There are also no real restrictions, nor are there any permanent currency or administrative controls on such investment. Furthermore, there are no special regulations on foreign takeovers of German firms. Foreign firms are generally treated as equals to national firms when building permits, obtaining licenses or applying for and receiving investment incentives.

Considering this, any business, trade, factory or industrial establishment, whether domestic or foreign, must notify the respective local administration and tax authorities about the business prior to commencing its activities.

For most types of investment, licenses are not required. Only for certain businesses, there is an obligation for the following licenses: agents and brokers for real estate, insurance, housing, investment and mutual funds; commercial banking; custody and security businesses, gambling, pawn broking and auction sales.

In case of an industrial engagement comprising activities which could be a danger for the environment, compliance to the rules of the "Federal Pollution Control Act" is required. There

is a very strict and formal licensing procedure for such special business permits. Also, special attention should be paid to EC environmental restrictions.

There are no principal limits that restrict private ownership of any kind of establishment. Either German or foreign entities have the right to establish and own business enterprises, engage in all forms of remunerative activity, and to acquire and dispose of interests in business enterprises. There is no discrimination against foreign investment and foreign acquisition, ownership, control or disposal of property or equity interests.

Also intellectual property is well protected in Germany. Patents are protected by the Patents Act of 1936, as amended. Copyrights are covered under the basic laws of 1965, as amended and Trademarks are protected by the Trademark Act of 1993, as amended.

Germany has introduced various incentives and other special conditions to encourage investments in Germany. There are more than 3.000 of these incentive programs. The incentive programs exist on the following levels: EU, federal and state Level. The incentive programs can be classified by target areas, which include the promotion of investment, research and development, human resource development and the promotion of the European market. Most of the programs are Tax Incentives (special depreciation allowance, capital reserve allowance), Investment Grants (Improvement of regional Economic Structures program) and various Credit Programs (Loans with below-market interest rates from the Equalization Funds Bank, Marshall Plan Funds, EU programs, loan guarantee programs and other programs for small and environmental demonstration projects). The government has placed particular emphasis on investments in eastern Germany and offered a number of incentives especially for this.

There are various possibilities of doing business in Germany. On the one hand, a foreign investor can form a strategic alliance with an already existing German business on a solely contractual basis. On the other hand, there are different forms of building up an own business. If the investor wants to incorporate a German Business unit, he could establish a German branch. Setting up a branch simply requires the registration with the commercial register and the local trade office of the municipality where the branch is to be located.
If the investor is interested in conducting an independent German business unit separated from its domestic business abroad, he can choose between varied forms of corporations and partnerships. The two major forms of corporations are the GmbH *(Gesellschaft mit beschränkter Haftung)* and the AG *(Aktiengesellschaft).* Important forms of partnerships are the OHG *(offene Handelsgesellschaft)* and the KG *(Kommanditgesellschaft).*

All business units are subject to a registration process with the commercial register at the district court *(Amtsgericht),* where the business is operated. The commercial register contains all basic information about the business and its owners. All information is public domain and accessible for creditors and public authorities.

Transfer of dividends, interests and royalties abroad

The transfer of dividends, interests and royalties abroad is uncomplicated and easy for foreign investors. The Euro is freely convertible into other currencies and the import and export of capital is free, subject only to reporting requirements.

A free European capital market was introduced by EU Directive 88/36L and the implementation of former Article 67 of the EU Treaty in national law. This Directive completely abolishes all restrictions on the transfer of capital between EU member states.

Considering non-EU member states, the 1956 U.S.-FRG Treaty of Friendship, Commerce and Navigation is to mention, which provides for free movement of capital between the Unites States and Germany. Germany also subscribes to the OECD Code on Capital Movements and Invisible Transactions (CMIT). While the provisions of Germany's foreign economic law provide that restrictions can be imposed on private direct investment flows in either direction for reasons of foreign policy, foreign exchange or national security, no such restrictions have ever been imposed. There doesn't exist a broad authority to screen foreign direct investment.

Repatriation procedures and restrictions

Investments are not subject to foreign-exchange controls. Profits and dividends may be freely repatriated without restrictions of any kind.

Foreign personnel (permits, etc.)

Foreign citizens who plan to take up residence and employment in Germany must comply with certain immigration rules and regulations. Generally, foreign citizens require a visa for entering Germany. The visa is granted for three month and can be extended once for an additional period of three month. Citizens of EU member states, the U.S.A. Canada, Japan and various other countries are able to enter Germany without a visa, provided that their stay in Germany does not exceed three month and provided the foreign citizen is in possession of recognized travel documentation.

Foreign citizens, who have planned to work or engage in a commercial activity or trade within Germany, need a residence permit. This does not apply to people, who enter Germany for the purpose of travel for a maximum of three months and who are exempted from visa requirement. If a foreign, non-EU citizen, who does not possess an unlimited residence permit, intends to take up gainful employment in Germany, the consent of the Labor Office is required.

The possession of a (limited) residence permit does not include the statutory right to receive a work permit. The Labor Office principally considers the application of the work permit on the basis of the prevailing labor market and the individual applicant.

In some cases, there is no work permit required. This means for example for certain executive employees and temporarily seconded specialists or instructors, whose stay does not exceed three months. Application for permits must be filed before leaving the home country at the local German diplomatic representation. Different to this, nationals of EU member states, EFTA-States and U.S. citizens may apply for a residence permit after having legally entered Germany. Work permits can be either issued for special types of employment in certain areas or for particular positions in named corporations. Work permits are usually linked to an employer and a new permit is therefore required for each change of employment.

→ Corporate Law

Regulations and Rules

German corporate law offers a wide range and broad variety of legal forms for conducting business, which reaches from the sole proprietorship via branches to various forms of corporations and partnerships. Unlike some other major Continental legal systems, the German corporate law is not integrated into one sole code as might be the case with the French Code de Commerce, but split into different codes.

The Civil Code *(Bürgerliches Gesetzbuch - BGB)* deals with company law in Articles 705 to 740, setting the legal framework for civil-law associations *(Gesellschaft bürgerlichen Rechts - GbR).* Regulations concerning partnerships are to be found in the Commercial Code *(Handels Gesetzbuch - HGB).* The two major types of corporations, the Limited-liability company and the stock corporation, both have been regulated individually in their own Code, the Private Limited Company Act *(Gesetz betreffend die Gesellschaften mit beschränkter Haftung - GmbHG)* and the Stock Corporation Act *(Aktiengesetz-AktG).* The German Reorganization of Companies Act *(Umwandlungsgesetz - UmwG)* furthermore provides a variety of ways to transform and merge existing business without generating the necessity to either liquidate the company or transfer single assets and liabilities. Recently a Corporate Governance Code has come into force, applicable to quoted companies.

Types of Companies and Liability of Shareholders

Investors willing to set up a business in Germany are necessarily restricted in their choice of entity to the legal forms provided by the above mentioned laws, which nevertheless provide a broad range of possibilities to conduct business. A foreign individual may wish to start business as a sole proprietor *(Einzelkaufmann)* or as a branch of a foreign entity *(Zweigniederlassung).* If he prefers to set up a legally independent entity in Germany, he may instead select between several forms of partnerships *(Personengesellschaften)* or corporations *(Kapitalgesellschaften).* The legal forms most commonly adopted by foreign investors and German businesses alike are the following:

AKTIENGESELLSCHAFT (AG) (STOCK CORPORATION): The AG is a separate legal entity with the liability of the shareholders restricted to the value of the corporation's assets including its share capital and outstanding contributions. The statutory minimum share capital is ¤ 50.000 and has to be fully subscribed. At least 25% of the share capital must be paid in by the date of application for registration in the commercial register.

This is the corporate form adopted by most of Germany's largest companies with the major advantage that its shares can be transferred rather easily and be listed on a stock exchange, making it relatively easy to raise capital from the public. Since the AG tends to enjoy a higher market reputation and its independent management is not bound by shareholder instructions, it has also been adopted by some smaller and privately owned businesses lately. On the other hand, the AG is subject to a large number of mandatory legislative regulations, which make its handling rather complex and sometimes might give little option to adapt the bylaws to specific shareholder requirements. Furthermore certain standards regarding the bylaws of listed AG's have come into practice and should be observed, at least if the AG considers being listed at the stock exchange.

GESELLSCHAFT MIT BESCHRÄNKTER HAFTUNG (GMBH) (PRIVATE LIMITED COMPANY OR LIMITED- LIABILITY COMPANY): The second major form of corporation in German corporate law is the GmbH, which is the corporate entity most commonly used for enterprises in Germany. The German legislator lately has come up with a comprehensive reform of the GmbHG or Private Limited Company Act, which has come into effect on November 1st, 2008 and is intended to encourage business start-ups as well as to raise the attractiveness of the GmbH as a legal form in the frame of growing international competition."

The minimum share capital of a GmbH is € 25,000, divided into shares *(Geschäftsanteile)* which may have different nominal amounts and be in cash or in kind. With a clear and stable shareholder structure and total liability protection for its shareholders - the liability is limited to the value of its assets including its share capital - the GmbH is designed to suit the necessities of private business. It is easier to establish and administer than the AG, and its bylaws *(Gesellschaftsvertrag)* may more easily be adapted to the requirements of the shareholders.

Unlike the AG, Shareholders retain overall control over the appointed management. Being usually closely held, the GmbH is generally not subject to as many regulations as the AG might be. It must have a minimum of 1 shareholder and is not restricted to a maximum number. Domestic and foreign corporations and partnerships as well as individuals may become shareholders. A GmbH is established by executing a deed of formation and bylaws before a German notary. The bylaws need to include the registered domicile, the purpose and its share capital. The GmbH does not come into corporate life until it is registered at the local commercial register, where the bylaws become part of the public record. Should the GmbH start its business operations before, the shareholders may incur personal liability. In the course of the recent reform of the GmbHG or Private Limited Company Act, a "limited liability entrepreneurial

company" or so called *"haftungsbeschränkte Unternehmergesellschaft"* has been introduced as a new form of the regular GmbH, which lacks any specific minimum registered capital, but is not allowed to distribute its profits until the minimum registered capital of the common GmbH has been accrued. Furthermore, 2 model protocols liable to notarization are allocated as annex to the GmbHG or Private Limited Company Act, granting less complicated foundations in standard matters. These protocols concentrate 3 documents (bylaws, appointment of directors and shareholders' list). Shares will be registered to a minimum of EUR 1,00 and can be split, merged and transferred more flexibly. Moreover, the registration of the GmbH at the Commercial Register shall be speeded up by decoupling the registration procedure from administrative approvals. In addition to those and other minor positive changes introduced by the reform, the relocation of the administrative centre of the GmbH abroad has now been made possible. Furthermore a higher degree of transparency is provided and the shareholders' list will serve as a focal point for a bona fide purchase and transfer of shares."

OFFENE HANDELSGESELLSCHAFT (OHG) (GENERAL PARTNERSHIP] AND KOMMANDITGESELLSCHAFT (KG) (LIMITED PARTNERSHIP): Besides AGs and GmbH's, Partnerships regulated by the German Commercial Code (HGB) continue to play an important role in German business life today.

These partnerships are divided into general partnerships (OHG] and Limited partnerships (KG), the main difference being the liability of the partners. All partners of an OHG are jointly and severally liable for all of the partnership's business debts. A Limited partner of a KG, however, is only Liable up to its subscribed and registered contribution of minimum € 1 *(Kommanditist),* although the KG must have at least one general partner (Komplementär); the general partners are fully liable. This is reason enough for foreign investors to frequently set up a KG when choosing a partnership structure for their business.

Partnerships have quasi-legal status and can enter into contractual relationships, own assets and incur liabilities in their own name. To set up a partnership at least two partners are required, who can be either individuals, (foreign) corporations or other partnerships. The formation of a partnership requires the execution of a partnership agreement and has to be followed by registration at the relevant commercial register. To achieve the desired liability protection for the limited partners, the subscribed liability contribution must be properly registered to become legally effective. In principle, the partners may freely agree on their rights and obligations in the partnership agreement, leading to a great flexibility in tailoring the internal affairs to the needs of the partners.

Another advantage of partnerships compared to the AG and GmbH are the fewer publication requirements, the easier way to dissolve a partnership and to distribute its capital to the partners, direct management by the partners, and an advantageous gift and inheritance tax, making it especially attractive for smaller and family-owned businesses facing a generation shift.

The transfer of any partnership requires an agreement between the transferee and the transferor, signed with the consent of all partners, unless the partnership agreement provides otherwise.

GMBH & CO KG (CORPORATION & CO KG): A quite common way in German corporate law of achieving the advantages of a partnership structure, without the frequent inconvenience, is to have a corporation with more or less no capital contribution as the sole general partner. The so called GmbH & Co KG grants all its partners to a certain extent security from unlimited liability, combining the advantages of a partnership with the liability limitations of a corporation. Small wonder a significant number of family-owned and medium-sized

GESELLSCHAFT BÜRGERLICHEN RECHTS (GBR) (CIVIL-LAW ASSOCIATION): A civil law association (GbR) is a partnership which has no registered business name and does not constitute a corporate entity separate from the partners. To set up a GbR, at least 2 partners are required to execute a partnership agreement. There is no registration needed. A GbR is usually used for non-commercial purposes (e.g. associations of professionals), or for individual contracts and transactions for a limited period (e.g. construction projects).

SOLE PROPRIETORSHIP *(EINZELKAUFMANN)*: The owner of a sole proprietorship is engaged in a typical commercial business and personally liable for all debts. His business must be registered at the commercial register *(Handelsregister).*

BRANCHES *(ZWEIGNIEDERLASSUNG):* A foreign company not interested in doing business through a separate German legal entity may establish a branch in Germany. The branch has to be registered in the commercial register (Handelsregister) located at the local court of its registered office. Although contracts may be signed in its name, a branch is not a separate Legal entity. For registration the court will request evidence of the existence of the foreign company such as copies of the articles of association, the amount of the share capital, the names of the managing directors etc. This information must be registered and kept up-to-date at the commercial register and in the German Federal Gazette *(Bundesanzeiger).*

Due to recent rulings of the European Court of Justice, German business is increasingly showing interest in the newly achieved possibility to establish its business in the form of a UK registered and seated Ltd or its different EU counterparts, which now is perfectly entitled to carry out business in Germany just by establishing a branch there without any form of discrimination, even if its business activities are carried out entirely in Germany. As this is a relatively new and untested approach, it remains to be seen whether the UK Ltd or similar EU corporations like the Spanish S.L. or French S.a.rl are set to undermine or seriously replace in anyway the GmbH and the AG as the two major legal forms of corporations in Germany.

Share Capital

As mentioned above, the statutory minimum share capital is € 25,000 for the GmbH and € 50.000 for the AG. It has to be subscribed in full. If it is contributed in cash, only E of the share capital of a GmbH, but at least a minimum contribution of € 12,500, must be paid in by the date of the application for registration at the commercial register. In case of the AG, € of the share capital plus any premium must be paid in. Should either a GmbH or an AG be established by a single shareholder, either the full amount has to be paid in or security provided for the outstanding amount. Contribution in kind is possible, but must be fully effected in a way that assures that the assets are at the permanent disposal of the managing directors. German corporate law is strongly focused on ensuring that the share capital is duly paid in and maintained. A GmbH therefore is not allowed to make payments to shareholders that would reduce its net assets to a level below its stated share capital The AG is subject to even stricter rules, which do not permit a company to repay share capital contributions to the shareholders regardless of whether such payments would reduce the AG's net assets to a level below its stated share capital or not.

The share capital of a GmbH is divided into shares *(Geschäftsanteile)* that can have different nominal amounts and which are not issued in the form of certificates. Each shareholder holds a share in the amount of the original contribution *(Stammeinlage).* The share must total at least € 100. A share in a GmbH may be transferred by assignment or inheritance. The contractual transfer of shares has to be documented in notarial deeds and can be made conditional upon the consent of the GmbH, its articles or any other holder of shares. The share capital of an AG is divided into shares that may be issued either with a par value *(Nennbetragsaktien)* of at least E1 per share or multiples thereof, or without par value *(Stückaktien).*

Shares may not be divided and in general carry one vote each. They may be issued as bearer shares (Inhaberaktien), which are owned simply by the person who holds them, or registered shares (Namensaktien), in which case the name of the owner is registered in the company's share register. Additionally, shares can be issued as ordinary shares (Stammaktien! or preferred shares (Vorzugsaktien). Bearer shares enjoy free transferability. The corporation is not allowed to restrict in any way their transfer, whereas registered shares might be bound by stipulations of the articles providing that a transfer requires the consent of the company.

Corporate Governance

SHAREHOLDERS MEETINGS: Shareholders decisions are made through shareholder resolutions passed in general meetings *(Hauptversammlung)* in case of an AG and shareholders meetings *(Gesellschafterversammlung)* in case of a GmbH.

For an AG a general meeting is to be held each year within 8 months after the end of the financial year. It is convened by the management board. Additionally the management board, the advisory board or shareholders holding at least 20% of the share capital are entitled to call an extraordinary general meeting. Shareholders resolutions regularly require a simple majority

of more than 50%, unless mandatory law requires a greater majority (e.g. 75%) as may be the case for amendments to the bylaws or increases or decreases in capital, transfer of all assets, or change of the corporate form] or the articles provide otherwise. The statutory rights of the general meeting include among others the appointment of members of the advisory board, the distribution of profits, the formal approval of the board members (management and advisory) with respect to their activities during the preceding financial year, the amendment of the articles as well as the liquidation and the reorganization of the AG.

For a GmbH, the managing director usually convenes general meetings of the shareholders. As is the case with the AG, at least one meeting is to be held each year within 8 months after the end of the financial year. Additionally the holders of 10% of the share capital are entitled to call a general meeting. Shareholders resolutions regularly require a simple majority of more than 50% of the votes cast, unless the bylaws of the GmbH require a greater majority. In some cases a majority of 75% is required by mandatory law as may be the case for amendments to the bylaws. The statutory rights of shareholders at the shareholders general meetings include, so long as the articles/bylaws do not provide otherwise, the appointment of managing directors, the review of their activities, the distribution of profits, the amendment of the bylaws and the approval of the financial statements.

DECISION-MAKING BODIES: The AG is required to have a management board *(Vorstand),* which manages and represents the company in and out of court. The management board is appointed by the supervisory board for a term not to exceed 5 years and is independent both with regard to the shareholders and the supervisory board itself for the term of service. Neither the shareholders nor the supervisory board may issue instructions to the management board. During their term in office, the members of the management board can only be dismissed for cause. The shareholders and the supervisory board therefore lack any direct influence on the management of the AG. A limitation on the statutory authority of the management board is not effective against third parties, although internal rules may subject it to certain restrictions as might be the case with specific transactions which require approval of the supervisory board.

A GmbH is managed and legally represented by its managing director *(Geschaftsfuhrer).* A GmbH must necessarily have one managing director but can have as many as desired. The principle of collective management and representation applies if the articles do not provide for some-thing else. The managing director does not need to be a shareholder, a German citizen or even resident- However he must be an individual and hence not a corporate entity. The power to appoint and remove managing directors at anytime belongs to the shareholders. The power of representation towards third parties cannot be restricted. Nevertheless the management authority *(Geschäftsführungsbefugnis)* can be restricted internally and shareholders may exercise their right to give managing directors instructions regarding any particular issue on which they wish to exercise their influence.

German law does not provide any specific rules limiting the fees of an AG's management board *(Vorstand)* or a GmbH's managing directors *(Geschäftsführer).* Nevertheless at least as far as the GmbH is concerned, the German Supreme Court (BGH) has ruled that if the fees exceed an appropriate proportion of the after-tax profit, the company is entitled to decrease the fees unilaterally.

Both the AG's management board and the GmbH's managing directors are bound to the company by a fiduciary duty and a duty of care and skill, leading to their far reaching liability for significant violations resulting in damage to the company.

An AG is obliged by law to have a supervisory board (Aufsichtsrat) in addition to the management board, the function of which basically consists in supervising and advising the management board, appointing its members, appointing the statutory auditor, reviewing and approving the annual financial statements, as well as representation of the AG in dealings with the management board. The supervisory board is not entitled to participate in the corporation's day to day management, but may nonetheless determine that certain categories of transactions have to be subjected to its approval. In case the approval is denied, the supervisory board may appeal the decision to the shareholders. Except for special provisions regarding the participation of employee representatives, the members of the supervisory board are elected by shareholder resolutions.

The special rights of employees referred to federal Laws, the *"Drittelbeteiligungsgesetz"* and the *"Mitbestimmungsgesetz"* (MitbG) or *"Co-Determination Act,"* which give employees representation on the supervisory board. The *"Drittelbeteiligungsgesetz"* provides that all GmbHs as well as all AGs with more than 500 employees , must allow employees to elect one third of the members of the supervisory board. The *"Mitbestimmungsgesetz"* or Co-determination Act requires that all companies with more than 2000 employees must grant their employees equal representation with shareholders on the supervisory board.

In case of a GmbH, a supervisory board is mandatory only if the GmbH has more than 500 employees. Should the company not reach that size, shareholders may nonetheless form a supervisory board or alternatively an advisory board *("Beirat")* and to provide for their functions in the articles.

Accounting and publication requirements

All commercial businesses in Germany are subject to a bookkeeping requirement. In addition they have to prepare financial statements as of the end of each fiscal year in accordance with German GAAP. For corporations as well as commercial partnerships with no individual as general partner (GmbH & Co KG) the following special provisions also apply: Annual financial statements as well as profit and loss accounts regularly have to be established within 3 months, in special cases exceptionally within 6 months. There are special provisions regarding the format of the balance sheet and the evaluation of the assets and liabilities. Moreover, a management

report is mandatory. Both management report and financial statement must be audited by a certified accountant *(Wirtschaftsprüfer)*. There is an exception if the company does not exceed certain thresholds pertaining to its balance sheet total, turnover and number of employees (*kleine Kapitalgesellschaft* or "small company"). Corporations and partnerships with no individual as general partner are also required to file their financial statements at the commercial register and publish them in the Federal Gazette *(Bundesanzeiger)*.

Quoted companies

German corporate law does not in principle make any distinction between quoted and unquoted corporations or impose special rules on quoted corporations. Since 2002, however, quoted companies are subject to a mandatory corporate governance code.

→ Corporate and Personal Taxes

German income tax law is regulated mainly in the German Income Tax Act *("Einkommensteuergesetz")* for individuals and partnerships, the Corporate Income Tax Act *("Körperschaftsteuergesetz")* for corporations, and the Trade Tax Act *("Gewerbesteuergesetz")* for individuals, partnerships and corporations with respect to income generated from trade. The following overview relates to the applicable law of 2012.

Personal Income Tax

Income tax is based on an individual's worldwide income from all sources if the individual is subject to unlimited taxation (tax residence) in Germany. If an individual is not a resident for German tax purposes, limited taxation applies, on income from German sources. German tax law has seven categories of taxable income, one of which is income from trading which is subject to the trade tax as well:

- Income from agriculture and forestry
- Income from trading
- Income from professional and other independent personal services
- Income from employment
- Income from investment
- Rental and royalty income
- Other income

Taxable income allows several deductions from the gross income, especially income-related expenses. Other than the previous years, the trade tax is no longer considered a "deductible expense" starting in 2009. The tax rates are calculated on a calendar year basis with separate tax tables for single and married taxpayers. After a tax-free allowance of EUR 8.004 for singles

and EUR 15,668 for married couples, the tax rate starts with a minimum rate of 15% and continues progressively up to 42% plus a solidarity surcharge of 5.5% of the tax liability. The maximum tax rate of 42% is reached with a taxable income higher than EUR 52.882 for singles and EUR 105.764 for married couples. Since 2008 the maximum tax rate is increased to 45% for certain incomes higher than EUR 250.731 for singles or EUR 501.462 for married couples. Since 2009 all income from investments (interests and dividends) are being taxed with a fix rate of 25% plus the so called "solidarity surcharge" of 5,5 %.

Corporate Income Tax

The most common German corporate entities are the limited-liability company (GmbH) and the stock corporation (AG). Corporate entities pay a flat rate of 15% tax plus a 5.5% solidarity surcharge from the income calculated on the base of the Corporate Income Tax Act, unless the act provides otherwise. Corporate entities are subject to trade tax as well, regardless of the nature of the income.

A corporate entity which is a German resident for tax purposes is subject to corporate income tax on its worldwide income. Corporations whose seat and place of management are located outside of Germany are subject to taxation on their German source income only. Branches and permanent establishments operating from Germany are subject to German corporate income tax and trade tax on their branch profits.

Any dividends received by a German corporate entity from another corporate entity are generally exempt from corporate income tax and trade tax, (for the purpose of trade taxation in case that the participation is on of at least 15%. However, 5% of the dividends are deemed to be a non-deductible expense, so that in fact only 95% of the dividends are tax-exempt. Individuals who receive dividends from a corporate entity are tax exempt to the amount of 25 %. The corporate entity has to withheld 25% (plus 5.5 % solidarity surcharge on the withholding tax) of all dividends at source. The tax obligation thereby is satisfied conclusively.

Trade Tax

Trade tax is a tax on the trading income of an individual, a partnership or a corporate entity payable to the local municipalities. Each municipality is entitled to determine its own effective tax rate by setting a multiplier which is applied to the basic rate.The basis for trade tax is calculated on the basis of the German Income Tax Act or the Corporate Income Tax Act with a number of adjustments. The most important adjustment are the non-deductibility of 25% of all interest paid on loans and of all expenses paid on rentals.

Trade tax ranges from about 9,5% to 15,6% depending of the municipality tax rate.Trade tax related income generated by individuals or partnerships is subject to a certain deduction for purposes of personal income tax.

Income Taxation of Partnerships

The most common German partnerships are the general commercial partnership (oHG) and the limited partnership (KG). For purposes of German income taxation a partnership is transparent. As a first step the income of the partnership is calculated according to the German Income Tax Act and the German Trade Tax Act. The trade tax, which is non-deductible and payable by the partnership after a tax-free allowance of EUR 24,500, the income will be allocated to the respective partners. At the level of each partner, and only there, the allocated income is subject to income tax or corporate income tax depending on whether the partner is an individual or a corporate entity. The trade tax is - from 2009 on - no longer deductible from the income tax.

Treatment of Losses

Tax losses of individuals and corporate entities are allowed to be carried back one year, up to an amount of EUR 511,500 for singles and twice that amount for couples. If the losses exceed EUR 511,500 or cannot be fully carried back into the previous year, losses will be carried forward up to an amount of EUR 1,000,000. Higher losses can only be offset against profits, up to 60% of the taxable income. No limitations exist on the use of losses carried forward.

Tax losses will be cut off completely if the economic identity of the corporation changes. This is assumed if more than 50% of the shares of the corporation are transferred within a period of 5 years. For purposes of the trade tax, losses of individuals, partnerships or corporate entities will be carried forward. Within a partnership a change in partner will lead to a loss of proportionate trade tax loss carry forwards. Trade tax losses cannot be carried back.

Value Added Tax

All individuals and entities who independently carry out an income-generating trade, business or other profession are subject to VAT The German VAT system in general ensures that the end customer bears the VAT. VAT is charged at the rate of 19% of turnover. The reduced rate is 7%. There are many exemptions from VAT, of which the most important are all transactions which are subject to real estate transfer tax, residential rental, all business carried out by banks and insurance companies, and export of goods.

Property Tax

Property tax is levied annually by all municipalities on land and buildings located in their region. The usual basic rate is 0.35% of the tax value of the property the result is then multiplied by a percentage which is determined annually by each municipality.

Real Estate Transfer Tax

Real estate transfer tax is charged at a rate of (generally) 3.5 % of the tax value of real estate sales and other transactions which are considered to be a transfer of real estate, such as the transfer of at Least 95% of a company owning real estate. Some federal states as Berlin, Brandenburg and others charge a higher tax rate (5%).

Inheritance and Gift Tax

Inheritance and gift tax is charged on the transfer of assets as a gift or by inheritance. Tax rates vary between 7% and 50%, depending on the degree of family relation and on the value of the property inherited or bestowed. Tax allowances are available for both spouses and children and also for the transfer of business assets and shares in domestic corporations. Further tax allowances are available in case of the transferral of business assets.

Other Taxes

Other taxes that may be relevant are ecology tax (electricity tax, mineral oil tax), church tax, insurance tax and vehicle tax.

→ Real Estate Law

The German law concerning real estate covers all matters connected to immovable property. The definition of real estate includes the following aspects:

- in a factual sense, an indicated area on the earth's surface,
- in a legal sense, an indicated area on the earth's surface registered on a separate page under
- a certain number in the German land register,
- in the cadastral sense, a land parcel, and
- in an economic sense, an indicated area on the earth's surface which forms an economic unit, but the unit includes not only the surface of the earth, but also the airspace above and earth below the surface.

Types of Ownership

A natural or legal person may be the sole owner of real estate, in the case of joint property, all owners hold the real estate jointly. Each co-owner owns an ideal (not physical) part of the real estate. Under German real estate Law, each ideal part of real estate is treated as if it were owned by a sole owner, so the co-owner can have his part to his own disposal and can, in

particular, sell or encumber it unilaterally. There is an exception to this rule in the case of decisions that affect the real estate as a whole, which must be made jointly by all co-owners.

As there was a great need for residential space after World War II, it became necessary to let people take part in financing their housing and give them property equivalents for their invested money. Thus a law concerning "property in a freehold flat" *("Wohnungseigentum")* was introduced, which offers the possibility of acquiring property in only a part of a residential structure. The real estate in such case includes the individually-held property of the flat or office (including constituent parts like balconies), plus an ideal part in the shared joint property in the whole building (all facilities and equipment belonging to the building and necessary to maintain it, or used by all co-owners jointly such as stairways or utility lines, laundry or storage rooms used by all proprietors] which is not part of any individually held property. The individually held property and the ideal co-ownership cannot be separated.

Another noteworthy feature of German real estate law is the "heritable building right" *("Erbbaurecht").* A basic principle of German real estate law is the unity of property of a building and the land of which the building is a permanent part. But the law authorizes an exception from that principle in case of the heritable building right, where the property of a building differs from the property of the land on which the building is built. Here the beneficiary has a property right in the building only for a limited time, and concerning the land the status is very similar to that of a full proprietor. The heritable building right is a charge on the land because it limits the rights and powers of the ultimate owner; as compensation, the beneficiary is obliged to pay ground rent to the owner. The heritable building right is a right equal to the rights to real estate, and so it is transferable and may be encumbered with a mortgage like real estate. For the beneficiary, the heritable building right provides the opportunity to put up a building without paying a great amount of money for land to build it on beforehand. For the owner, the benefit of the heritable building right lies in remaining the owner of the land (although another person has built a house on it) and obtaining ground rent. It is common to agree upon a period of validity of 99 years. If the beneficiary fails to pay the ground rent, he is obliged (under certain conditions) to reconvey the heritable building right to the owner, who must pay compensation for the building to the former beneficiary. All these issues are regulated in the heritable building contract.

Land Register *("Grundbuch")*

In order to protect legal relations, the land register *("Grundbuch")* discloses all legal relationships concerning a piece of real estate. Every person who claims a legitimate interest is entitled to inspect the land register, which is kept at the land registry, a department of the relevant local court *("Amtsgericht").* The land register is divided into sections by region and each piece of real estate has its own page in the land register. With a few exceptions (such as public roads and waterways), all pieces of real estate must be entered in the register. A page of the Land register is made up of three sections: The first section provides information about the

owner, the third section provides information about liens on real property ("Grundpfandrechte"} such as mortgages *("Hypothek")* or land charges *("Grundschulden")*, and the second section provides information about all other land charges (such as usufruct, *"Nießbrauch"*), restraints on disposition [e.g. because of insolvency) or interim measures (like a priority caution). Depending on the form of property, the page of the Land register may also have the special form of a "housing register'' *("Wohnungsgrundbuch")* or "heritable building register" *("Erbbaugrundbuch")*. An entry in the land register creates a presumption of a right, but the presumption maybe rebutted.

Transfer Formalities

The Legal conveyance of property rights in real estate requires an agreement of the parties to the contract *("Auflassung")* and the registration of the transfer of property in the land register. The agreement on transfer must be in the form of a notarial deed. This rule is valid for all types of property mentioned above.

The deed of sale for real estate includes details about the contracting parties, the subject of the sale (especially the information drawn from the land register), conditions of payment, details on the building (whether already built or to be built), regulations and agreements on liability and avoidance of contract, and on the expenses of the contract, which are usually borne by the buyer. The costs usually include fees for the notary (approximately 0.3% to 0.4% of the purchase price) plus the fees for the land register (approximately 0.1% to 0.2% of the purchase price) plus the real estate acquisition tax (approximately about 3.5%). But this tax does not accrue if, for example, parents donate the real estate to their children.

Mortgages

Mortgages *("Hypothek")* and land charges *("Grundschulden")* are the most important liens on real property *("Grundpfandrechte")*. Their purpose is to secure creditors. The creditor of a Lien on real property (in most cases a bank) is entitled to two claims, one for payment, and if the debtor will not pay, then a claim for compulsory enforcement (in this case execution on the real estate).

It is common to issue a certificate for mortgages or Land charges. These documents regarding liens on real property are issued by the land registry and provide information about the serial number of the charged real estate under which it is registered in the land register, plus the amount and the content of the lien on real property. A lien on real property is transferred if the certificate is handed over and the conveyance is declared. If a certificate does not exist, a lien on real property can only be transferred if the new creditor is registered in the land register. For that reason, chartered rights may be sold much more easily than non-chartered rights.

Liens on real property generally require a notarial deed. This is based on the fact that a creditor with a lien on real property needs a title (the legal right to own something) to be able to proceed

to compulsory execution against the real estate. An enforceable title includes, for example, a legally binding judgment, but to achieve such a judgment requires time and expense. A preferable solution is a title in the form of an enforceable notarial deed. The only prerequisite is that the debtor has already agreed in notarial form to immediate forced sale of the real estate.

Special Restrictions and Special Rights

In German law, there is no distinction between German and foreign buyers of real estate. Any legal or natural person, as well as a partnership, is entitled to buy real estate. But there are several legal provisions that limit this. These include, in particular, pre-emptive rights stipulated by law or contract. A pre-emptive right is the right to enter into an existing contract and take over the subject of the contract.

A municipality has pre-emptive rights in order to carry out urban building plans, in practice, municipalities only use their pre-emptive rights very restrictively.

Another application of pre-emptive rights is the right of lodgers living on real estate. If their house is supposed to become property in a freehold flat, they have a pre-emptive right to buy their own flat before it is sold to a third party. Non-commercial housing estate companies *("gemeinnützige Siedlungsunternehmen")* have a pre-emptive right concerning agricultural-use areas.

Furthermore, other charges may limit the acquisition of real estate in Germany, as in principle the conveyance of real estate must be free of encumbrances. But there may be several encumbrances, such as liens on real property, right to usufruct, heritable building right or right of abode. These encumbrances must be solved before the conveyancing, or else have to be assumed by the new owner (but then are reflected in the price for the real estate).

To ensure that no acts of disposal are conducted in the time between the conclusion of the contract and the entry in the land register, the buyer's interest is protected by a priority notice of conveyance *("Auflassungsvormerkung")*. This notice, which is registered in the second section of the land register, assures the buyer's right to assignment of the real estate.

If the real estate is transcribed to the buyer before the purchase price is paid, the seller bears the risk of the buyer's insolvency. In that case, if the purchase price is not paid, the claim for payment could not be enforced. To avoid this risk, it is common to agree on deposit of the purchase price with the notary. In this case, as soon as the new owner of real estate is registered in the land register, the price can be paid to the seller, who is sure of receiving his money. If this way is not chosen, the seller can safeguard his right to payment, if both parties instruct the notary only to make the application to the land register when the purchase price has been paid or secured.

As mentioned above, provisions on rescission are made between the parties in the notarial deed of sale. As a rule, this will include the right of rescission for the seller if the buyer does not pay on time. On the other hand, the buyer has the legal right to rescind the contract if the seller is guilty of willful deceit, for example in regard to the nature or quality of the real estate.

Construction and Use Restrictions

Before land can be developed with buildings, permission by the relevant authority under the corresponding public law is required. The land must be designated for construction in the applicable local land-use plan.

Contracts of tenancy

German law distinguishes between contracts of tenancy for private housing accommodation and contracts of tenancy for business premises.

Unlike in some other major European countries, most people in Germany dwell as tenants. For that reason German law tends to provide special protection for tenants. Thus, appointments of the lease contract for tenements that differ from the provisions stipulated by law, concerning for example the tentants right of abating the rent, the right to sublet the object or the right of due cancellation of the contract are declared void. Quite often the lessor uses standard forms to draw up the contract, which must conform the requirements of the German Law on "general terms and conditions". Furthermore, it is noticeable, that a flat shall not be rededicated for different use, for example as accommodation for a shop, and shall not be left permanently vacant, being the lessor obliged to hire it out. Regarding the Lease price, the lessor has to realign to the local amount of rent for comparison. If a lessor demands an increased lease price of at least 20% above the average local amount of rent, he acts disorderly.

Contrary to that, appointments of lease contracts for business premises may differ from the provisions stipulated by law mentioned above (abating the rent, subletting, due cancellation). Furthermore, the lease price is not bound to the average local amount but only limited by the proscription of usury.

The German law of tenancy has undergone far reaching reformation by September 2001, but is still subject to difficult interim arrangements, applicable for contracts of tenancy that were concluded before that date.

→ Labour Law

Employment contracts / Costs of wrongful dismissal

Generally there are two types of working contracts, such as temporary contracts and non-temporary contracts. A temporary contract needs to be fixed in written form. The limitation can be up to 24 months without reason. If an initial period is shorter then 24- month, the contract can be extended up to three times, not exceeding 24 months.

The costs of wrongful dismissal are not foreseen by german labour law. The actual costs depend upon the particular case but should be considered with about 50 % of the gross salary per month for each year of the duration of the working contract.

Collective Bargaining Agreements

Collective bargaining is carried out on a national or industry-wide level as on a regional or local level. Said agreements apply only to those employers and employees who are members of the respective employer organization respectively trade union unless the agreement is declared to be generally binding by the Federal Department for Labour and Social Affairs. Some 495 collective bargaining agreements of a total of 67,000 are currently declared to be generally binding.

Works Councils and Co-determination

Works councils can be formed in all companies with five or more employees. The members are elected for four years and need not be union members. The rights of the works council, as set forth in the Works Constitution Act *(Betriebsverfassungsgesetz, BetrVG),* range form information rights to codetermination rights in organizational, social and other matters. In social matters, the employer is obligated to negotiate rules with the works council on the allocation of working hours, vacation schedules, grievances and matters of safety and welfare. The works council must be informed prior to the dismissal of any employee. The employer and the works council must under certain circumstances negotiate a reconciliation of interests and a social compensation plan in the case of mass redundancies in order to compensate employees for the actual and financial disadvantages suffered as a result of dismissal. The most important co-determination laws are currently the so called *"Drittelbeteiligungsgesetz"* and the Co-determination Act 1976 (Mitbestimmungsgesetz, MitbG).

The so called *"Drittelbeteiligungsgesetz",* provides that all GmbHs and AGs with more than 500 employees, if registered in the commercial register prior to August 10,1994 and not family-owned must allow employees to elect one third of the members one the supervisory board. The Co-determination Act 1976 requires that all companies with more than 2,000 employees must give employees equal representation with shareholders on the supervisory board. Employee

representatives must include at least one management employee representative. The chairman (usually a representative of the shareholders) has the deciding vote in the event of a tie.

Wages, Salaries, Bonuses, Working Hours, Holiday and Vacation

Law in Germany prescribes no minimum wage. Minimum wages are, however, often fixed by collective bargaining agreements in different industries. Equal pay legislation exists on a federal level providing equal pay for men and women. Although not a legal requirement, a thirteenth month salary/bonus is usually paid at Christmas, or split between Christmas and vacation time. The general legal maximum is 40 hours per week (based on a five-day working-week), which can be extended up to 50 hours provided, however, within approximately six months the average will not exceed 8 hours per day. Trade unions are obbying for a 35-hour week and collective bargaining agreements often provide for a shorter weekly working time (e.g. 38.5-hour week). Overtime is strongly opposed by unions.

All German states recognize the following public holidays: New Year's Day (January 1), Good Friday, Easter Monday, May Day (May 1], Ascension Day, White Monday, German Unity Day (October 3), Christmas Day (December 25), December 26.

Certain religious holidays exist in addition thereto which differ from state to state.

The minimum Legal vacation is 20 working days annually after completing six months of employment. Collective bargaining agreements as well as individual employment contracts usually increase the number of vacation days (often up to 30 days or more per year) while state laws provide for leave for special purposes (i.e., educational leave). An employee is entitled to receive vacation pay equal to his or her current salary during vacation. Several collective bargaining agreements as well as business practice provide for an extra vacation bonus.

Employment Regulations

he Employment Protection Act provides that giving notice without an important reason to an employee who has worked in the same company for more than six months is only legally effective to the extent it is socially justified. The Employment Protection Act only applies, however, if the plant or shop regularly employs more than ten individuals based on full-time positions. Part-time positions are only counted proportionally (up to 20 hours per week = 0,5; up to 30 hours per week = 0,75).

Social justification within the meaning of the Employment Protection Act is limited to three principal areas. Firstly, the termination of employment may be due to the personal circumstances of the employee such as a series of short-term illnesses or a long-term illness. Secondly, the behavior of the employee may constitute social justification for termination, i.e.

being absent from work without excuse despite repeated warning or refusal to work. Prior to issuing a notice of termination in such cases, the employer has to give a warning to the employee with regard to his or her shortcomings. Thirdly, a dismissal may be socially justified if based on operational reasons. In particular, this can be based on changes in the employer's business organization resulting in redundancies of the relevant job due, for example, to a plant closing or reduction of the work force due to a shortage of orders. However, the employer has to apply the so called "social factor method" considering the social data (age, seniority, maintenance obligation, handicaps) in order principally to select those employees for dismissal first, who are the "least disadvantaged" by the redundancy. The employee has the right to challenge said notice and to file a cause of action for re-employment with the competent labour court within a three-week period after receiving the notice. A statutory severance payment does not exist. The termination of an employment relationship under the Employment Protection Act is usually complicated and often results in paying off the employee through a settlement agreement. As a general and rough rule, an average severance payment amounts to about 50 % of the monthly gross salary for each year of service.

Additional employment protection exists for works council members, disabled employees, pregnant employees and employees on educational leave; said employees may not be terminated except for cause. Any termination, however, requires the prior consent of the competent authorities.

Social Security

Germany has a compulsory social security system that covers five principle areas: health and nursing care insurance, old-age-benefits, unemployment benefits and workers ' compensation. Contributions to the social security system are generally shared equally between the employer and employee. The employer withholds the employee's share of the contribution to the Federal Insurance Agency.

Benefits from public health insurance include the payment of medical and hospital expenses and compensation for loss of salary. Contributions to the public health insurance system are only payable up to certain salary levels, which are usually increased annually. As of January 1, 2012, only employees with a gross salary not exceeding € 50.850 annually or € 4.237,50 are obligated by law to make contributions to the public health insurance system. No compulsory health insurance exists beyond these salary thresholds; employees exceeding said thresholds might therefore opt to maintain a private health insurance, to continue the participation in the public health insurance system or to have no health insurance at all (which is rare). The exact rate of public health insurance depends on the individual insurance company but usually amounts to approximately 15,5% of gross salary (above caps apply), If the employee is not subject to compulsory health insurance, the employer must contribute up to € 279,23 per month (official average premium) to the employee' s private health insurance.

Contributions to the nursing care insurance plan amount to 1,95% of gross salary capped again at € 50.850 annually or € 4.237,50 monthly. Old-age contributions are currently levied at a rate of 19,6% of gross salary capped at ¤67.200 annually or € 5.600 monthly (Western part of Germany) and € 57.600 annually or € 4.800 monthly (Eastern part of Germany).

Unemployment insurance contributions amount to 3 % of gross salary capped as well at € 67.200 annually or € 5.600 monthly (respectively € 57.600 annually/€ 4.800 monthly in the Eastern part of Germany).

Effects of § 613a BGB

In general the rule of § 613a BGB states, that in case of a so called *"Betriebsübergang"*, which is the sale of a firm by legal transaction, the purchaser is stepping into the rights and obligations of the working contracts between the seller and his employees existing at the time of the transaction. This means, that all working contracts, which exist between the seller and his employees, automatically pass to the purchaser by law.

Some effects of the rule of § 613a BGB have to be considered even before the actual transaction has taken place. For instance: The employees, who will be effected by the transaction, have to be informed in detail either by the seller or the transferee about:

- The date or the planned date of the transaction;
- the reason for the transaction
- the legal, economical and social effects of the transaction for the employees and
- the planned measures (for instance further education) regarding the employees.

The time span between the information of the employees and the actual transaction depends upon the particular case, although it should be one month at least. The employees' right of protest, which is provided to the employees by law, against the transfer of their working contract onto the purchaser has to be considered thereby.

Due to the rule of § 613a paragraph 6 BGB the employees do have the right to protest against the transfer of their working contracts onto the purchaser. The protest has to be done in written form and within one month after the receipt of the above mentioned information.

The consequence of such a protest is, that the working contract of the protesting employee is not being transferred, but will furtherly exist between the seller and the protesting employee. Since the seller will not be leading the firm any more after the transaction has taken place, the purchaser is generally justified to terminate the working contract for operational reasons. The above mentioned obligation of information must be followed in any case, because without a regular information of the employees, the time limit of the employees' right to protest will not

even start to run. This leads to the fact, that the working relationship will remain between the seller and the employee until the employees have regularly been informed about the above mentioned points. Therefore, personal measures, such as the termination of a working contract, can only be done by the purchaser himself after the employees have been regularly informed. Even if all information obligations have been fulfilled regularly and the transaction itself has taken place, it is forbidden by § 613a paragraph k BGB to use the transferration of the company itself as a reason for the termination of a working contract. However, a termination of a working contract, which is based upon the other reasons, which are admissible in German labour law, such as operational or personal reasons or the behaviour of the employees, is generally possible at any time and is not at all restricted by the transferration of the company.

Charltons
易周律师行

→ Hong Kong

CHARLTONS was founded in October 1998 as a focused corporate finance solicitors firm advising on Hong Kong law and also with extensive experience of China related legal issues. The firm brings a high impact approach to legal services on Hong Kong and PRC-related corporate finance matters, to both international and local clients from Hong Kong and mainland China. CHARLTONS aims to provide practical, creative and commercial solutions that match the business objectives and priorities of their clients. The firm was awarded the "Boutique Firm of the Year" by Asian Legal Business for the years 2002, 2003 and for each of the years from 2006 to 2013.

CHARLTONS has considerable experience in offering advice to multinational and local companies operating in Hong Kong and China. The firm represents Hong Kong based local and international investment banks on IPOs and other capital raising transactions as well as advising companies seeking listing and major shareholders of such companies. The firm advised the controlling shareholder on the largest IPO in Hong Kong in 2011 as well as its subsequent US$6 billion placing and advised the sponsors of two successful IPOs in 2012. The firm has extensive experience on advising on SFC licensing, regulatory issues and internationally structured investment funds. The firm's regulatory and compliance work involves frequent communications with the Hong Kong Stock Exchange and Securities and Futures Commission regarding securities regulatory, Listing Rules and corporate finance issues relevant to our clients' projects. CHARLTONS is also experienced in advising clients in relation to mergers and acquisitions, particularly in the natural resources sector (www.charltonsnaturalresources.com) and has advised on a number of takeovers under the Hong Kong Takeovers Code, including one of the few hostile takeover offers in recent years in Hong Kong.

CHARLTONS extensive experience in due diligence, both for IPOs and M&A transactions is underlined by the firm's role as the coordinating law firm for the recently published ground

breaking Hong Kong Sponsor Due Diligence Guidelines (www.duediligenceguidelines.com) - a collaborative project on an unprecedented scale in the Hong Kong sponsor market, involving over 40 Hong Kong investment banks who act as sponsors, around 20 other law firms as well as accounting firms and other professionals. The 750+ page Due Diligence Guidelines are free to download and were developed as an initiative of Hong Kong sponsors to promote standards in the conduct of due diligence for new Hong Kong listings, with particular relevance to Chinese companies, with a view to maintaining the integrity of the Hong Kong market and to assuring the quality of information disclosed in IPO prospectuses.

The DD guidelines were developed in the light of the new Paragraph 17 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission introduced on 1 October 2013, which sets out the standards and certain procedures, taken together with the requirements of the Hong Kong Stock Exchange Listing Rules, expected by the SFC of sponsors in the conduct of a due diligence to support IPOs in Hong Kong, an important reference point to guide sponsors and Hong Kong professionals as sponsors' work is ultimately to be judged "based on what a sponsor's peers would consider objectively appropriate having regard to all relevant facts and circumstances at the time of making a listing application". Also with the additional benefit of serving as an educational tool for less experienced market practitioners or those who come to Hong Kong from other jurisdictions.

CHARLTONS has extensive and diverse experience in all aspects of direct and indirect investments in the PRC, whether by way of joint venture, wholly foreign owned enterprises or offshore restructuring methods, often involving private equity firms with subsequent IPO exits. CHARLTONS has worked with a number of technology companies, both in China and Hong Kong as well as elsewhere, from start up to business expansion, including the setting up of joint ventures, licensing of intellectual property rights, and marketing issues and in some cases has represented these technology companies on their eventual successful IPOs. Charltons has experience in the areas of registration and protection of intellectual property.

CHARLTONS is headquartered in Hong Kong with representative offices in Beijing and Shanghai and an arm in Yangon, Myanmar. The firm also has extensive personal links with firms in over 60 countries worldwide and often acts as the coordinating law firm for both public and private M&A transactions when advice from multiple jurisdictions is required.

CHARLTONS' work reflects the firm's deep local knowledge and international perspective and the and the firm's lawyers provide insightful and highly personalised service to clients, often working round the clock to deliver on transactions spanning multiple time zones. CHARLTONS is headquartered in Hong Kong with representative offices in Beijing and Shanghai and an arm in Yangon, Myanmar. The firm also has extensive personal links with firms in over 60 countries worldwide and often acts as the coordinating law firm for both public and private M&A transactions when advice from multiple jurisdictions is required.

Languages spoken by the firm's lawyers include English, Mandarin, Cantonese, Shanghainese, Chiu Chow, Myanmar (Burmese) and French. The firm frequently provides seminars and training to corporate and investment banking clients on recent developments in securities and company law and regulation in Hong Kong and China as part of its ongoing client relationships.

→ Foreing Invesment Law

The Hong Kong Special Administrative Region ("HKSAR" or "Hong Kong") is receptive to foreign investment and does not discriminate between foreign and domestic investors. Attracting foreign investment is a priority of the government and is widely considered beneficial, even crucial, for Hong Kong's economic stability. It is quite common to have 100 per cent foreign investment in certain industries.

Hong Kong's predictable business environment, rule of law, stable and low tax regime, free flow of information and capital, good infrastructure and proximity to the People's Republic of China ("PRC") make it a desirable platform for investors. Hong Kong was named number one on the 2013 Index of Economic Freedom, compiled by The Heritage Foundation and The Wall Street Journal with a score of 89.3.

Foreign direct investment flows into Hong Kong exceeded US$75 billion in 2012. Hong Kong currently ranks third globally in terms of foreign direct investment inflows, after the United States and PRC and was second only to PRC in Asia. The city also topped the United Nations Conference on Trade and Development's Global Foreign Direct Investment Attraction Index 2011, an annual measure of an economy's success in attracting foreign direct investment.

Hong Kong Basic Law regarding foreign investment

The Basic Law of the HKSAR has provisions safeguarding Hong Kong's free enterprise system and liberal investment regime. Among other things, the Basic Law upholds the principles of a low tax policy, free convertibility of the Hong Kong dollar and free flow of capital.

Business Entities available to foreign investors

No distinction is made between foreign and domestic investors in terms of the types of business structures that may be used to carry on business in Hong Kong. Foreign investors may make use of all available forms of Hong Kong business entities.

Overseas companies that intend to establish an office in Hong Kong that do not wish to create a Hong Kong-incorporated subsidiary may register as non-Hong Kong companies under Part XI of the Companies Ordinance (Cap 32) (the "Companies Ordinance"). Hong Kong registered

foreign corporations, with the exception of certain provisions, are not governed by the provisions of the Companies Ordinance. While the Companies Ordinance governs the formation and dissolution of Hong Kong companies, the creation and dissolution of a foreign corporation are governed by its respective law of place of incorporation.

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

A non-Hong Kong company under Part XI of the Companies Ordinance must report to the Registrar of Companies any subsequent changes to its name, directors, secretaries, local representatives, memorandum and articles of association, the address of its principal places of business and registered office within one month of the change by submitting the prescribed forms. The creation of a charge on property situated in Hong Kong and any existing charge on acquired property situated in Hong Kong must be registered with the Registrar of Companies. Every year, a non-Hong Kong company must submit to the Registrar of Companies an annual return and a copy of its annual accounts (unless exempted). Such obligations will cease if the company ceases to have a place of business in Hong Kong.

Directors

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

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

- a duty to act in good faith in the interests of the company;
- a duty to exercise powers for a proper purpose for the benefit of members as a whole; and
- a duty to avoid conflicts of duty and interest.

Directors also owe a duty of skill and care to the company, which is not as onerous as directors' fiduciary duties.

Although the Companies Ordinance does not currently codify these directors' duties, which are derived from common law rules and equitable principles found in case law, directors can find guidance in "A Guide on Directors' Duties" issued by the Registrar of Companies and the "Guidelines for Directors" and the "Guide for Independent Non-Executive Directors" issued by the Hong Kong Institute of Directors. In addition to the general duties listed above, the Guide on Directors' Duties also includes the following general directors' duties:

- a duty not to delegate powers except with proper authorisation and duty to exercise independent judgement;
- a duty to exercise care, skill and diligence;
- a duty not to gain advantage from use of position as a director;
- a duty not to make unauthorised use of company's property or information;
- a duty not to accept personal benefit from third parties conferred because of position as a director;
- a duty to observe the company's memorandum and articles of association and resolutions; and
- a duty to keep proper books of account.

It should also be noted that the new Companies Ordinance, which is expected to come into effect in 2014, has codified directors' duties of care, skill and diligence. These standards will replace the existing common law rules and equitable principles. Directors of companies listed on the Stock Exchange of Hong Kong Limited (the "Exchange") must also comply with their obligations as directors of a listed company under the Exchange's Listing Rules and the Corporate Governance Code in Appendix 14 of the Listing Rules. Directors who do not perform their duties as a director may be liable to civil or criminal proceedings and may be disqualified from acting as a director.

Foreign investment incentives

There are no specially enacted incentives for foreign investment. However, all foreign companies benefit from the Hong Kong government's policy of providing an appealing climate for investment. It promotes fair competition and does not discriminate between foreign and domestic investors. Hong Kong generally has lower rates of tax than most other Asian jurisdictions and its tax environment is relatively simple.. In particular, there is:

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

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

Profits tax

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

Tax rates

The tax rates for profits tax applicable to corporations are set out as follows:

YEAR OF ASSESSMENT	TAX RATE
2008/09 onwards	16.5%
2003/04 to 2007/08	17.5%
667 1/3	16%

The tax rates for profits tax applicable to unincorporated business are set out as follows:

YEAR OF ASSESSMENT	TAX RATE
2008/09 onwards	15%
2004/05 to 2007/08	16%
500 3/4	15.5%
667 1/3	15%

Tax incentives and allowances

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

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

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

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

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

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

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

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

■ Bad and doubtful debts (subject to certain rules).

■ Repairs of premises, plant, machinery or articles etc. used in producing the profits.

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

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

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

Foreign investment restrictions

As previously discussed, Hong Kong does not generally subject foreign investments to special regulatory regimes or requirements. However, there are restrictions in certain areas. For example, there are restrictions on voting control by non-Hong Kong residents and corporations in the broadcasting sector. The Hong Kong government considers that such restrictions are

justified as the media has an extensive reach and the potential to influence a large proportion of the population.

Television broadcasting restrictions

Pursuant to the Broadcasting Ordinance (Cap.562) ("BO"), an 'unqualified voting controller' (that is, a person who alone or with others, directly or indirectly, has the ability to control the exercise of the right to vote, who is not ordinarily resident in Hong Kong) is prohibited from holding or acquiring specified thresholds in aggregate of the total voting control of a domestic free television program service licensee without the prior written consent of the Broadcasting Authority. here are no equivalent restrictions on voting control by non-residents for domestic pay television programme service licensees or non-domestic television program service licensees.

Sound broadcasting restrictions

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

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

Capital Investment Entrant Scheme

Hong Kong maintains a Capital Investment Entrant Scheme to facilitate the entry for residence by capital investment entrants (i.e., persons who make capital investments in Hong Kong but who would not be engaged in running a business in Hong Kong).

The Capital Investment Entrant Scheme (the "Scheme") commenced in October 2003 with the objective of allowing well-heeled people to take up residence in Hong Kong without needing to join in or establish an operating business. At this time, an entrant under the Scheme must have a HKD10 million qualifying investment, which excludes Hong Kong real property, in order to be eligible for admission to Hong Kong.

STATISTICS ON THE CAPITAL INVESTMENT ENTRANT SCHEME: Breakdown of the applicants under the Scheme (as at 30 June 2013)

	RECEIVED	APPROVAL-IN-PRINCIPLE GRANTED	FORMAL APPROVAL GRANTED
Foreign nationals	2723	79	1756
Macao SAR residents	443	7	326
Chinese nationals with permanent residence overseas	25906	1306	16182
Stateless persons with permanent residence in a foreign country	3	0	3
Taiwan residents	529	6	3355
TOTAL	29,604	1,398	18,622

CAPITAL INVESTMENT ENTRANCE SCHEME REQUIREMENTS: An applicant for admission under the Scheme must:

- be aged 18 or above when applying for entry under the Scheme;

- have net assets of not less than HK$10 million to which the applicant has been absolutely beneficially entitled for at least two years immediately prior to making the application;

- have invested within six months before submission of his application to the Immigration Department, or will invest within six months after the granting of approval in principle by the Immigration Department, not less than HK$10million in permissible investment asset classes nominated for the Scheme program (except Certificates of Deposit which must be invested within the latter period);

- have no adverse record in Hong Kong, his country of origin and present country of domicile (if different);

- be able to demonstrate that he is capable of supporting and accommodating himself and his dependants, if any, on his own without relying on any return on the permissible investment assets, employment or public assistance in Hong Kong; and

■ be a Chinese national with permanent residence overseas, a foreign national (other than citizens of Cuba, Afghanistan and Democratic People's Republic of Korea), a resident of Macau or Taiwan or a stateless person with permanent residence in a foreign country with proven re-entry facilities.

CONDITION OF STAY: When approval in principle is given to an entrant, he will be initially allowed to enter Hong Kong on visitor status for three months. If evidence of active progress in investment can be shown, his visitor status can be extended for another three months. When the entrant has furnished proof that the requisite level of investment has been made, permission to stay for two years (formal approval) will be granted.

Further extensions for two years will be granted if the entrant can demonstrate to the satisfaction of the Immigration Department that he continues to meet the eligibility criteria and portfolio maintenance requirements. Further extensions for two years will be granted on the same basis. Upon completion of not less than seven years of continuous ordinary residence in Hong Kong, the entrant and his dependants may apply for the right of abode in Hong Kong in accordance with the law.

Entrants admitted under the Scheme are subject to a special condition of stay. If an entrant breaches any part of his Undertaking to the Immigration Department, he, together with his dependants, if any, would only be allowed to stay in Hong Kong for the remainder of his limit of stay or two months after the Director of Immigration has determined that he has breached the Undertaking, whichever is earlier.

CAPITAL INVESTMENT ENTRANT SCHEME QUALIFYING INVESTMENTS: Qualifying investments under the Scheme include investments in:

■ equities/listed shares on The Stock Exchange of Hong Kong Limited and traded in Hong Kong Dollars;
■ debt securities issued in Hong Kong Dollars by nominated government agencies;
■ certificates of deposit issued by Hong Kong banks in Hong Kong Dollars and each for a minimum of twelve months deposit;
■ subordinated debt issued by Hong Kong banks in Hong Kong Dollars; and
■ eligible collective investment schemes as prescribed and authorised by the Hong Kong Immigration Department from time to time.

All permissible investment assets need to be held in a designated account in the applicant's own name and operated by a single financial intermediary and a contract has to be entered into between the financial intermediary and the applicant on terms which are set out by the Hong Kong Immigration Department.

The entire HK$10 million investment is ring fenced for the life of the capital investment visa. The visa holder is not required to top up the HK$10 million if the value of his portfolio drops nor

is he allowed to withdraw any increase in value. Any such increase must be reinvested if a choice is made to move between permissible asset classes.

FEES: The prescribed fee for a visa, entry permit, or extension of stay is HK$160.

Exchange controls

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

→ Corporate Law

The Companies Ordinance (Cap 32) (the "Companies Ordinance") governs companies incorporated in Hong Kong and overseas companies registered in Hong Kong. Hong Kong's first Companies Ordinance was enacted in 1865 and was based upon the UK Companies Act 1862. Since that time it has been revised to take account of changing practices in the commercial world and in particular the principles concerning transparency and disclosure of corporate transactions. The revisions are often similar to those introduced in other common law jurisdictions, such as Australia, Canada, Malaysia, New Zealand and Singapore, all of which adopted the UK corporate model. When interpreting its company law, Hong Kong courts may also refer to the cases decided in these jurisdictions.

TYPES OF BUSINESS STRUCTURE

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

Sole Proprietorship or Partnership

Sole proprietorships or partnerships are required to obtain a business registration certificate from the Inland Revenue Department, but beyond this there are few formalities with which they must comply. Whilst sole proprietorships and partnerships are not required to disclose information to the public, they must nevertheless keep accounts and are liable for profits tax. Partnerships are governed by the Partnership Ordinance (Cap. 38). Both sole proprietorships and partners are liable for the debts of their business with unlimited liability. Whilst partnerships may be formed under the Limited Partnership Ordinance (Cap. 37), in practice this ordinance is rarely used.

Company

LIMITED COMPANY INCORPORATED IN HONG KONG: To incorporate a limited company in Hong Kong, certain documents must be filed with the Registrar of Companies and a business registration certificate must subsequently be obtained from the Inland Revenue Department. Under the one-stop company and business registration service jointly launched by the Companies Registry and the Inland Revenue Department, so far as limited companies are concerned, provided the incorporation documents and prescribed fees have been submitted together to the Registrar of Companies, upon approval of an incorporation application, a certificate of incorporation (issued by the Companies Registry) and a business registration certificate (issued by the Inland Revenue Department) can be collected together from the Companies Registry. After incorporation, limited companies are subject to continuing obligations (including the requirement to submit various documents to the Registrar of Companies such as annual accounts and details of loan capital and directors) set out in the Companies Ordinance.

In general, a company incorporated in Hong Kong must comply, inter alia, with the following continuing obligations:

- Maintenance of registers (including registers of members, charges, directors and secretaries);
- Maintenance of proper accounting records;
- Hold an annual general meeting at least once every calendar year (first general meeting must take place within 18 months after the company's incorporation);
- File with the Registrar of Companies an annual return within 42 days of the anniversary of its incorporation every year;
- Preparation by the company's directors of the annual accounts of the company and presentation of the profit and loss account before the annual general meeting;
- Preparation of an auditors' report and a directors' report to be attached to the annual accounts;
- Delivery of particulars of certain charges or security created to the Registrar of Companies; and
- Notification of the Registrar of Companies when there are changes in certain details and particulars.

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

OVERSEAS COMPANY REGISTERED AS A NON-HONG KONG COMPANY IN HONG KONG: Overseas companies that intend to establish an office in Hong Kong that do not wish to create a Hong Kong-incorporated subsidiary may register as non-Hong Kong companies under Part XI of the Companies Ordinance. Within one month after establishing a place of business in Hong Kong, an overseas incorporated company must register as a non-Hong Kong company under Part XI of the Companies Ordinance by registering certain documents with the Registrar

of Companies and must obtain a business registration certificate from the Inland Revenue Department. Similar to limited companies, upon approval of a registration application, a certificate of incorporation (issued by the Companies Registry) and a business registration certificate (issued by the Inland Revenue Department) can be collected together from the Companies Registry provided registering documents are submitted to the Companies Registry together with the prescribed fees payable under the Companies Ordinance.

A non-Hong Kong company registered under Part XI of the Companies Ordinance must report to the Registrar of Companies any subsequent changes to its name, directors, secretaries, local representatives, memorandum and articles of association, the address of its principal places of business and registered office within one month of the change by submitting the prescribed forms. The creation of a charge on property situated in Hong Kong and any existing charge on acquired property situated in Hong Kong must be registered with the Registrar of Companies. Every year, a non-Hong Kong company must submit to the Registrar of Companies an annual return and a copy of its annual accounts (unless exempted). Such obligations will cease if the company ceases to have a place of business in Hong Kong.

Private companies

Under the Companies Ordinance, a private company is a company that, according to its articles of association:

- restricts the right to transfer its shares;
- limits the number of its members to 50; and
- prohibits the company inviting members of the public to subscribe for its shares or debentures.

A private company need not file accounts with its annual return.

Public companies (non-listed)

Any company which does not contain in its articles of association the three restrictions required for the establishment of a private company under the Companies Ordinance is a public company. A public company is subject to wider disclosure requirements than a private company, e.g. a public company must submit to the Registrar of Companies its annual audited financial statements which are open to inspection by the public. At the same time, a public company is subject to more stringent restrictions imposed by the Companies Ordinance than a private company.

Listed companies

Listed companies in Hong Kong are companies listed on one of the two boards operated by the Stock Exchange of Hong Kong Limited (the "Exchange"), namely, the Main Board and the Growth Enterprise Market (the "GEM"). The Main Board caters for companies with a profitable operating

track record or that are able to meet alternative financial standards. It is designed to give these companies an opportunity to raise further funds from the market in order to finance future growth. GEM, on the other hand, caters for smaller growth companies and has lower admission criteria. The majority of companies listed in Hong Kong are listed on the Main Board.

While a listing offers advantages and opportunities such as providing easier and greater access to new or additional capital, a listed company is subject to more stringent ongoing compliance obligations. In addition to the Companies Ordinance, listed companies are mainly governed by the rules governing the listing of securities on the Exchange (or the rules governing the listing of securities on GEM of the Exchange) as well as the Securities and Futures Ordinance (Cap 571).

Limited companies

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

COMPANIES LIMITED BY SHARES: The memorandum of association of a company limited by shares will specify the maximum number of shares that it may issue. Shares are usually fully paid when they are issued, in which case, even if the company is wound up and is unable to pay its debts, the members would not be liable to pay those debts. Liability of members of a company limited by shares will be limited to the nominal value of the shares, as already contributed.

Where shares have only been partly paid for on issue, however, a member is liable to pay the agreed balance according to the terms of issue or, if there are no terms, when called upon to do so. In the event of the company being wound up according to this scenario, the members may be liable to contribute towards paying the company's debts, but their maximum contribution will be the amount of the nominal value unpaid on their shares.

COMPANIES LIMITED BY GUARANTEE: The liability of the members of a company limited by guarantee is limited to the amount that they agree to contribute to its assets in the event of the company being wound up. The amount guaranteed by each member is specified in the company's memorandum. It is commonly used when there is no intention to distribute the company's profits to its members and the members therefore do not need to hold shares. Companies limited by guarantee are typically used by charities and quasi-charitable organisations such as schools and hospitals, but is only a suitable corporate form if the company does not need an initial share capital.

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

Companies without limited liability

If a company is registered as unlimited, its members will be personally liable for the debts of the company without limit. Unlimited companies may be formed with or without a share capital. If the company is trading and intends to distribute profits, shares may be a useful method of measuring each member's interest in the company. If an unlimited liability company with a share capital goes into liquidation, the members will be liable to pay whatever price they agreed for their shares; where this amount is inadequate to satisfy the debts and liabilities of the company together with the costs of winding-up, the members must contribute rateably according to their shareholdings.

Dormant Companies

An inactive private company may pass and deliver to the Registrar of Companies a special resolution declaring that the company will become dormant. A company is eligible to apply for dormant status if, since the date of incorporation or any other specified date, it has not entered into a "relevant accounting transaction", as defined under the Companies Ordinance. Dormancy enables a private company to remain a registered company while at the same time being exempt from holding annual general meetings, preparing and filing annual reports and carrying out audits of its accounts. Thus, the cost of maintaining a dormant company can be significantly lower than the cost of maintaining an active company.

A dormant company may not enter into any transaction that should be entered into its books of accounts (a "relevant accounting transaction") except the payment of certain fees. If a dormant company does enter into a "relevant accounting transaction" its members (should they know or ought reasonably to have known about it) and all directors are liable for any debt or liability that arises from that transaction. A company ceases to be deemed to be dormant upon delivery to the Registrar of Companies of a special resolution declaring that the company intends to enter into a "relevant accounting transaction".

Share Capital

The Companies Ordinance does not specify a minimum or maximum amount of authorised or issued share capital for either a public or a private company. Instead, a company's memorandum of association must specify its authorised share capital, including how the total sum is divided into shares and the nominal value of each share. A company may issue shares with preferred, deferred, redemption or other special rights as specified in the memorandum and articles of association of the company. If a company issues only one type of shares, the shares are presumed to be ordinary shares.

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

in Hong Kong and can be an individual or a corporation. In Hong Kong, companies are typically incorporated with a share capital of HK$10,000 divided into 10,000 shares of HK$1 each.

Rights of Shareholders

Although a company's board of directors have the powers to manage a company and make day-to-day decisions, the Companies Ordinance reserves certain matters for the decision of a company's shareholders. Decisions reserved for shareholders include:

- at an annual general meeting, declaring the rate of dividend to be paid on the shares of the company;
- at the annual general meeting, electing directors in place of those retiring;
- at the annual general meeting, appointing auditors for the forthcoming year;
- alterations to the company's memorandum and articles of association;
- changing the name of the company;
- giving financial assistance for the purchase of the shares of the company;
- buying back the company's own shares;
- granting the directors power to allot shares;
- reducing the capital of the company;
- reconstructing the company's shareholding and debts;
- removing the company's directors from office; and
- petitioning the court to wind up the company.

MINORITY SHAREHOLDER PROTECTIONS: The Companies Ordinance provides for certain rights and protections for minority shareholders. Some of these protections include:

- certain decisions of a company requiring a special resolution also require the approval of the court (i.e. reduction in a company's share capital);
- minority shareholders may be able to apply to the court for cancelling certain decisions approved by a special resolution if the court considers the decision unfair;
- holders of 5 per cent of the paid up capital of the company may require the directors to convene an extraordinary general meeting;
- members who hold 2.5 per cent of the total voting rights of all members, or 50 members holding shares on which there has been paid up an average of HK$2000 per member, may require a certain resolution to be added to the agenda for the company's next annual general meeting;
- 100 members, or the holders of 10 per cent of the company's shares, may apply to the Hong Kong Financial Secretary for the appointment of an inspector to investigate the affairs of the company;
- any member may apply to the court for a remedy if the affairs of the company are being conducted in a manner 'unfairly prejudicial' to the members;
- any member may bring an action in respect of misfeasance committed against a company; or any member may petition for the company to be wound up by the court.

Directors

REQUIREMENTS: Public companies must have at least two directors. Private companies may have just one director. In the case of a private company that is not a member of a group of companies that includes a listed company, a body corporate can be appointed as a director. Under the Companies Ordinance, a director can be of any nationality, must have attained the age of 18 and must not have been disqualified from acting as a director. When a company appoints a director, the company must send a specific form to the Registrar of Companies of such appointment, the director's name and usual residential address and the number of his identity card or passport and a statement must be included that the director accepts the appointment and has attained 18 years of age. That statement must signed by the director.

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

- a duty to act in good faith in the interests of the company;
- a duty to exercise powers for a proper purpose for the benefit of members as a whole; and
- a duty to avoid conflicts of duty and interest.

Directors also owe a duty of skill and care to the company, which is not as onerous as directors' fiduciary duties.

Although the Companies Ordinance does not currently codify these directors' duties, which are derived from common law rules and equitable principles found in case law, directors can find guidance in "A Guide on Directors' Duties" issued by the Registrar of Companies and the "Guidelines for Directors" and the "Guide for Independent Non-Executive Directors" issued by the Hong Kong Institute of Directors. In addition to the general duties listed above, the Guide on Directors' Duties also includes the following general directors' duties:

- a duty not to delegate powers except with proper authorisation and duty to exercise independent judgement;
- a duty to exercise care, skill and diligence;
- a duty not to gain advantage from use of position as a director;
- a duty not to make unauthorised use of a company's property or information;
- a duty not to accept personal benefit from third parties conferred because of position as a director;
- a duty to observe the company's memorandum and articles of association and resolutions; and
- a duty to keep proper books of account.

It should be noted that the Companies Ordinance 2012, which is expected to come into effect in 2014, has codified directors' duties of skill, care and diligence. These standards will replace the existing common law rules and equitable principles. Directors of companies listed on the

Exchange must also comply with their obligations as directors of listed companies under the Exchange's Listing Rules and the Corporate Governance Code in Appendices 14 and 15 of the Main Board and GEM Listing Rules, respectively. Directors who do not perform their duties as a director may be liable to civil or criminal proceedings and may be disqualified from acting as a director.

Dissolution of a company

A company may be dissolved by the following methods:

- a court order to facilitate an amalgamation or reconstruction of companies;
- striking off the name of a company from the register of companies by the Registrar of Companies;
- deregistration of defunct private companies ; or
- a winding up.

DEREGISTRATION OF DEFUNCT PRIVATE COMPANIES UNDER THE COMPANIES ORDINANCE: A private company may make application to the Registrar of Companies for deregistration in accordance with Section 291AA of the Companies Ordinance if :

- all the members of the company agree to the deregistration;
- the company has never commenced business or operation, or has ceased to carry on business or ceased operation for more than 3 months immediately before the application;
- the company has no outstanding liabilities; and
- the company has obtained a "no objection" notice from the Inland Revenue Department (the company applying for deregistration is required to prepare the final accounts up to the date of cessation of the business and file the final accounts with the Inland Revenue Department before obtaining a "no objection" notice. The final accounts should show that the company has no liabilities and should be prepared before the commencement of deregistration).

WINDING UP: A company may be wound up:

- by the court, i.e. a compulsory winding up; or
- voluntarily, either as:
- a members' voluntary winding up, or
- a creditors' voluntary winding up.

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

- if a special resolution has been passed by the company that it should be wound up by the court;
- if the company does not commence its business within one year from its incorporation, or suspends its business for a whole year;
- if the company has no members;
- if the company is unable to pay its debts; a company is deemed to be unable to pay its debts if:

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

■ if the memorandum or articles of association of the company provide that on the occurrence of certain events the company is to be dissolved, and such events occurred;
■ if the company is being carried on for an unlawful purpose of any purpose lawful in itself but one which cannot be carried out by a company;
■ if the court is of the opinion that it is just and equitable that the company should be wound up;
■ if throughout a period of not less than six months ending on the date of the winding up petition the company has not had:

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

■ if the company has failed to pay the annual registration fee payable under the Eighth Schedule to the Companies Ordinance; or
■ if the company has been persistently in breach of its statutory obligations.

VOLUNTARY WINDING UP: Section 228(1) of the Companies Ordinance provides that a company may by wound up voluntarily:
■ when the period, if any, fixed by the articles for the duration of the company expired, or an event which determines its existence occurs, and the company resolves (by ordinary resolution) to be wound up voluntarily;
■ if a special resolution has been passed by the company that it should be wound up voluntarily;
■ if a special resolution has been passed by the company that it cannot by reason of its liabilities continue its business and that it is advisable to wind it up; and
■ if the directors of the company or, in the case of a company having more than two directors, the majority of the directors, make and deliver to the Registrar of Companies a winding up statement under Section 228A of the Companies Ordinance.

A company can be dissolved by members' voluntary winding up only if it is solvent, i.e. it can settle all of its debts in full. If a company has been put into a members' voluntary winding up and the liquidators are subsequently of the opinion that the company will not be able to pay its debts in full within the period stated in the certificate of solvency, they must summon a meeting of the creditors and lay before the meeting a statement of the assets and liabilities of the company, i.e. the winding up is converted into a creditors' voluntary winding up.

Liability of the members of the company

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

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

This statement of liabilities is qualified in relation to companies incorporated with limited liability:

- in a company limited by shares, no contribution is required from any past or present member which exceeds the amount, if any, that is unpaid on his shares.
- in a company limited by guarantee, no contribution is required which exceeds the amount which was undertaken to be contributed in the event of the company being wound up.
- in a company limited by guarantee which has a share capital in addition to the amount undertaken to be contributed in the event of a winding-up, the members are liable to contribute to the extent of any sums unpaid on any shares they hold.

Directors with unlimited liability

Although rarely used, the Companies Ordinance provides that the memorandum of a limited liability company may provide that the liability of its directors, managers, or managing director is unlimited. In such case, the directors will be personally liable for all of the company's debts. Before a person accepts an office in such a company, whether by election or by appointment, he must be given notice in writing that his liability will be unlimited.

If authorised by its articles of association, a limited company may also alter its memorandum to make the liability of its directors, managers, or managing director unlimited. Such alteration requires a special resolution. The directors or members of a company may also accept personal liability, for example, by guaranteeing a particular contract, which has the effect of that director losing the benefit of limited liability in that instance.

→ Labour Law

Legislation

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

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

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

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

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

Common Law

Case law is used to interpret employment law legislation, explain and expand the tests and definitions and fill the gaps using common law principles. Whilst Hong Kong cases are binding on Hong Kong courts, case law from other common law jurisdictions may be considered and have persuasive authority in Hong Kong.

Employment Ordinance

APPLICATION OF THE EMPLOYMENT ORDINANCE: The Employment Ordinance applies to all employees with the following exceptions:

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

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

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

Contract of Employment

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

Information on Conditions of Service

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

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

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

Wages

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

Minimum Wage Ordinance

The Minimum Wage Ordinance provides a wage floor to protect grassroots employees. It came into effect on 1 May 2011 and the current statutory minimum wage rate ("SMW rate") is HK$28 per hour. With effect from 1 May 2013, the SMW rate is revised from HK$28 per hour to HK$30 per hour. In essence, wages payable to an employee in respect of any wage period, when averaged over the total number of hours worked in the wage period, should be no less than the SMW rate.

APPLICATION OF THE MINIMUM WAGE ORDINANCE: SMW applies to all employees, whether they are monthly-rated, daily-rated, permanent, casual, full-time, part-time or other employees, and regardless of whether or not they are employed under a continuous contract as defined in the Employment Ordinance, except for (i) persons to whom the Employment Ordinance does not apply; (ii) live-in domestic workers; and (iii) student interns as well as work experience students arranged or endorsed by an institution in connection with a non-local education program.

AMOUNT OF MINIMUM WAGE: Wages payable to an employee in respect of any wage period must not be less than the amount of minimum wage calculated as follows:

Minimum wage = Total number of hours worked by the employee in the wage period x SMW rate (i.e. $28)

Rest Days, Holidays and Leave

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

REST DAYS AND STATUTORY HOLIDAY: An employee employed under a continuous contract is entitled to at least one rest day in every seven days. While an employee may work voluntarily on a rest day, an employer must not compel an employee to work on a rest day except in cases of unforeseen emergency. An employer should grant his employee a statutory holiday, or arrange an "alternative holiday" or "substituted holiday". "Buy-out" of a holiday is not allowed.

PAID ANNUAL LEAVE: An employee is entitled to annual leave with pay after having been employed under a continuous contract for every 12 months. An employee's entitlement to paid annual leave increases progressively from seven days to a maximum of 14 days according to his length of service.

Sickness and Maternity Protection

SICK LEAVE: An employee employed under a continuous contract is entitled to sickness allowance. An employer is prohibited from terminating the employment contract of an employee on his paid sickness day, except in cases of summary dismissal due to the employee's serious misconduct.

MATERNITY LEAVE: A female employee, subject to certain qualifying requirements under the Employment Ordinance, is entitled to a continuous period of 10 weeks' paid maternity leave. An employer is prohibited from dismissing a pregnant employee from the date on which she is confirmed to be pregnant by a medical certificate to the date on which she is due to return to work upon the expiry of her maternity leave.

End of Year Payment

The provisions concerning end of year payment apply to an employee employed under a continuous contract who, in accordance with a term of his contract is entitled to an end of year payment from his employer. Such end of year payment means any annual payment (including double pay, 13th month payment, end of year bonus) of a contractual nature. It does not include any payment which is of a gratuitous nature or which is payable at the discretion of the employer.

Termination of Contract of Employment

TERMINATION OF EMPLOYMENT CONTRACT BY NOTICE OR PAYMENT IN LIEU OF NOTICE: A contract of employment may be terminated by the employer or employee through giving the other party due notice or wages in lieu of notice. In the case of a continuous contract of employment, the length of notice or the amount of wages in lieu of notice required are:

TABLE 1

	EMPLOYMENT CONDITIONS		LENGHT OF NOTICE	WAGES IN LIEU OF NOTICE
DURING PROBATION PERIOD	Within the first monthof probation		Not required	Not required
	After the first month of probation	With agreement to the length of notice	As per agreement, but not less than 7 days	Table 2
		Without agreement to the lenght of notice	Not less than 7 days	Table 2
NO/AFTER PROBATION PERIOD	With agreement to the lenght of notice		As per agreement, but not less than 7 days	Table 2
	Without agreement to the lenght of notice		Not less than 1 month	Table 2

TABLE 2

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

TERMINATION OF EMPLOYMENT CONTRACT WITHOUT NOTICE OR WAGES IN LIEU OF NOTICE: An employer may summarily dismiss an employee without notice or payment in lieu of notice if the employee, in relation to his employment: (i) wilfully disobeys a lawful and reasonable order; (ii) misconducts himself; (iii) is guilty of fraud or dishonesty; or (iv) is habitually neglectful in his duties.

Taking part in a strike is not a lawful ground for an employer to terminate an employee's contract of employment without notice or payment in lieu.

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

An employee may terminate his employment contract without notice or payment in lieu of notice if: (i) he reasonably fears physical danger by violence or disease; (ii) he is subjected to ill-treatment by the employer; or (iii) he has been employed for not less than five years and is certified by a registered medical practitioner or a registered Chinese medicine practitioner as being permanently unfit for the type of work he is engaged to perform.

STATUTORY RESTRICTIONS ON TERMINATION OF EMPLOYMENT CONTRACT: An employer may not dismiss an employee under the following circumstances:

Maternity Protection: An employer may not dismiss a female employee who has been confirmed to be pregnant and has served a notice of pregnancy.

Paid Sick Leave: An employer may not dismiss an employee whilst the employee is on no paid sick leave.

Giving evidence or information to the authorities: An employer may not dismiss an employee by reason of his giving evidence or information in any proceedings or inquiry in connection with the enforcement of the Employment Ordinance, work accidents or breach of work safety legislation.

Trade Union Activities: An employer may not dismiss an employee for trade union membership and activities.

Injury at Work: An employer may not dismiss an injured employee before having entered into an agreement with the employee for the employee's compensation or before the issue of a certificate of assessment.

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

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

Employment Protection

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

ELIGIBILITY AND REMEDIES FOR EMPLOYMENT PROTECTION: An employee may claim for remedies against an employer in the following situations:

SITUATION	CONDITIONS	REMEDIES
Unreasonable dismissal	■ The employee has been employed a continuos contract for a period of not less than 24 months; and ■ The employee is dismissed other than for a valid reason as specified in the ordinance	■ And order for reinstatement or reengagement; or ■ An award of terminal payments
Unreasonable variation of the terms of the employment contract	■ The employee has been employed under a continuos contract; ■ The terms of the employment contract are varied without the employee's consent; ■ The employment contract does not contain an express term which allows such a variation; and ■ The terms of the employment contract are varied other than for a valid reason as specified in the Ordinance.	■ An order for reinstatement or reengagement; or ■ An award of terminal payments
Unreasonable and unlawful dismissal	■ The employee is dismissed other than for a valid reason as specified in the Ordinance; and ■ The dismissal is in contravention of the law	■ An order for reinstatement or reengagement; or ■ An award of terminal payments; and/or ■ An award of compensation not exceeding $150,000

VALID REASONS FOR DISMISSAL OR VARIATION OF THE TERMS OF THE EMPLOYMENT CONTRACT: The five valid reasons for dismissal or variation of the terms of the employment contract are:

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

REMEDIES FOR EMPLOYMENT PROTECTION: Remedies for Employment Protection, which are awarded by the Labour Tribunal, include an order of reinstatement or re-engagement, an award of terminal payments and an award of compensation.

Severance Payment and Long Service Payment

ELIGIBILITY FOR SEVERANCE PAYMENT AND LONG SERVICE PAYMENT: An employee is eligible for severance payment or long service payment subject to the following conditions

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

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

Meaning of Redundancy

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

Meaning of Lay-off

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

AMOUNT OF SEVERANCE PAYMENT/ LONG SERVICE PAYMENT: The following formula applies to the calculation of both severance payment and long service payment:

Monthly-paid employee = (last month wages x 2/3) x reckonable years of service

Daily-rated/piece-rate employee = Any 18 days' wages chosen by the employee out of his last 30 normal working days x reckonable years of service

Protection Against Anti-Union Discrimination

RIGHT OF AN EMPLOYEE IN PARTICIPATING IN TRADE UNIONS: Every employee shall have the rights to be a member or an officer of a trade union and to take part in the activities of the trade union. An employer shall not prevent or deter an employee from exercising any of the above rights and shall not dismiss, penalise or discriminate against an employee for exercising such rights.

The Employees' Compensation Ordinance

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

The Employees' Compensation Ordinance also applies to employees employed in Hong Kong by local employers injured while working outside Hong Kong. Even if the employer is a person carrying on business outside Hong Kong, or the employee is a crew member of a foreign ship, the Employees' Compensation Ordinance still applies if the employer submits to the jurisdiction of the Courts of Hong Kong. The Employees' Compensation Ordinance does not however apply to casual employees, outworkers or members of the employer's family who live with him.

STATUTORY LIABILITY OF THE EMPLOYER:

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

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

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

COMPULSORY INSURANCE: The Employees' Compensation Ordinance obliges an employer to obtain a policy of insurance to cover its liabilities both under the Employees' Compensation Ordinance and at common law for injuries at work in respect of all its employees.

NO. OF EMPLOYEES	AMOUNT OF INSURANCE COVER PER EVENT
Not more than 200	Not less than $100 million
More than 200	Not less than $200 million

CLAIMS FOR DAMAGES BY ACTION AT COMMON LAW:

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

Mandatory Provident Fund Schemes Ordinance

To provide retirement protection to the entire workforce in Hong Kong, a mandatory provident fund ("MPF") system was introduced under the Mandatory Provident Fund ("MPF") Schemes Ordinance in 2000. It requires both employees (with the exception of certain exempt persons) and employers to make regular contributions into a registered MPF scheme. Every employer is obliged to contribute an amount equal to at least 5% of an employee's salary (subject to the maximum level of income, currently set at $25,000 per month) to such MPF scheme. Every employee is also required to contribute at least 5% of his/her salary to the scheme, also subject to the same maximum level of income.

On 17 July 2013, the Legislative Council passed the relevant law relating to the amendment of the minimum relevant income level and the maximum relevant income level. The minimum relevant income level has been increased from $6,500 to $7,100 per month (the new level applies to contribution periods commencing on or after 1 November 2013). The maximum relevant income level has been increased from $25,000 to $30,000 per month (the new level applies to contribution periods commencing on or after 1 June 2014). Accordingly, the maximum mandatory contribution amount has been increased from $1,250 to $1,500 per month.

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

Anti-discrimination legislation

There are certain anti-discrimination laws in force in Hong Kong: the Sex Discrimination Ordinance (Cap. 480), Disability Discrimination Ordinance (Cap. 487), the Family Status Discrimination Ordinance (Cap. 527) and the Race Discrimination Ordinance (Cap. 602) to prohibit discrimination on the basis of sex, pregnancy, marital status, disability, family status and race. Further, there are also provisions in the Employment Ordinance guarding against discrimination on the ground of trade union membership.

→ Tax Law

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

Profits tax

THE SCOPE OF THE CHARGE: Persons, including corporations, partnerships, trustees and bodies of persons carrying on any trade, profession or business in Hong Kong are chargeable to profits tax on the assessable profits arising in or derived from Hong Kong from such trade, profession or business. No distinction is made between residents and non-residents. A resident may therefore derive profits from abroad without being subject to tax; conversely, a non-resident may be chargeable to tax on profits arising in or derived from Hong Kong. Whether a business is carried

on in Hong Kong and whether profits are derived from Hong Kong are largely questions of fact. However some guidance on the principles applied can be found in cases which have been considered by the courts in Hong Kong and in other common law jurisdictions.

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

TAX RATES: The tax rates for profits tax applicable to corporations are set out as follows:

YEAR OF ASSESSMENT	TAX RATE
2008/09 onwards (Note 1)	16.5%
2003/04 to 2007/08 (Note 2)	17.5%
667 1/3	16%

Note 1: 75% of the 2012/13 profits tax is waived subject to a ceiling of $10,000 per case and 75% of the 2011/12 profits tax is waived subject to a ceiling of $12,000 per case. Note 2: 75% of the 2007/08 profits tax is waived subject to a ceiling of $25,000 per case.

The tax rates for profits tax applicable to unincorporated business are set out as follows:

YEAR OF ASSESSMENT	TAX RATE
2008/09 onwards (Note 3)	15%
2004/05 to 2007/08 (Note 4)	16%
500 3/4	15.5%
667 1/3	15%

Note 3: 75% of the 2012/13 profits tax is waived subject to a ceiling of $10,000 per case and 75% of the 2011/12 profits tax is waived subject to a ceiling of $12,000 per case. Note 4: 75% of the 2007/08 profits tax is waived subject to a ceiling of $25,000 per case.

EXEMPTIONS AND DEDUCTIONS: Dividends from a corporation which is subject to Hong Kong profits tax, as well as amounts already included in the assessable profits of other taxpayers chargeable to profits tax, are not included in the assessable profits of the recipient. In general, all expenses, to the extent to which they have been incurred in the production of chargeable profits, are deductible. They include (but are not limited to):

- Rent paid by any tenant of buildings or land occupied for the purpose of producing the assessable profits;
- Bad and doubtful debts (subject to certain rules);
- Repairs of premises, plant, machinery or articles etc used in producing the profits;
- Expenditure for registration of a trademark, design or patent and expenditure on the purchase of patent rights or rights to any know-how for use in Hong Kong in the production of assessable profits;
- Expenditure on research and development (subject to certain rules); and
- Donations of an aggregate of not less than HK$100 made to approved charities with the restriction that such donation should not exceed 35% from year of assessment 2008/09 and onwards of the adjusted assessable profits.

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

- Immediate writing off is allowed for capital expenditure on plant and machinery specifically and directly related to manufacturing processes, and on computer hardware and software.
- Capital expenditure on refurbishment of business premises is allowed to be written off over five years of assessment.
- Exemption from payment of tax on interest derived from any deposit placed in Hong Kong with an authorised institution (not applicable to interest received by or accrued to a financial institution).
- Accelerated deduction for capital expenditure on specified environmental protection facilities from year of assessment 2008/09 and onwards. For machinery or plant, 100% deduction will be allowed for the capital expenditure incurred. For installations forming part of a building or structure, 20% deduction will be allowed for each year in five consecutive years.
- 100% deduction for capital expenditure on specified environmental-friendly vehicles from year of assessment 2010/11 and onwards.

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

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

Salaries Tax

THE SCOPE OF THE CHARGE: Salaries tax is charged on all income arising in or derived from Hong Kong from an office, employment or pension. In determining whether income "arises in or is derived from Hong Kong", it is necessary to establish where the employment, i.e. the source of income, is located. "Income arising in or derived from Hong Kong from any employment" includes

all income derived from services rendered in Hong Kong, without in any way limiting the meaning of the expression.

THE BASIS OF ASSESSMENT: Liability to salaries tax is based on the chargeable income of the year of assessment, but the total amount of income for the year cannot be determined until the year is past. Accordingly, the Inland Revenue Department will first demand for payment of provisional salaries tax during the year of assessment and then make adjustments in the following year. Any provisional tax paid for a year of assessment is applied firstly against the salaries tax payable on the income for that year and if there is excess, apply the excess against the following year's provisional tax liability.

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

DEDUCTIONS ALLOWED: The following deductions are allowable:

- Expenses wholly, exclusively and necessarily incurred in the production of assessable income, not being expenses of a private, domestic nature or capital expenditure.

- Donations paid to approved charities if the amount is not less than HK$100 and with the limitation that such allowance should not, from year of assessment 2008/09 and onwards, exceed 35% (25% for years of assessment 2005/06 to 2007/08) of the income after allowable expenses and depreciation allowances.

- Self-education expenses paid on fees (including tuition and examination fees) in relation to a 'prescribed course of education', or on fees in respect of an examination set by the specified education providers or trade, professional or business associations. The course and examination must be for gaining or maintaining a qualification for use in any employment.

A 'prescribed course of education' is a course undertaken at an education provider, specified education providers, such as a university, college, school, technical institution, training centre, or a training or development course provided by a trade, professional or business association or one accredited or recognised by specified professional bodies or institutions.

The amount deducted should exclude any amount that has been or will be reimbursed by the employer or any other persons. The maximum deduction is as follows:

YEAR OF ASSESSMENT	MAXIMUM DEDUCTION (IN HK$)
286 4/7	$40000
2007/08 and onwards	$60000

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

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

YEAR OF ASSESSMENT	MAXIMUM DEDUCTION (IN HK$)
2006/07 to 2010/11	$60000
167 7/12	$72000
2012/13 and onwards	$76000

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

■ For mandatory contributions paid to a mandatory provident fund ("MPF") scheme by a taxpayer as an employee, the maximum deduction for each year of assessment is:

YEAR OF ASSESSMENT	MAXIMUM DEDUCTION (IN HK$)
2006/07 to 2011/12	$12,000
2012/13	$14,500
2013/14 and onwards	$15,000

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

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

YEAR OF ASSESSMENT	MAXIMUM DEDUCTION (IN HK$)
2006/07 to 2011/12	$12,000
2012/13	$14,500
2013/14 and onwards	$15,000

Property tax

THE SCOPE OF THE CHARGE: Property tax is charged on the owners of land and/or buildings in Hong Kong and is computed at the standard rate on the net assessable value of the property. The standard rate is 16% for years of assessment 2005/06 to 2007/08 and 15% from year of assessment 2008/09 and onwards.

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

Completion of tax return

Tax Return-Individuals is to be used by an individual to report all his employment income, profits from sole proprietorship businesses and rental income from solely owned properties. Owners of jointly-owned properties who receive rental income are required to file property tax returns. For partnerships and corporations, profits tax returns should be filed.

Double taxation

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

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

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

COUNTRY / TERRITORY	DATE OF SIGNATURE OF AGREEMENT	EFFECTIVE FROM (YEAR OF ASSESSMENT)
Austria	25.05.2010	1
Belgium	10.12.2003	1
Brunei	20.03.2010	1
Czech	06.06.2011	1
France	21.10.2010	1
Hungary	12.05.2010	1
Indonesia	23.03.2010	1
Ireland	22.06.2010	1
Japan	09.11.2010	1
Jersey	22.02.2012	Pending
Kuwait	13.05.2010	Pending
Liechtenstein	12.08.2010	1
Luxembourg	02.11.2007	1
PRC	21.08.2006	1
Malaysia	25.04.2012	Pending
Malta	08.11.2011	1
Mexico	18.06.2012	Pending
Netherlands	22.03.2010	1
New Zealand	01.12.2010	1
Portugal	22.03.2011	1
Spain	01.04.2011	1
Switzerland	04.10.2011	Pending
Thailand	07.09.2005	1
United Kingdom	21.06.2010	1
Vietnam	16.12.2008	1

Stamp duty

Stamp duty is chargeable on the documents set out in the First Schedule to the Stamp Duty Ordinance (Cap. 117) which imposes fixed duty on some documents and an ad valorem duty on others. On 22 February 2013, the Financial Secretary announced that the Government would amend the Stamp Duty Ordinance to adjust the ad valorem stamp duty (AVD) rates and to advance the charging of AVD on non-residential property transactions from the conveyance on sale to the agreement for sale. Any residential property (except that acquired by a Hong Kong Permanent Resident who does not own any other residential property in Hong Kong at the time of acquisition) and non-residential property acquired on or after 23 February 2013,

either by an individual or a company, will be subject to the new rates of AVD upon the enactment of the relevant legislation. Transactions which took place before 23 February 2013 will be subject to the original stamp duty regime. The new rates of AVD is calculated at rates which vary with the amount / value of the consideration or value of the property as follows.

AMOUNT OR VALUE OF THE CONSIDERATION OR VALUE OF THE PROPERTY (IN HK$)		RATE (WITH EFFECT FROM 22 FEB 2013)
Exceeds	*Does not exceed*	
	$2000000	1.5%
$2000000	$2176470	$30,000 + 20% of excess over $2,000,000
$2351760	$3000000	3%
$3000000	$3290320	$90,000 + 20% of excess over $3,000,000
$3290320	$4000000	4.5%
$4000000	$4428570	$180,000 + 20% of excess over $4,000,000
$4428570	$6000000	6%
$6000000	$6720000	$360,000 + 20% of excess over $6,000,000
$6720000	$20000000	7.5%
$20000000	$21739120	$1,500,000 + 20% of excess over $20,000,000
$21739120		5%

On 26 October 2012, the Financial Secretary announced that the Government would amend the Stamp Duty Ordinance to introduce with effect from 27 October 2012 a Buyer's Stamp Duty ("BSD") on residential properties. The relevant provisions are set out in the Stamp Duty (Amendment) Bill 2012 which was gazetted on 28 December 2012. Upon the enactment of the relevant legislation, any residential property acquired by any person (including a company incorporated) except a Hong Kong Permanent Resident will be subject to the BSD. BSD is to be charged at a flat rate of 15% on all residential properties, on top of the existing stamp duty and the special stamp duty, if applicable.

For residential property acquired on or after 20 November 2010 and disposed within 24 months, Special Stamp Duty ("SSD") will be imposed in addition to the ad valorem duty. The amount of SSD is calculated by reference to the stated consideration or the market value of the property (whichever is higher) at the following regressive rates for different holding periods by the transferor before the disposal:

HOLDING PERIOD	RATE
6 months or less	15%
More than 6 months but for 12 months or less	10%
More than 12 months but for 24 months or less	5%

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

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

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

Evasion of tax

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

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

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

Advance rulings

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

→ Real Estate Law

Types of Ownership

LEASEHOLD LAND: Since the return of sovereignty on 1 July 1997, virtually all land in Hong Kong is owned by the government of Hong Kong, which is part of the People's Republic of China. Therefore, all land in Hong Kong is leasehold land except for the land on which St. John's Cathedral is situated. Previously, the Hong Kong government granted land for private leaseholding by way of a government lease, which granted the leasehold land to the purchaser for a certain number of years.

Since government leases are no longer issued, land is granted by way of conditions of sale, exchange, or grant ("Government Grant"). A Government Grant is a contract whereby once the conditions have been complied with, a government lease is deemed to be issued pursuant to section 14 of the Conveyancing and Property Ordinance (Cap. 219) ("CPO"). This is what is now known as a "Government Lease".

Subject to the terms of the Government Lease, a leaseholder of land is at liberty to deal with his or her leasehold interest in the lot granted by the government, including:

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

JOINT OWNERSHIP OF LEASEHOLD LAND: Hong Kong allows co-ownership of a leasehold interest in real property in the form of either:

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

Pursuant to the CPO, where the same estate or interest in land vests in 2 or more persons under an instrument or a will, it is be presumed that (unless a contrary intention is expressed in that instrument or will) the tenancy vests in those persons as tenants-in-common rather than as joint tenants. Tenants-in-common jointly own the undivided shares of a property as a whole. However, each of the tenants-in-common may own the property in a ratio determined by them, i.e., either in equal shares or in different proportions.

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

Co-ownership by way of tenants-in-common differs materially from joint tenancy in that there is no automatic right of survivorship. A tenant-in-common's interest in property will be part of his or her estate and can pass either under a will or upon his or her intestacy. Under the CPO, a company is capable of acquiring and holding real property as a co-owner in the same manner as if it were a natural person pursuant to the CPO.

OWNERSHIP OF LAND AND/OR BUILDINGS: The ownership of a building situated on a certain lot of land is not implied in the "ownership" of that land. However, a deed of mutual covenant between the co-owners of the building governing the use of the building and land usually provides that the owner of the undivided share of the land will have the exclusive right to use and occupy the unit relating to that undivided share. Also, the ownership of a building will not necessarily imply the ownership of the land on which it is situated, and it is possible to have different owners of the land and the building erected on it.

Land registration

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

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

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

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

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

Neither the CPO (in respect of the writing requirement) nor the LRO (in respect of the registration requirement) apply to unregistrable interests in land, such as any unwritten equities creating interests in land arising out of constructive trusts (e.g. interest of a wife in the real property arising out of promise or the husband and wife relationship) or resulting trust (e.g. interest of Party X in the real property arising out of contributions of purchase money or mortgage repayment by Party X in relation to the real property purchased by Party Y).

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

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

Real estate transaction procedures

In Hong Kong, real estate transactions are governed by the CPO, as supplemented by common law. Property transactions in Hong Kong may be divided and classified into three main stages:

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

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

- an initial deposit of about five per cent of the purchase price is paid by the purchaser to the vendor on the signing of the provisional agreement; and
- liquidated damages in an amount equivalent to the initial deposit to be payable by the party in default to the innocent party in the event of any breach or default of the provisional agreement; or
- in provisional agreements without a liquidated damages clause a specific performance clause allowing the innocent party to compel the defaulting party to complete the sale in addition to any claim for damages.

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

FORMAL SALE AND PURCHASE AGREEMENT: Both the vendor and the purchaser engage their respective lawyers to proceed with the property transaction after the signing of the provisional

agreement. The vendor's solicitors will prepare a formal sale and purchase agreement with detailed terms and conditions reflecting the terms in the provisional agreement for the purchaser's solicitors' review and comments.

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

In relation to the purchase of a residential property, for the protection of the purchaser, the purchaser's solicitors will arrange stamping of the provisional agreement and/or formal sale and purchase agreement with the Stamping Office at the Inland Revenue Department and registration of the same with the Land Registry within 30 days after signing.

In relation to the purchase of a non-residential property, stamp duty is not payable on the formal sale and purchase agreement. However, the purchaser's solicitor will still arrange registration of the formal sale and purchase agreement directly with the Land Registry within 30 days after signing.

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

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

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

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

Tax

TAX ON TRANSACTIONS – STAMP DUTY: Real property transactions in Hong Kong are subject to stamp duty pursuant to the Stamp Duty Ordinance (Cap. 117). Stamp duty will be imposed on both the agreement and assignment of real property (for non-residential properties, stamp duty is chargeable only on the assignment for the transfer).

Unless specifically exempted or otherwise provided, the new ad valorem stamp duty is payable on an agreement for sale for the acquisition of any residential property or non-residential property, if the agreement is executed on or after 23 February 2013. It also applies to a conveyance on sale of such a property executed on or after that date (unless the related agreement for sale was executed before 23 February 2013).

However, the new ad valorem stamp duty does not apply to an agreement/conveyance for a residential property where the purchaser/transferee is a Hong Kong permanent resident acting on his own behalf and he does not own any other residential property in Hong Kong at the time of acquisition; only the old rates (which are lower than the new rates) will apply to such agreement/conveyance. For properties not exceeding HK$2,000,000, the new ad valorem stamp duty rate is 1.5 per cent the amount or value of the consideration; for property consideration exceeding HK$2,000,000, the stamp duty payable is on a sliding scale, up to 8.5 per cent of the amount or value of the consideration.

TAX ON TRANSACTIONS – PROFITS TAX: The Inland Revenue Department will charge profits tax on any persons, including corporations, partnerships and bodies of persons who derive profits through carrying on a trade, profession or business in Hong Kong. It is a question of fact as to whether a business is being carried on as a result of any sale and purchase of real property in Hong Kong, in which case some of the relevant factors that will be taken into account are as follows:

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

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

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

Termination of existing tenancy on a lease

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

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

Restrictions on development

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

The Lands Department may also refer the application to other relevant departments for approval, including the Planning Department, Building Department and Fire Services Department. Each application will be considered on a case-by-case basis together with the relevant circumstances. If the Lands Department approves of the application for the lease modification, then the modification will be reflected by way of a deed of variation or letter of modification.

In addition, the leaseholder will be required to pay a premium reflecting the enhanced value of the property. It may also be the case that additional conditions relating to the new use of the property are imposed. Approval for an application for a lease modification normally takes at least six months.

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

- approved by the Lands Department;
- subject to the payment of land premium; and
- approved by all owners of the building,
- a change of usage of a building in Hong Kong is very difficult, if not impossible.

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

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

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

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

Foreign investment in real estate

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

- direct purchasing of real estate;
- investing in stocks of various property developers; or
- investing in real estate investment trusts ("REITs"), which are listed trusts. REITs work by investing in income-producing real estate assets and using the income derived to provide a return to its unit holders.

By purchasing a unit in a REIT, it allows investors to share in the risks as well as the benefits of owning the real estate assets held by the REIT.

RESTRICTIONS ON ACQUISITION: There are no restrictions on acquisition and any individual adult person, corporation or foreign entity that has a recognized legal status and capacity may purchase property in Hong Kong Consideration shall be given to the higher rate of ad valorem stamp duty payable by a non-Hong Kong permanent resident, corporation and Hong Kong permanent resident who already owns residential property in Hong Kong.

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

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→ Ireland

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- Planning and environmental
- Public and regulatory law
- Private client / estate planning
- Renewables
- Technology and intellectual property

→ Real Estate Law

There are no particular restrictions on non-Irish or non-EU persons or companies acquiring or leasing real estate in Ireland. The following is a brief outline of the main issues that need to be taken into consideration when acquiring property in Ireland.

Title

In Ireland property ownership is divided into two categories – freehold and leasehold. Freehold land is land which is owned outright by the owner. Leasehold is land which is subject to a lease. Much property in Ireland is held under long leases, usually in excess of 99 years. Long leases are particularly common in urban areas and they help the landlord to maintain some element of control over their land as the tenant will be subject to covenants and conditions in the lease. Office and commercial premises are often let to tenants under shorter leases for terms up to 25 years, subject to the payment of market rents.

Registration

There are two systems of registration of real estate in Ireland, the Property Registration Authority and the Registry of Deeds. Registration in the Property Registration Authority is intended to provide evidence of ownership in one single document called a folio, whereas in the Registry of Deeds, the system is slightly more complicated. A solicitor is required to investigate the title to the property to assess if the vendor owns the land and has "good marketable title" to it.

Buyer Beware – Due Diligence is essential in any property transaction

It is prudent for prospective purchasers and tenants to have the subject property surveyed in advance of signing contracts for sale in order to determine if there are any structural defects. This is because the principle "buyer beware" applies in Ireland so that a purchaser takes a property in its actual state and has no comeback once the transaction is closed should any latent defects flare up.

When buying or selling a property in Ireland, it is vital that a solicitor is consulted as early as possible in the process to avoid a party unwillingly entering into a binding agreement. The vendor's solicitor must draw up the Contract for Sale and demonstrate that their client has "good marketable title" to the property. The Contract for Sale will also deal with planning, taxation and condition of the property and list any vouching documentation that is held on title in this respect. The solicitor for the purchaser should carry out due diligence to establish that the vendor has definite good marketable title and that no liabilities will pass with the property to their client. For example, the purchaser's solicitor will ensure that statute has been complied with and that no litigation in relation to the property is pending.

Planning and Development

The use to which a property is put, the construction of new property and alterations to existing property must comply with the planning and building control regulations in Ireland (unless the specific development is exempt). These regimes are operated by the local authorities. Planning considerations require adherence to regional development plans whilst building control is concerned with the proper construction of buildings having regard to fire safety and safety of the structure of the building.

Commercial Leases

In Ireland, commercial leases are typically between five and twenty five years. Leases in excess of five years tend to place full responsibility on the tenant for the cost of repair and insurance of the premises. They also commonly provide for rent reviews every five years and there is now legislative provision for upwards and downwards review for leases entered into after 28 February 2010. It could be said that because of recent economic developments, together with statutory changes (both VAT and Landlord and Tenant Rights), some tenants are now enjoying an increase in their negotiating power. Currently, there is considerable excess in capacity and development and so this has afforded tenants with greater flexibility.

For leases over five years in duration, break clauses are usually inserted giving the option to terminate at year five, ten and fifteen. However, rent reviews which result in downward reviews are still very uncommon. Since the 1960's, practically every Irish commercial lease for a term in excess of five years contained a five yearly upwards only rent review clause. This clause provided that the rent first reserved would be reviewed every five years to the higher of the rent payable immediately before the review or the open market rent at the date of the review. Section 132 of the Land and Conveyancing Act 2009 now provides that rent review clauses in leases granted after 28 February 2012 can be interpreted as reviewing rents to the open market value thus making downwards rent reviews possible.

Stamp Duty

Stamp duty is a tax on deeds and instruments transferring ownership of property. Stamp duty is payable by a purchaser on the purchase price of a property. Stamp duty on commercial property is currently two per cent of the consideration paid. Stamp duty is also payable on occupational leases by the tenant at a rate of one per cent of the annual rent.

Programme to simplify Irish Land Law

A major restructure of Irish land law and conveyancing practice has been undertaken by the Law Reform Commission and the Department of Justice, Equality and Law Reform. A new act introducing major reform was introduced in December 2009. This has brought clarity to the law

in the area and modernized the law to some extent. The aim of the act was to simplify the law in the area, not only for practitioners but for the general public also. Compulsory registration of ownership in the Property Registration Authority was introduced so that, eventually, all ownership will be recorded in the Property Registration Authority and evidenced by one document called a folio. This is going to be a long process but is a step in the right direction.

→ Tax Law

Corporation Tax

The scope and remit of Irish corporation tax is largely dependant on the residential status of a company. In theory an Irish entity is liable to Irish corporation tax on its world wide income and gains, no matter what the nature of these gains. A company that is resident in Ireland for tax purposes is subject to Irish corporation tax on its worldwide income and gains. A non resident Irish company that operates through Ireland is liable to Irish corporation tax on trading income arising directly or indirectly from a branch of its company located in Ireland.

First and foremost a company is tax resident in Ireland if it is incorporated in Ireland. However this general rule does not always apply. The tax net extends further in the following circumstances:

- If the company is under the ultimate control of a person resident in any EU Member State or in another country which has a double tax treaty or which itself is related to a company whose principal class of shares is regularly traded on the stock exchange in an EU country or treaty country.

- If the company carries on trade in Ireland or is related to a company which carries on trade in Ireland.

Generally a company is deemed to be tax resident where its central management resides. Unfortunately there is no definition in statute to this effect and so guidance is obtained from case law. In the past many factors have been taken into consideration by the courts when deciding if a company is in fact tax resident. The most prevalent of these is the place of residence of the directors together with the place where board meetings are held.

How is the tax liability calculated in Ireland?

For many years Ireland had a 10% incentive rate of corporation tax which applied to certain sectors – manufacturing operations established prior to July 1998 continued to avail of this special rate up until 31 December 2012 but now all companies pay the same rate of 12.5%. This is one of the lowest corporation tax rates in Europe. The National Recovery Plan 2011-2014 confirms Ireland's intention to maintain this rate of corporation tax into the foreseeable future.

A company's taxable profit is based on its accounting profit as adjusted for certain items. The principal adjustment is the disallowance of capital expenditure incurred by the company. A company is liable to corporation tax by reference to the taxable profit it earns in an accounting year (12 month period). This normally coincides with the company's accounting year.

Non trading profits earned by a company, such as investment income and other activities are taxed at a higher rate of 25%. Dividends received by an Irish tax resident company from subsidiaries or branches in other EU Member States or a country with which Ireland has a double tax treaty with can be taxed at a rate of 12.5%. Since the introduction of the Finance Act 2012 the dividends paid out of the trading profits of a company resident in a country with which Ireland does not have a double tax treaty can now be subject to the rate of 12.5% corporation tax also.

Exemptions and Allowances

Special tax regimes apply to earnings from commercial management of woodlands, patent royalties deriving from inventions developed in the European Economic Area, artistic earnings, and certain shipping activities. Ireland's favourable tax regime to date has played a significant part in attracting inward investment. Key tax incentives include Ireland's low corporate tax rate for trading income, generous tax depreciation (capital allowances) for capital expenditure and an extensive double tax treaty network, with 59 signed treaties, 49 of which are currently in force and a further 10 in the process of negotiation. Additionally, tax treaty based reliefs are available from the time of signing the relevant tax treaty and not the time it comes into force which in practice can be considerably later. In all, this helps to ensure that inward investment in Ireland is ongoing.

Research and Development Allowance ("R&D")

An R&D expenditure tax credit was introduced into Ireland's tax code with effect from 1 January 2004. The relief now takes the form of a 25% (previously 20%) tax credit for companies subject to Irish corporation tax.

Scientific Research Allowance

A deduction against profits is available for revenue and capital expenditure on scientific research. This can apply even when the scientific research does not apply to the trade being carried out by the company in question at the time. A deduction is also allowable for payments made to a company to a body approved by the Minister of Finance and /or to an Irish university in order to undertake the scientific research.

Know How Allowance

Expenditure incurred in relation to know how purchased from a third party and not as part of trade is tax deductible. However, to avail of the deduction the know how must be related to the trade being carried on by the company in question.

Tax on Individuals: Income Tax

Ireland has a system of income tax which is levied at two rates. As of 2011 an individual is subject to income tax at a rate of 20% on his/her first €32,800 of income and 41% thereafter. The threshold of €32,800 is increased to €41,800 when the individual is married.

In addition to income tax an individual is also subject to two social contributions known as the Universal Social Charge at 7% and PRSI (Pay Related Social Insurance Scheme) at 4% on his/her income.

Scope of Irish Income Tax – Domicile

In order to be liable for Irish income tax the individual must be resident or ordinarily domiciled (have a permanent home) in the state. A person is tax resident if they spend a total of 183 days in Ireland in any one tax year or they spend a combined total of 280 days over two tax years (assuming a minimum of 30 days in each tax year). It should be noted that if a person is resident in Ireland for three consecutive tax years they then become ordinarily resident for tax purposes.

Individuals resident in Ireland for tax purposes are liable to Irish income tax on their worldwide income. Individuals who are not resident in Ireland for tax purposes are liable to Irish income tax (subject to the provisions of any appropriate double tax treaty) where they are in receipt of Irish source income.

Domicile

Domicile is initially determined by an individual's domicile of origin. Generally the country where the individual's father is domiciled when they are born is considered to be his/her domicile and so they will be regarded as domiciled in that country unless a domicile of choice is acquired.

In general foreign income earned by a person with non-Irish domicile who is resident in Ireland is taxed when remitted to Ireland (this is referred to as the remittance basis). A limited form of remittance tax applies in relation to income.

A resident and domiciled but not ordinarily resident person is liable to Irish income tax on Irish source income and on any other income to the extent remitted.

A resident but not domiciled person is liable to Irish source income tax and to income tax on any other income to the extent remitted.

Capital Gains Tax

Ireland also imposes a capital gains tax on gains arising from the disposal of assets where the gains are not treated as trading profits. The rate of capital gains tax is currently 25%. Where a company resident in Ireland is subject to corporation tax, any capital gains are subject to corporation tax in such a way that results in the same liability arising as if capital gains tax had applied to the gain. Where a company has related companies that are tax resident in Ireland and certain criteria are met, assets can be transferred between companies without gains being recognised for tax purposes.

Value Added Tax

Ireland has a value added tax ("VAT") system based on the EU Sixth Directive. At the time of writing the standard rate of VAT is 23%. Lower rates of 13.5% and 0% are applicable to certain supplies of goods and services.

Stamp Duty

Stamp duty is a tax on certain documents referred to as instruments including those transferring ownership in property. Applicable rates of stamp duty vary from nominal amounts up to 9% of purchase price or market value. Since 1 April 2004, instruments affecting the transfer of, and contracts for the sale of, intellectual property (including goodwill directly attributable to intellectual property rights) have been exempt from stamp duty. Capital duty has been abolished since 7 December 2005.

→ Corporate Law

Irish company law is governed by both statute and common law. The statutory regime is contained in the Irish Companies Acts 1963 to 2012 as well as regulations implementing various European directives.

Corporate law is on the threshold of major reform and development as a consequence of the work of a government-appointed advisory body, the Company Law Review Group (the "CLRG"), since 2001. The CLRG was asked to make proposals for the modernization and, where possible, simplification of Irish company law. The reports of the CLRG led to the publication of the heads of a Companies Consolidation and Reform Bill in 2007.

In May 2011, the Department of Jobs, Enterprise and Innovation published a long-awaited draft of the main part of a new consolidated Companies Bill (the "Bill"). This Bill will implement recommendations of the CLRG to update, consolidate and reform Irish company law.

Business Structure

While most foreign companies in Ireland operate through an Irish incorporated subsidiary, business can be conducted through a branch of a foreign company. A foreign company may establish a place of business in Ireland without incorporating an Irish company subject to filing certain information in the Companies Registration Office (the "CRO"), including copies of the company's constitutional documents, details of the persons authorized to bind the company, and the name of the person resident in Ireland authorised to accept service of process on behalf of the company.

The two main types of company in Ireland are private companies and public companies. The vast majority of companies registered in Ireland are private companies limited by shares. They are by far the most popular form of business entity for inward investment projects. The shareholders of a private limited company have limited liability. Public limited companies are typically used where securities are listed or offered to the public.

Procedure for incorporation

To incorporate a private company limited by shares, certain documents must be publicly filed with the CRO. These include details of the proposed name of the entity, the shareholders, directors and company secretary.

Under an express incorporation scheme, it is possible to incorporate a company within 5 working days. Outside of the express scheme, it can take approximately 2 to 3 weeks for a company to be incorporated. There is no minimum capital requirement for an Irish private company and shares can be denominated in any currency. To incorporate an Irish company, the following documents have to be filed with the CRO:

- Memorandum of Association;
- Articles of Association; and
- Form A1.

Every Irish incorporated company is required to have one EEA* resident director unless it holds a surety bond to the value of ¤25,394.76 or the Revenue has certified it has a real and continuous link with one or more economic activities in Ireland. At all times there must be two directors and a company secretary (who may be one of the directors). A corporation is not eligible to be a director.

Name of an Irish company

The CRO may refuse a company under a proposed name if it is identical to, or too similar to, the name of an existing company, if it is offensive or if it would suggest State sponsorship. Names which are phonetically and/or visually similar to existing company names will also be refused by the CRO. This includes names where there is a slight variation in the spelling. It is often recommended that company names include extra words so as to create a sufficient distinction from existing names.

Registration does not give the company any proprietary rights in the company name. As well as searching the Register of Companies, it is also important to check any proposed name against the names on the Irish Business Names Register and Irish and EU Trade Marks Registries (and any other registers, depending on where it is proposed to carry on business). This is to ensure that the proposed company name does not conflict with an existing business name or trade mark, since the person claiming to have a right to that name or mark could take legal action to protect its interest. It should also be noted that certain names cannot be used unless approved by relevant regulatory bodies. By way of example, the words "bank", "insurance", "society" and "university" cannot be included in a company name unless prior permission is obtained from the relevant regulatory authority.

Where a company uses a business name that is different from its company name, the business name must be registered by that company with the Irish Register of Business Names at the CRO. Company names may be reserved for a period of up to 28 days in advance of incorporation.

A company will not be incorporated in Ireland unless the company will, when registered, carry on an activity in Ireland. A declaration confirming this must be completed and filed with the incorporation documents at the CRO.

Statutory obligations of the company

A company has ongoing statutory obligations including:

- holding its first Annual General Meeting ("AGM") within eighteen months of incorporation and AGMs thereafter at intervals of not more than fifteen months;

- filing the first annual return six months after the date of incorporation and subsequent annual returns in each year thereafter. The second and subsequent annual returns must be filed with the CRO together with the relevant accounts, made up to a date not more than nine months earlier than the date of the annual return; and presenting the company's accounts to the members of the company for consideration at the AGM.

■ keeping proper books of account. Accounts of all companies must be audited by independent accountants, except for small limited companies with a turnover not exceeding ¤7,300,000 and which fulfill a number of other conditions.

The shareholder meeting requirements are relaxed for single member companies.

Management and Governance Structure

The management of a company is nearly always delegated to the board of directors. All companies must have at least one secretary and a minimum of two directors, one of whom is required to be a resident of the EEA. The secretary may also be one of the directors of the company. A body corporate may act as secretary to another company, but not to itself. A body corporate may not act as a director.

The directors of a company have wide responsibilities under Irish law. They are obliged to act in the best interests of the company as a whole and to ensure that the company acts in compliance with Irish company law. Directors should familiarise themselves with their duties under Irish law. The Office of the Director of Corporate Enforcement has published an information booklet on the subject entitled 'The Principal Duties and Powers of Company Directors' and a copy is available to download from their website at www.odce.ie.

Statutory Duties

As well as these general duties, a director has specific duties under the Companies Acts including a duty to keep proper books of account and to have the annual audit carried out, although there is an audit exemption for small companies. Directors have a duty to file annual accounts and annual returns and failure to file an annual return can cause the company to be struck off. Late filing of an annual return can mean that the company loses the benefit of the audit exemption. A director also has a duty to disclose certain interests, whether it is in shares in the company or in any contract that the company might be entering into. Directors have duties to keep certain registers. The Companies Acts also govern transactions between the company and directors and/or their connected persons and there are specific duties for directors in companies which are insolvent.

Corporate Governance

There is a great deal of discussion in the media about directors' duties and best corporate governance practice. We can expect to see increased regulation in this area which will affect all companies and not just listed companies, so it is important to get it right from the beginning. This involves, amongst other items, putting the right systems in place, keeping proper records and complying with obligations as a director to act in the best interests of the company.

Registered Office

Every company is required to have a registered office in Ireland to which communications and notices may be sent. The company must file the situation of its registered office in the CRO.

Company's Notepaper

A company must ensure that its name, registered address and registered number are mentioned on all business letters of the company and on all cheques, invoices and receipts of the company. For private limited companies and public limited companies, this information must also be displayed on the company's website and certain electronic communications (for example, email, letters and electronic order forms). The names of directors and their nationality (if not Irish) must be included on all business letters on, or in, which the company's name also appears. A company is also required to paint or affix its name in a conspicuous place, in legible letters, on the outside of every office or place in which its business is carried on.

Investment Incentives

Generous fiscal incentives are available to foreign companies looking to invest in Ireland. These packages are flexible and vary from project to project. A summary of the primary grant aids available is as follows:

- capital grants contributing towards the cost of fixed assets, including site purchase and development, buildings and, new plant and equipment;

- where a factory building is rented, a grant towards the reduction of the annual rental payments may be available instead;

- employment grants to companies which will create jobs. Normally, one half is paid on certification that the job has been created and the balance one year later, provided the job still exists;

- training grants to cover the full cost of certain training initiatives. Covered costs include trainees wages, travel and subsistence expenses and engagement of instructors, consultants to train. Training grants are based on specific training programmes agreed between each investing company, IDA Ireland and FÁS the Irish National Training and Employment Authority; and

- research and development grants in respect of approved research and development work, including product and process development, feasibility studies and technology acquisitions.

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Law Offices - Founded in 1966

→ Italy

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

Our clients are public and privately held industrial, commercial as well as financial businesses, involved in complex corporate and financial transactions and dispute resolution proceedings. The firm has a wide experience in all legal aspect of life of companies since their incorporation and start up of their businesses including the negotiation and settlement of joint venture agreements, supplies of goods and services, agency, distribution and franchising agreements, as well as equity based and asset based transactions.

Our team of professionals have developed a specific expertise in takeovers and mergers, and in the buying and selling of businesses. The firm practice is also concerned with issues of domestic & cross border contracts, corporate, corporate finance, banking, taxation, corporate restructuring, real estate and construction, intellectual and industrial property, information technology, aviation and EU Law. As well, the Firm assists its clientele on subject matters involving regulatory compliance and periodic mandatory filings before the main public bodies (UIC, ISVAP, CONSOB and Banca d'Italia etc.).

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

In the area of Intellectual property, our team of IP lawyers deals with major cases relating to the enforcement and prosecution of trademark and patent rights, copyrights, industrial design and web domain name rights on behalf of both domestic and foreign IP right-holders.

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

Moreover, the Firm advises and represents companies and individuals on legal matters regarding properties and estates situated in Italy or affected by domestic law. Furthermore, we provide legal counselling and representation on any aspect of the areas of labour, Employment & industrial relations regulating relationship with personnel. In this area, the firm enjoys a broad experience in collective and individual labour related claims, social security claims, and arbitration proceedings concerning employees and managers.

Our primary commitment has always been the devotion to giving legal assistance and representation of the highest quality to our clients. We accomplish this purpose within the perspective that legal problems are essentially business problems for our clients. Our assistance consists in giving them practical advices and fast responses, anticipating their needs. When the matter requires specialized expertise in different areas of the law, our lawyers use to work together to ensure the highest standard of skills, knowledge and creativity.

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

→ Corporate Law

Regulations and rules

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

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

The reform amended and supplemented portions of the Italian Civil Code and modified Italy's Unified Text of provisions on financial intermediation, which now include specific provisions for listed companies (Legislative Decree No. 6/2003). Overall the 2004 reform successfully introduced changes to the structure of limited companies which simplify and speed up the procedures for establishing a business, new financial instruments for companies to create

special categories of shares and new rules providing greater flexibility and choice in corporate governance. Corporate responsibility for groups clarifying issues related to liability, transparency and publicity.

Types of business associations and liability of shareholders

Prospective foreign investors wanting to set up a business in Italy with a more permanent presence other than establishing a mere representative office or a branch may decide to incorporate a company. By considering doing so, they will need to choose the most suitable organizational structure in accordance with the nature of their businesses.

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

Capital Companies and Partnerships

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

The difference between the two categories is that only the capital companies are regarded as having a legal entity entirely separate and distinct from the individuals who compose it, with the capacity of continuous existence or succession and having as capacity that of taking holding and conveying property (Civil code, Articles 2257 through 2510 and Act No. 58/1998, known as "TUF". TUF has been significantly amended by means of Act No. 262/2005, which provides rules aimed to safeguard savings).

A capital company's liability is normally limited to its assets and the stock or quota holders are protected against personal liability in connection with the business of the company. There is an exception to the above distinction that is represented by a rarely used business association structure, the so called *"società in accomandita per azioni"* or Partnership Limited by Shares that is a form of company organized on a stock capital basis, where two category of shareholders exist: Those who enjoy the shield of corporate privilege of this business association and do not respond on a personal basis for the obligations of the limited share partnership *("soci accomandanti")* and those who are instead entrusted with the management of the company and are as well personally liable for the obligations *("soci accomandatari").*

The main types of business associations provided for in the Civil code are the following.

Capital Companies

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

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

Small or medium-sized enterprises may adopt the Limited liability company form to run their businesses in Italy. This form of business association - with a minimum capital contribution required of € 10,000 (Civil code, Article 2463) - enjoys a great degree of internal flexibility in terms of management and control that makes it attractive to closely held enterprises. This flexibility leaves the stockholders free to develop their organizational structure and to some extent their own management rules and principles. Stockholders are not personally liable for debts of a Limited liability company, unless the following circumstances concur altogether:

- Sole Stockholder Company
- Insolvency of the company
- Stock contributions have not been fully paid in, rules concerning payment of the stock or rules regarding duty of legal publicity have not been observed (Civil code, Articles 2462 and 2464).

In the above circumstances, the stockholder is personally liable for debt of the company. The contribution of a stockholder may be cash, property and services as long as a contribution can be financially evaluated. Participation of a member is a quota that cannot be represented by shares.

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

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

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

- Companies without outstanding shares held by public investors (Closely Held Corporations)
- Companies with outstanding shares held by public investors, namely, companies issuing stock shares that are traded on regulated markets or circulating in the market on a relevant

scale, that means circulating among Italian issuers with net capital not less than € 5 million and with a number of shareholders or bondholders greater than 200). Specific rules are provided for these public companies (Civil code, Article 2325bis and TUF).

There is a minimum capital contribution required of € 120,000 (Civil code, Article 2327).

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

Very rarely used (Save for a noteworthy exception, that is "Giovanni Agnelli & C. S.a.p.a.", the holding company of "Fiat Group"), this structure has the same features of Limited partnerships and stock companies. Their share capital consists of stocks and shareholders are divided into two groups: general partners, who manage the company and have unlimited, collective and contingent liability; and limited partners, whose exposure to debt is limited to the shares each underwrote, and who cannot carry out management activities within the company.

In case of plurality of Directors, the appointment of a new director is subject to the approval of the other Directors (Civil code, Article 2457).

Partnerships

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

■ Simple Society *("Società semplice")* – Rarely used, the main feature of this business structure would be used for the exclusive purpose of non commercial economic activities, such as for instance the management of small real estate property or agricultural activities.

■ General Partnership *("Società in Nome Collettivo")* – The partners have unlimited liability for the partnership's obligations (Civil code, Article 2291). A general partnership may not have a corporate partner. An SNC may transact business, acquire, hold property, sued and be sued in its own trade name. It must operate under a business name that includes the name of one or more or the partners and indicates the partnership relationship. No minimum level of capital contribution is required, and contributions may be in the form of cash, property or services. The consent of all partners is required for the transfer of a partnership interest. Partnership profits and losses are distributed in proportion to each partner's contribution, unless otherwise stated in the partnership agreement. Any stipulation in the partnership agreement limiting the extent of a partners' losses is void.

■ Limited Partnership *("Società in Accomandita Semplice")* – A Limited Partnership must be composed of at least one partner with unlimited liability and at least one partner with liability limited to the extent of the partner's capital contribution (Civil code, Article 2313). The partner with limited liability may not participate in a partnership management. Several Court decisions have held that a corporation may not be a partner in a partnership management. Trade name

of the partnership must include the name of at least one general partner and indicate that is a limited partnership. Unless stated differently in the partnership agreement, the interest of a partner may be transferred only by the votes of partners representing a majority of the partnership's capital. In general, provisions relating to General Partnerships apply to limited partnerships as well.

Share capital (Minimum and Minimum paid in amount)

■ Amount of stated capital in corporations (s.p.a.) and capital contributions - The minimum amount required has been raised to € 120,000. Nevertheless companies existing on January 1, 2004 does not have to comply with such new rule until their duration stated in the By-Laws elapses. As a condition of the incorporation, shareholders must subscribe the entire stated capital. Shareholders shall pay upon subscription at least 25% of the stated capita (if there is a sole shareholder, deposit of the stated capital as a whole is required). The term for restitution to the company of the percentage deposited in the bank for subscription of the shares has been reduced to 90 days. If the shares have not been entirely paid in, it is not possible for the company to increase its stated capital.

■ Amount of stated capital in limited liability companies (s.r.l.) and capital contributions - The minimum amount required is € 10,000. The same rules concerning the entire subscription of the stated capital, the payment of the 25% of the stated capital and the eventual contributions in kind apply. Differently from corporations contribution of a quota-holder may be also intellectual property and labour services as long as the contribution may be economically appraised.

Contributions by members of limited liability companies cannot be represented by shares, nor they can be publicly traded. If the Articles of incorporation do not provide differently, participation of the members is determined in proportion with the contribution. The Articles of incorporation may provide for granting to single members of special rights relating to the management of the company or the distribution of profit.

Classes of shares

STOCK SHARES IN CORPORATIONS - Corporations are generally authorized according to their By-Laws to issue different classes of stock, which may differ in their right to dividends, their voting rights and their right to share. The i of shares with no par value is now allowed in Italy. Shares may be linked to a fraction of the stated capital, as well as it is possible for Limited liability companies. The only requirement is to make express reference about it in the By-Laws.

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

- The company and/or its shareholders undertake to purchase the share; or
- The seller has a right to withdraw at expense of the company and/or its shareholders.

In order to be enforceable stock transfer restrictions must be mentioned on the stock certificate. Issue of redeemable shares is now permitted.14 Redeemable shares may be relevant in the event that participation in the stock capital is connected to a specific relationship from outside the company.

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

Principal classes of shares

The following are the principal classes of shares:

- Common Stock – Full voting rights, save for those shares issued for specific corporate business activities

- Stock having different rights If there is specific provision in the By-Laws it is possible to create categories of stock having different rights even with reference to a predetermined and actual level of losses

- Stock and other instruments for to the benefit of employees – The extraordinary general meeting has the power to determine assignments, rules, rights, eventual expiration terms and facility for repurchase

- Non-voting Stock – They have no voting rights. Such shares may be only issued by companies whose shares are traded on the Stock exchange for an amount of stock capital not greater than 51%.

- Stock of participation to a determined business – Financial instrument of participation, whose rights must be specifically predetermined.

A corporation may authorize – not more than 51% of stock capital – specific stock without voting rights, with restricted voting rights, with limited or subordinated voting rights. Stock for the benefit of employees or issued pursuant to services or work carried out by shareholders or third parties may carry the right to vote on specific arguments of particular interest for the rights of the stock itself and a member of the controlling board may represent them.

The mandatory deposit with consequent prohibition of withdrawal of the shares for a corporate meeting has been eliminated.

Shares representing assets dedicated to specific business

Corporations may dedicate and link a proportion of the stock,(not more than 10% of the stock capital), to the results of a determined area of business (with the exclusion of business activities with a reserved statutory regulation). To that extent, a corporation may:

■ Set up one or more assets specifically dedicated to the realization of a specific business (a single business or an entire business activity to be carried out along with the main business activity of the company).

■ Establish that financial resources necessary for carrying on the activity have to come from the specific business itself

The purpose of this regulation is to allow for split management and and to enable different activities and businesses to be valued independently

Possible purposes are:

■ DISPOSITION OF ASSETS – Setting up of a separate corporate entity internal to the company, without the need to deal with rules and regulations of the Civil Code applicable to de-merge of companies, therefore without bearing related costs (i.e. investment of corporate equity in financial speculations aimed at risk diversification). Where there is provision in the Bylaws offsetting out the criteria for calculation of income and expenditure for the specific business, the issuance of stock directly linked to results of the specific business is permitted.

■ NEW CONTRIBUTIONS AND NEED OF NEW RESOURCES FOR DEVELOPING A NEW PROJECT – Separate accounting for the specific business activity is mandatory (Contributors may decide on the basis of the substance and the content of the single project or operation)

A specific resolution of the Shareholders Meeting is necessary in order to bind some assets to a specific business. The meeting shall determine:
- The object of the business
- Assets involved
- Financial and economical business plan (in order to determine congruity, criteria of management, expected result, guaranties etc.)
- Contributions specifically undertaken and financial instruments issued for the operation
- Appointment of an auditing company in case the corporation issues equity securities publicly traded and offered to non professional investors
- Rules of accounting of the specific business.

The resolution must be filed with the Companies Registry. Actual creditors may file an objection within two months from the filing.

Debt Securities

Corporations are allowed to issue debt securities offered to the market for subscription. The decision to issue debt securities as a financial instrument, may be led by the:

- Preference of raising financial resources without granting new subjects the right to vote and without altering corporate control

- Necessity of financing projects or operations, which only need a temporary financing

- Circumstance that the purchase of equity stock is not a soundinvestment during a particular period of time.

Issuance of equity security instead may sound convenient for raising permanent resources, acquiring new resources without paying additional financial costs, or financing the stock capital without being subject to statutory limitations provided for the issuance of debt securities.

Unless otherwise provided by either the certificate of incorporation or the bylaws, the Board of Directors may adopt the resolution for issuance of debt securities. The extraordinary general meeting may vote for issuance of convertible bonds. To be enforceable, the resolution of issuance must be entered in the minutes of the meeting and must be filed in accordance with the regulation established for By-Laws amendments.

The threshold for the issue of debt security has now been raised to an amount equal to twice the aggregate of the stock capital, of the legal reserve and of the available reserves as shown on the last approved balance sheet. It would seem possible to make reference to the subscribed stock capital and not to the stock capital paid in, since the law is silent in this respect.

The following situations are not subject to the above limitations:

- Bonds issued in excess that are subscribed by professional investors subject to prudential control in accordance with specific regulations and that are traded among non professional purchasers (situation where bond subscribers are liable for the solvency of the company).

- Bonds backed by first mortgage over real estate owned by the company up to 2/3 of their value

- Authorization by governmental authority.

Rules and regulations concerning convertible bonds has not changed (extraordinary General Meeting + stated capital increase for an amount equal to the shares to issue in conversion). Stated capital must be entirely paid in.

Corporate governance

■ CORPORATE GOVERNANCE IN LIMITED LIABILITY COMPANIES - In Limited Liability companies, the By-Laws may contain a provision that management is undertaken by a:
- Sole Director
- Board of Directors, whose members exercise their actions jointly. In this case statutory rules regulating management of partnerships apply to Limited Liability Companies.18 Therefore:
    - Unanimous consent of all the Directors is required for company's actions
    - Single Directors cannot carry out any action on their own, save when there is necessity to avoid damage to the company.
- Board of Directors, whose members may act individually. In this latter case:
    - Each Director may exercise her/his office individually
    - The power to manage the company belongs to any stockholder with unlimited liability.

Certain company's actions (annual financial reports drafting, merger or de-merger plan and capital increase plan drafting) may only be exercised by the Directors altogether, by way of majority quorum or the different quorum that the By-Laws of the company may set forth.19

In Limited Liability companies, even if Directors exercise their activity jointly, it cannot be said that the Board is a collective body. In fact there may be a provision in the Articles of Incorporation of Limited liability companies establishing that Directors' resolutions must be adopted by way of written consultation or by way of express written consent (even via fax or e-mail if bearing signature). The statutory provisions of consultancy and of written consent imply that an action is undertaken by a single Director and that resolutions are adopted without the need for a meeting of the Board of Directors.

■ CORPORATE GOVERNANCE IN CORPORATIONS - In Corporations, different models of corporate governance may be adopted. By-Laws may regulate more freely the internal organization of the Board competent for management, its functioning, the circulation of information among its members and the members of the Board of Auditors. If By-Laws do not provide otherwise the model of corporate governance and control applied is still represented by the traditional system.

- *Traditional System* – The reference model is the traditional system (General Shareholders' Meeting, Board of Directors, Executive Committee, Board of Auditors and external auditing when required by the Law). Under the new system, the accounting control previously attributed to the Board of Auditors is now attributed to an external Auditor or an Auditing Company.

A Provision of the Civil Code establishes that the office term for appointed directors is the same office term set of directors appointed by the time of their election.20 In case of conflict of interest, the executive director shall refrain from undertaking operations and shall empower the Board of Directors for their enforcement. If a resolution would have not been approved without the

vote of the director in conflict of interest, such resolution may be challenged within 90 days, and during this period of time operations carried out with bona fide third parties are valid.

Directors and members of the Board of Auditors "...must act with the same professionalism and diligence required by the nature of the action undertaken". Such standard does not require Directors to be necessarily experts on accounting, finance and any other sector of management and governance of the enterprise, rather it means that their decisions shall be informed and pondered, based on knowledge and on a calculated risk, and not on irresponsible and negligent improvisation.

- *Dualistic System* (German tradition) - It may be established on By-Laws that governance of the company is exercised by the Management Board, which is appointed by the Supervisory Board (with the exception of the first election resulting from the certificate of incorporation). Management Board can assign specific executive powers to one or more of its members.

Rules regulating relationship between Board of Directors and the Executive Committee, and directors in general apply to this corporate model. Management Board cannot remain in office for more than three consecutive fiscal years. It may be however be confirmed and removed for "good cause" by the Supervisory Board.

General rules apply to individual claims against members of the Management Board, as well as to claims raised by the Supervisory Board against them. When the resolution is adopted by 51% of its members, the member of the Management Board against whom the claim has been raised, is automatically removed from office.

The Supervisory Board, which exercises general supervision over activity of the company, is elected by the General Shareholders' Meeting (with the exception of the first election resulting from the certificate of incorporation). Both effective (those holding office) and supplemental (substitutes) members are elected. Supplemental members are those who replace effective members in case one or more of these latters resign or cannot otherwise attend her/his duties.

Its membership has to be no less than three. Their office lasts three fiscal years. At least an effective and a supplemental member have to be auditors members of the Roll of Auditors. It is not possible to be member of the Management and of the Supervisory Board at the same time. The Supervisory Board exercises supervision over:
- Compliance with legal and accounting rules and regulations
- Corporate operations, reporting any unlawful act.

Moreover, once a year the Board reports to the Management Board. Members of the Supervisory Board share joint and several liability with members of the Management Board for acts and omissions of the latter, whenever the activity of supervision of the Board could have avoided damages.

- *Monistic System* (British Tradition) – By-Laws may set forth that a Board of Directors have the duty of corporate management, but a Committee appointed internally will be appointed for the purpose of supervising the management.

This system of governance must be explicitly set out in By-Laws. There is a close connection between the Board of Directors and the Committee for supervision of the management, in fact only those who have been previously elected members of the Board of Directors may serve as members of the Committee.

The Board of Directors set the number of members for the Committee (not less than three, if the company solicits investment at large). Half of the members at least must be independent, and further standards and by ethical codes are set by business associations or by legal entities of management of trading markets. It is not allowed to serve at the same time as member of the Committee for supervision of the management and as member of any other Executive Committee.

Further, it is not permitted for a member of a Committee for supervision of the management to have specific assignments, powers or offices regarding the management of the company. At least one director, among members of the Committee for supervision of the management must be an auditor member of the Roll of Auditors. The same powers and duties of the Board of Auditors are attributed to the Committee.

Shareholders Meetings and amendments to the By-Laws

The General Meeting may be called at any place within the municipality where the company has its own registered office, unless the Bylaws provide otherwise. The Meeting has to take place once a year within the 120th day after closing of the corporation's fiscal year. By-laws may set a longer period of time not exceeding 180 days for companies required to file a consolidated tax return and when there is a specific need in connection with structure and business activity of the company. In this latter case Directors have to make mention of the deferral in their report. The following powers previously reserved to the extraordinary general Meeting may be assigned to the Board of Directors, to the Board of Auditors or to the Management Board, if any:

- Issue of non convertible bonds or of financial instruments without voting rights
- Merger with a wholly owned company
- Creation or suppression of secondary offices
- Attribution of powers of attorney
- Capital reduction due to a shareholder's withdrawal
- By-Laws amendments in compliance with statutory regulations
- Transfer of the registered office within the national territory.

Companies without outstanding shares held by public investors may avoid formalities and requirements established for the call of the meeting (notice on the Official Gazette 15 days before the meeting). By-Laws may allow calls through means of communication that guarantee the effective knowledge of the call at least 8 days in advance on the date scheduled (Certified letter with receipt, fax are proper means; some doubts about e-mails with automated reading receipt message).

Shareholders are not allowed to call the meeting solely on arguments concerning the competence of Directors. Upon petition by 10% of the Shareholders, the Tribunal may also call the general meeting, but only if the management did not call it without justification. Quorum and majorities for the resolution of the Shareholders Meetings of a corporations are different among closely held and publicly traded corporations. They may be summarized as follows.

First Call

■ COMPANIES WITHOUT OUTSTANDING SHARES HELD BY PUBLIC INVESTORS (closely held corporations):

- *Ordinary General Meeting* – In order to effectuate corporate business a quorum of 50% of shares entitled to vote must be represented. Unless Bylaws provide otherwise, shareholder actions must be approved by the majority of shares represented at the meeting and entitled to vote. Call formalities need not to be observed if the meeting is attended by:
  - Shares representing the entire capital
  - The majority of Directors
  - The majority of members of the Board of Auditors.

Absentees must be given immediate notice about adopted resolutions. Participants may claim they have not been sufficiently informed on the argument.

- Extraordinary General Meeting – Unless Bylaws provide otherwise a quorum of 50% of shares entitled to vote must be represented and shareholder actions must be approved by the majority of shares represented at the meeting and entitled to vote.

■ COMPANIES WITH OUTSTANDING SHARES HELD BY PUBLIC INVESTORS (publicly traded corporations):

- *Ordinary General Meeting* – Same rules as above

- *Extraordinary General Meeting* – A quorum of 50% of the shares (entitled or not to vote) must be represented and shareholders' actions must be approved by 2/3 of the shares represented at the meeting.

Second Call

If the above quorum required for the first call of the shareholders' meeting are not met, the meeting has to be recalled on another day, within 30 days.

■ COMPANIES WITHOUT OUTSTANDING SHARES HELD BY PUBLIC INVESTORS (closely held corporations); Only resolutions on arguments to the order of the day of the first meeting may be adopted, with the following quorum:

- *Ordinary General Meeting* – No minimum quorum required

- *Extraordinary General Meeting* – A quorum of more than 1/3 of the shares must be represented and shareholder actions must be approved by 2/3 of the shares represented at the meeting.

By-Laws may increase quorum required, but not for annual financial reports approval, appointment and revocation of corporate management. A quorum of at least 1/3 of the shares representing the stated capital is required for passing a resolution on the following arguments:

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

■ COMPANIES WITH OUTSTANDING SHARES HELD BY PUBLIC INVESTORS (publicly traded corporations): Same quorum set above for those companies which do not solicit investment at large, with the exception of those Extraordinary General meetings with calls subsequent to the second one, where a quorum of at least 1/5 of the shares must be represented to effectuate corporate business.

Company's decisions and Quota-holders Meetings in Limited Liability Companies

The powers and attributions of stockholders are set forth in Bylaws.24 Stockholders shall decide on issues brought to their attention by one or more directors or by 1/3 of shareholders, and on the following matters:

■ Balance sheet approval and dividend distribution
■ Election of Directors
■ Election of Board of Auditors and/or external Auditor
■ Amendments to articles of organization
■ Resolutions concerning substantial modification to the corporate purpose or concerning relevant modification to the rights of stockholders.

There are no specific formalities for adoption of a company's decision. However, there must be a writing wherein the will of stockholders, the matter subjected to decision and consent of stockholders are certified.

The written decision must be reported in the Book of Stockholders' Decisions. This rule evidences that decisions over company's operations do not have necessarily to be adopted by a collective body as long as the above requirements are met.

In order to adopt company's resolutions a quorum of 50% of the stock must be represented.26 Shareholder actions must be approved by the majority of the stock represented at the meeting, save for those actions concerning:

- Substantial modification to the corporate purpose
- Relevant modification to the rights of stockholders.

The above actions must be approved by 50% at least of the stock of the company. It is important to remark that extraordinary meetings are not required anymore for Limited Liability Companies.

The Articles of incorporation of Limited liability companies set forth rules for the call of quota-holder Meetings, with the formalities necessary to ensure information about the arguments subject to discussions (fax and e-mails are proper means of transmission). In absence of specific provisions on the matter, the call must be delivered via registered letter with receipt sent to stockholders at least 8 days before the date set for the meeting. No formalities are required when the entire stock is represented at the meeting and all the Directors and Auditors are either present or informed and no one objects that the discussion over the matter should not take place.

Decision-making bodies

- QUALIFICATION AND POWERS OF DIRECTORS. The management of the company exclusively belongs to the directors, who perform the actions necessary to the achievement of the corporate object. In corporations, the management of the company may be entrusted to non shareholders. It cannot be entrusted to entities other than individuals (Civil code, Article 2380bis). If more than one person is entrusted, they constitute the Board of Directors. The Board of Directors selects the chairman among its members, unless she/he is appointed by the Shareholders Meeting.

If the By-Laws or the Shareholders Meeting allows so, the Board of Directors may delegate its functions to an executive committee composed by one or more of its members. The Board of Directors set out the content, the limits and the modalities for the exercise of delegated powers. Even when delegates, the Board of directors may always give guidelines to the delegated bodies and bring back anytime power delegated.

On the basis of the information received, the Board of Directors assess the adequacy of the corporate organization, management and accounting structure of the company; it reviews the strategic and industrial plans of the company assessing as well the general trend of the management. Not all of its functions can be delegated, as for instance the drawing up of annual account, the decisions about issuance of debt securities, the power to increase the stock capital etc. (Civil code, Articles 2420ter, 2423 and 2443).

The delegated bodies take care that the organizational, administrative and accounting structures are adequate to the nature and the size of the company and report to the board of Directors and to the Board of Auditors as the By-Laws set forth and at least every six months, on the general trend of the management and on its expected evolution, as well as on most relevant transactions entered into by the company or by its subsidiaries.

The directors are required to act being informed. Each director may request the delegated bodies to report to the Board about the management of the company. The powers of representation granted to the directors by either the By-Laws or the Shareholders Meeting are of general character.

Liability of Directors

The directors are liable to:

- The company, if they have not exercised due care over the general management of the company, they have not done what they could for preventing damages to the company to occur, and they have not fulfilled their duty with the professionalism and diligence required by the nature of the action undertaken. A claim of their responsibility may be promoted by resolution of the General Shareholders' Meeting. With reference to the balance sheet, without previous notice, a claim of responsibility may be carried out during discussion about balance sheet approval by shareholders representing 1/1000 of the stock capital and within the five years subsequent to their removal from office. Outside the General Shareholders' Meeting, even a minority of shareholders may make the claim (1/5 of the stock capital for companies which do not issue capital of risk and 1/20 of the stock capital for the others).

- Creditors of the company, whenever the preservation of the stock assets is not guaranteed and the stock assets are not sufficient to satisfy their credits. In case of bankruptcy, the claim for responsibility may be initiated by the bankruptcy administrator, and in case of extraordinary administration, by the extraordinary administrator.

- The single shareholder or the third may carry out a claim for damages within five years.

Fiduciary duties

As the provisions of the Civil code sets forth, the Directors of a company are required to perform their mandate and to carry out their duties with the diligence of a good *pater familias* (Civil code, Articles 1710 and 2392. The standard refers to the diligence that a normally diligent director would use under the same circumstances). They must fulfil the duties that the law and the By-Laws establish with the diligence required by the nature of the appointment and by their specific skills. Directors are jointly and severally liable to the company for damages arising from the non observance of such duties, save for functions vested solely in the executive committee or in one or ore executive directors.

They are in any event jointly and severally liable if, being aware of prejudicial acts, the directors did not act as they could to prevent their performance or to either eliminate or reduce their harmful consequences.

Liability for acts or omissions of directors does not extend to that director who, being without fault, has had her/his dissent entered without delay in the minute book of the meetings and resolutions of the Board of Directors and has immediately given notice to the Board of Auditors.

Restrictions on Directors

Interdicts, bankrupts and those who have been sentenced to a penalty entailing interdiction even though temporary, from public office or incapacity to exercise managerial functions, cannot be appointed as directors and if appointed they forfeit their office (Civil code, Article 2382).

Also, according to the provisions of the Civil Code (Civil code, Article 2390), directors cannot act as unlimited liability shareholders in competing ventures, neither can they carry on a concurrent business activity on their own or on behalf of third parties, nor as directors or general managers in competing ventures, unless with explicit authorization by the General Shareholders Meeting.

The directors must inform the other directors and the Board of Auditors of any interest they have on their own behalf or on behalf of third persons in a specific transaction of the company, by specifying its nature, terms, origin and relevance. In case of interest by a managing director, she/he must abstain from the transaction remitting it to the Board of Directors and giving notice about it at the first appropriate Meeting. The relating resolution by the Board must adequately justify the reasons and the convenience of the transaction for the company.

Removal of Directors

Removal of a director can be effected by a resolution from a Shareholders Meeting. In case of corporations, when in the course of the fiscal year a vacancy of one or more directors occurs, the others provide for their replacement by resolution approved by the Board of Auditors

provided that the majority is always constituted by directors appointed by the Shareholders Meeting. If vacancies of the majority of the directors appointed by the Meeting occur, those who remain in office shall call the Shareholders Meeting to provide for filling the vacancies (Civil code, Article 2386).

In case of Limited liability companies, there are no specific provisions that the civil code sets forth. Consequently, provisions of the By-Laws have to regulate replacement of the directors.

Annual accounts - Financial and operating results: Duties and Liabilities

The Meeting for approval of the annual balance sheet has to take place once a year within the 120th day after closing of the corporation's fiscal year. By-laws may set a longer period of time not exceeding 180 days for companies required to file a consolidated tax return and when there is a specific need in connection with structure and business activity of the company. In this latter case Directors have to make mention of the deferral in their report (Civil code, Article 2428).

■ AUDITORS IN CORPORATIONS: THE BOARD OF AUDITORS – Only one out of the three or five of the effective members (and one of the supplemental members) of the internal Board of Auditors must be an auditor member of the Roll of Auditors; other members may be chosen among members of other professional categories or among professors in juridical or economical sciences.

According to the statutory provision of the Civil Code (Civil code, Article 2403), the Board of Auditors exercises a control of Law and Bylaws regulation compliance and over principles of fair management. In other words its duty is to exercise administrative and legal control, while duty of control over accountancy, which characterized the activity of the Board, has been eliminated. Members of the Board of Auditors have to attend both the Board of Directors' and the General Shareholders' meetings, as well as meetings of the Executive Committee. They are removed if they do not attend without justification two consecutive meetings during a fiscal year. The supervisory board must meet at least each 90 days and may meet through the use of electronic means (e.g. videoconferences).

When some shareholders report an unlawful action by Directors, the Tribunal cannot intervene if the General Shareholders' Meeting substitutes members of the Board of Directors and of the Board of Auditors as a whole, and elect new members of adequate professionalism for curing eventual illegality.

The following cannot be elected members of the Board of Auditors (Civil code, Article 2399) those who are in the condition listed on Article 2382 (Insanity etc.), parent and relatives within the 4th degree of company's Directors, Directors of the company, parent and relatives within the 4th degree of either controlling or controlled company's Directors; those who are bound to either the company or to controlling/controlled companies by an employment relationship, a continuative consulting relationship, a remunerated service activity, or by other economical

interested relationship that affect their independency. Among other duties, members of the Board of Auditors have also to certify that a bond issuance does not override legal limitation 9Civil code, Article 2412).

■ ACCOUNTING SUPERVISION – Supervision over accounting has to be exercised by an external auditor, who cannot be member of the Board of Auditors. His appointment may be mentioned in the Certificate of incorporation or he may be elected by the General Shareholders' Meeting. Accounting supervision over companies with outstanding shares held by public investors has to be exercised by an auditing company. Accounting supervision over companies without outstanding shares held by public investors and required to have consolidated financial statements may be exercised by an auditor.

Accounting supervision over companies without outstanding shares held by public investors and not required to have consolidated financial statements may be exercised by an auditor as well. In this latter situation, however, By-Laws may provide that accounting supervision is exercised by the Board of Auditors, whose members shall be in this case only auditors members of the Roll of Auditors. The auditor is elected by the General Shareholders' Meeting, takes his office for three years and may be removed only for "good cause". His activity of control consists in:
- Drafting a specific auditing report
- Communicating to the Supervisory Board about the existence of any fact deemed to be blamed.

The auditors are required to:
- Verify quarterly during the fiscal year regularity of accounting and fairness of accounting methods applied
- Express with specific report an opinion over the annual balance sheet and the consolidated balance sheet
- Document the activity carried out on a specific book as provided by statutory regulation on mandatory bookkeeping.

The auditing activity is in conflict with the office of member of the Supervisory Board of:
- The company
- Controlling/controlled companies and with other activities listed in the relevant provisions of Civil code.

■ AUDITORS IN LIMITED LIABILITY COMPANIES - In a Limited Liability company, an external Auditor and the internal Board of Auditors exercise accounting supervision. Election of the Board of Auditors is mandatory whenever:

- The stated capital of the company is in the amount equal or superior to the minimum amount (€120,000) of stated capital required for Corporations

- Thresholds set forth in Civil Code, Article 2435bis, allowing a company to file simplified annual financial reports are exceeded for two consecutive years.

If the above thresholds have not been exceeded for two consecutive fiscal years the company is not compelled to maintain the Board of Auditors. Rules of the Civil Code regulating election and functioning of the Board of Auditors of Corporations apply to Limited Liability Companies as well.

Corporate governance issues for Publicly Traded Companies

Pursuant to the general principles indicated by CONSOB (which is the Italian Security Exchange Commission), the managing bodies of publicly traded companies must adopt rules ensuring substantive and procedural transparency and the fairness of the business transactions with related parties and disclose them in the management report. For this task, they may be assisted by independent experts on the basis of the nature, value or characteristics of the business transaction. The above provisions apply to business transactions directly entered into or through subsidiaries and regulate such transactions in terms of powers, decision, reasonableness and documentation. The supervising body exercises its control over the transaction and has to report to the Shareholders Meeting.

→ Tax Law

Corporate Income Tax (IRES)

Corporate income tax (IRES) is regulated by the Unified Text on direct Taxes *("Testo Unico Imposte Dirette"*-Act No. 917/86). Italian resident corporations are subject to IRES on their worldwide income. Non-Italian resident corporations are subject to IRES only on Italian source income. As of January 1, 2004, the imputation system previously in force has been abolished and replaced with the so called 'partial exemption' method, under which corporate profits are subject to income tax at the level of the company and partially exempted at the level of the shareholders. In addition, other significant measures have been introduced, e.g. reductions in corporate income tax, the participation exemption regime and the domestic tax consolidation regime.

Taxable persons, tax rates and taxable period

Corporate Income Tax (IRES) applies to resident and non-resident corporations. Resident corporations are subject to IRES on their worldwide income, so-called 'unlimited taxation'. Non-resident entities are subject to IRES only on income considered sourced in Italy, 'limited taxation'.

Resident corporations include Corporations *("Società per azioni - Spa"),* Limited liability companies *("Società a responsabilità limitata – Srl"),* and Partnerships limited by shares *("Società in accomandita per azioni- Sapa").* Resident corporations also include companies formed under foreign jurisdictions which, for most of the taxable period, have their statutory office, place of effective management, or main object of their business in Italy. Resident

partnerships not limited by shares, are not subject to IRES. Such partnerships, namely *"società in nome collettivo - Snc"*, or *"società in accomandita semplice - Sas"*, are considered transparent entities. For tax purposes, their income is attributed to the partners and subject to tax accordingly.

For IRES purposes, the taxable period coincides with the company's financial year, as provided by the law or by the articles of association. Otherwise, the taxable period coincides with the calendar year. IRES is levied at a flat rate of 27,5% (Act No. 917/86).

Regional tax on business activities (IRAP)

Regional tax on business activities, *"Imposta regionale sulle attività produttive – IRAP"*, is a local tax applied on the value of the production generated in each taxable period by persons carrying out business activities in a given Italian region. Non-Italian resident corporations are subject to IRAP only on the production generated through Italian permanent establishments. Rates may vary, though they range around 3.9%.

Indirect taxes – Value Added Tax (VAT)

The Italian value-added tax (VAT) system conforms fully to European Union VAT rules. In principle, the system ensures that VAT is borne by the ultimate consumer only and that, at the upper level, input VAT is deducted by the suppliers of goods and of services. VAT is charged on any supply or service deemed to be made or rendered within the Italian territory. The ordinary VAT rate is set at 21%.

Transfer tax

Transfer tax *("Imposta di registro"),* is due on specific contracts if formed in Italy, and contracts including those formed abroad, regarding the transfers or leases of business concerns or immovable properties situated within the Italian territory. The taxable base and rates depend on the nature of the contracts and on the status of the parties. When transferring immovable properties, cadastral and mortgage taxes also apply.

These are due for formal transcription in the public registers. The tax base matches that of the transfer tax, with tax rates set respectively at 1% and 2%. Transfer tax, cadastral and mortgage taxes are imposed as a lump sum of €129.11 on transfers of immovable properties subject to VAT. Alternatively, transfer tax rates may vary from 4% up to 15% depending on the type of real property.

Municipal tax on real estate

Any owner, resident or non-resident, of real properties located within Italian territory must pay annually the municipal tax on immovable property, *"Imposta comunale sugli Immobili - ICI)"*.

The taxable base equals the sum of the estimated value for the type and class of immovable property, as determined by the Cadastral Office, ie, the cadastral income, and a given multiplier. The municipality where the immovable property is located sets the tax rate at not less than 0.04%, and no more than 0.07%.

Inheritance tax and gift tax

On December 24, 2007 new rules were enacted to regulate inheritance and gift taxes. The inheritance and gift tax is imposed on the value of the share of each beneficiary. The rates vary depending on the relationship between the deceased and the beneficiary, as well as the non-taxable threshold amount.

Inheritances of spouses and direct descendants or ascendants are subject to inheritance tax at a rate of 4% on the amount exceeding €1,000,000 per beneficiary. Transfers to brothers or sisters are taxed at 6% on the amount exceeding €100,000 per beneficiary. Transfers to relatives up to the fourth degree or relatives-in-law up to the third degree are taxed at 6% on the entire amount of their inheritance. Any other transfer is taxed at 8% on the entire amount.

→ Foreign Investment

Registrations and Permits

There are not specific statutory regulations in Italy providing limitations on foreign investment in the Country. In principle, foreign investments as well as domestic investments can be forbidden only for reasons of public order, public health or other general principles of law.

■ EU CITIZENS AND EU COMPANIES – In accordance with the general principles of EU, foreign EU citizens and EU companies enjoy the same treatment and protection of law as domestic ones.

■ NON EU COMPANIES – As long as the reciprocity of treatment with another Country is observed, foreign companies are generally allowed to operate, to maintain representative offices or permanent establishments, to incorporate subsidiaries and to participate to domestic business concerns in Italy.

Transfer of dividends, interest and royalties abroad

Transfer of dividends, interest and royalties abroad is not restricted. As tax statutory regulations set forth, foreign citizens with fiscal residence in Italy or companies incorporated in Italy or foreign companies without fiscal residence in Italy but having there a permanent establishment, are taxable subjects in Italy and have to pay taxes in accordance with the relevant tax statutory regulations applicable.

Definition of permanent establishment substantially matches the definition that Article 5 of the OECD Model Convention (double taxation) establishes. Dividends, interest and royalties paid to foreign citizens or foreign companies without fiscal residence in Italy, but with a permanent establishment, are taxed through a withholding tax.

Withholding taxes on foreign investments (dividends, interest and royalties)

There are three main withholding taxes applicable at source on certain payments: dividend withholding tax, withholding tax on interest, and withholding tax on royalties.

■ DIVIDEND WITHHOLDING TAX – In principles, dividends paid to Italian resident individuals from non-substantial participations in Italian corporations are subject to a 12.5% final withholding tax. Dividends from substantial participations in Italian corporations are not subject to withholding tax. Dividends paid to Italian resident corporations, or to Italian permanent establishment of non-resident corporations, are not subject to withholding tax.

Dividends paid to non-resident corporations without, or not through, an Italian permanent establishment, from substantial and non-substantial participations in Italian corporations are subject to a 27% final withholding tax. The withholding tax rate is reduced to 12.5% for dividends from saving shares.

Reduced rates are possible under any tax treaties, Italy has concluded with the recipients' country of residence. The withholding tax is not due, in line with the EU Parent-Subsidiary Directive, for dividends paid by Italian resident corporations to its EU parent company. The benefit is subject the parent's current ownership dating back at least one year, of no less than 25% of the Italian subsidiary's share capital.

■ WITHHOLDING TAX ON INTEREST – In principle, interest from bank accounts and deposits, certain bonds, and similar securities are subject to withholding tax at rates of 27% or 12.5%. These taxes, if any, on interest received by Italian residents generally consist of an advanced payment of income tax due by the recipients. As such, gross interest must be included in the recipient's tax base and the withholding tax deducted from the aggregate taxable income.
If non-Italian residents receive interest from bank accounts and deposits through an Italian permanent establishment, no withholding tax is due.

Interest and other profits from certain bonds issued by the state, by banks and by Italian-listed corporations are subject to a 12.5% substitute tax. If Italian resident corporations receive interest from such bonds no substitute tax is due. If residents in countries listed in the so-called 'White List', e.g. those with adequate exchanges of information with the Italian tax authorities, receive interest from such bonds, not through an Italian permanent establishment, no substitute tax is due.

In principle, interest from loans received by residents other than business entities is subject to a 12.5% advance withholding tax. If non-residents receive interest from loans, not through an Italian permanent establishment, the withholding tax is a final payment of tax. The withholding tax rate is set at 27% for recipients resident in countries listed in the so-called 'Black List', ie, countries granting privileged tax regimes. The withholding tax rate may be reduced under any tax treaties Italy has concluded with various foreign countries.

In line with the provisions of the EU Directive on Interest and Royalties, the withholding tax on interest payments is not levied if these payments are made by Italian resident companies or by Italian permanent establishments of EU resident companies to affiliated (i) companies resident, for tax purposes, in another EU Member State or to (ii) permanent establishments of companies resident, for tax purposes, in another EU Member State. In line with the above-mentioned Directive, the benefit is applicable if certain shareholding requirements are satisfied.

■ WITHHOLDING TAX ON ROYALTIES – Royalties paid to Italian resident corporations, or to Italian permanent establishments of non-resident corporations, are not subject to withholding tax. In principle, royalty payments to non-Italian residents are subject to a 30% final withholding tax. Under certain conditions, the tax base may receive a 25% flat deduction.

The withholding tax rate, if due, can be reduced under any tax treaties Italy has concluded with various foreign countries. In line with the provisions of the EU Directive on Interest and Royalties, the withholding tax on royalty payments is not levied if these payments are made by Italian resident companies or by Italian permanent establishments of EU resident companies to (i) companies resident, for tax purposes, in another EU Member State or to (ii) permanent establishments of companies resident, for tax purposes, in another EU Member State.

In line with the above-mentioned Directive the benefit is applicable if certain shareholding requirements are satisfied.

Tax treaties

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

- Albania
- Algeria
- Argentina
- Australia
- Austria
- Bangladesh
- Belgium
- Brazil
- Bulgaria
- Georgia
- Germany
- Greece
- Hungary
- India
- Indonesia
- Ireland
- Israel
- Ivory Coast
- Mexico
- Morocco
- Mozambique
- New Zealand
- Norway
- Oman
- Pakistan
- Philippines
- Poland
- Sweden
- Switzerland
- Tanzania
- Thailand
- The Netherlands
- Trinidad & Tobago
- Tunisia
- Turkey
- Ukraine

- Canada
- China
- Cyprus
- Czechoslovakia
- Denmark
- Ecuador
- Egypt
- Estonia
- Finland
- France
- Japan
- Jugoslavia
- Kazakhstan
- Kuwait
- Lithuania
- Luxembourg
- Macedonia
- Malaysia
- Malta
- Mauritius
- Portugal
- Romania
- Russia
- Senegal
- Singapore
- South Africa
- South Korea
- Soviet Union
- Spain
- Sri Lanka
- United Arab Emirates
- United Kingdom
- U.S.A.
- Uzbekstan
- Venezuela
- Vietnam
- Zambia

The treaties generally provide more favourable tax treatment of Italian non-residents than the treatment provided under local Italian law. Most of these treaties are based on the OECD Model Convention.

EU Parent-Subsidiary Directive

Italy has fully implemented the EU Parent-Subsidiary Directive for the abolition of double taxation on corporate profits generated by an EU subsidiary, and distributed to an EU parent resident in another EU Member State.

According to the rules on taxation of dividends, dividends received by Italian parent corporations are 95% exempt from IRES regardless of the size of the underlying shareholding, and of the relevant holding period.

Dividends paid by Italian subsidiaries are exempt from withholding tax provided that the EU parent corporations hold, for an interruptive period of one year, a direct shareholding of at least 25% in the Italian subsidiaries. Italy has not yet implemented the Directive 123/2003 regarding, amongst the other, the reduction of the relevant threshold to 20%.

EU Merger Directive

Italy has fully implemented the EU Merger Directive regarding the tax ramifications arising from mergers, divisions, transfers of assets and exchange of shares between EU-resident corporations. In line with the EU Merger Directive, Italian tax law specifies the conditions under which income, profits and capital gains from the above indicated business reorganizations - occurring between Italian and other EU-resident corporations - are deferrable.

EU Directive on Interest and Royalty Payments

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

different EU Member States.The benefit of the exemption from withholding tax on payments made in favour of EU beneficiaries is subject, amongst the others, to the following conditions:

■ The recipient is the beneficial owner of the interest and royalties payments. To this end, the recipient is regarded as the beneficial owner only if it receives the payment for its own benefit and not as an intermediary, such as an agent, trustee or authorised signatory, for some other person

■ The interest and royalties payments are made:
- By a company which directly holds at least 25 per cent of the voting rights in the ordinary shareholders meeting ("Voting Rights") of the company which receives the payment
- To a company which directly holds at least 25 per cent of the Voting Rights in the company which makes the payments
- To a company whose Voting Rights are directly held for a percentage not less than 25 per cent by a third company which also directly holds said minimum percentage in the company which makes the payments and in the company which receives the payments.

■ The minimum 25 per cent stake at point (ii) above is held without interruptions for at least 12 months.

For the purposes of the exemption, the beneficial owner of the payments shall have to attest its residence through a certificate issued by the Tax Authorities of its State of residency. The implementing Decree provides that the exemption is applicable on interest accrued or royalties payable as from January 1, 2004. In addition, the Legislative Decree introduces a withholding tax of 30% on payments made to non-Italian residents deriving from licences of industrial, commercial and scientific equipments.

Repatriation procedures and restrictions

Capitals, dividends, interests and royalties are freely transferable to and from Italy, and foreign citizens and business concerns are not subject to any restrictions on their repatriation. Transfers exceeding € 10,329.14 must however be notified to the Italian Foreign Exchange Office in accordance with the statutory regulations on money laundering.

Foreign Personnel

Foreign citizens can enter our territory for tourism, for study, for family reunification and in order to integrate into the labour market, within the limits established by entry flows.

■ Entry of foreign nationals coming form the European Union – It is regulated by the Schengen agreements which made it possible to build a common area of free movement among the signatory States and eliminated border controls. In this case, the foreigner who holds a permit of residence, is exempt from a visa for stay not exceeding three months, upon the condition that

he does not enter Italy for subordinate work, for self-employment or for apprenticeship.

■ Entry of third-Country nationals – The foreigner must hold a visa that authorizes his entry and that must be sticked on his passport or on another travel document. Some States are exempt from the obligation of visa for tourism.

Visas are issued by Italian embassies and consulates in the country of origin or in the country in which the foreigner is regularly residing. The foreign national who legally enters Italy must apply for the permit of residence within eight working days. This document will bear the same reasons for stay as those stated in the visa.

■ Purpose of entry and visas – It is possible to legally enter and stay in Italy for:

- *Tourism*: in order to enter into our Country the foreign national must show a valid passport upon crossing the border. This kind of permit does not allow to perform a job.

- *Study*: a visa for study can be applied for at the Italian Embassy in the foreigner's country of residence. Its validity is equivalent to the length of the course he/she intends to follow; in any case, it must not exceed one year.

- *Family reunification:* it is possible be granted this permit when the applicant is a regularly residing foreigner who holds a residence card or valid permit of residence for subordinate work, for self-employment, for asylum or for religious reasons: its duration must not shorter than one year.

- *Work:* upon his entry into Italy, the foreign national must hold a visa for work that is issued keeping into account entry flows quotas established by decrees that are issued every year. Permits for work relate to subordinate work, self-employment and seasonal work.

In order to establish a permanent, fixed-term or seasonal subordinate work relationship with a third-country national who resides abroad, the Italian or regularly residing foreign employer must submit a ad hoc request for authorization, bearing the name of the person, to the "Single Desk for Immigration" that is competent in the place where the job will be performed.

The foreign national who intends to carry out an industrial, professional, craftsmanship or commercial permanent self-employment job, or intends to establish a joint-stock or partnership company or to take up posts in a company must possess the moral and professional requirements that law requires from Italian citizens for performing their activities.

The foreign national who is already on the Itlaian territory for any other reason, on certain occasions and within the limits established, can perform a job activity by applying for the conversion of his title of residence to the competent local police headquarters (Questura).

The holder of a permit of residence for study or training can perform:

- A subordinate job, once he has obtained the authorization from the competent Single Desk for Immigration and the conversion of his permit of residence

- A self-employment activity after the requirements for self-employment entry have been tested and after the permit of residence has been converted

- The holder of a permit of residence for seasonal work can perform permanent subordinate work, and having his permit of residence subsequently converted, only if the previous year he had got a permit of residence for seasonal work and, upon its expiration, he has gone back to his country of origin.

→ Labour Law

Domestic statutory regulation enacted in 2003, the so called *"Legge Biagi"*, substantially amended the previous statutory regulations on labour relationships. The act introduced major changes to the existing employment rules, by increasing flexibility in the market to the extent of reducing unemployment and of promoting the hiring of young workers.

The two major amendments of the reform may be summarized as follows:

- New categories of contractual relationship were created to allow companies to upfront special needs of business-growth over a limited periods of time, and to allow them to contain labour costs during the periods of business-reduction

- New regimes for independent contractors were established to allow job placements only when needed for the performance of a specific project.

Employment relationships are regulated by the Constitutional principles, the provisions of the Civil code, those of the so-called "Statute of Workers" *("Statuto dei Lavoratori")* and by other statutory regulations. Terms and conditions of employment are also periodically established by the so called Collectively Bargained Labour Agreements (CCNL) that have been entered for the different professional categories. In case of conflict between the provisions of an employment contract and the provisions of law, those of law always prevail.

In addition, the Italian Constitution contains several general principles of labour law. Among these are Article 1 that states that "Italy is a democratic Republic founded on labour", Article 4 that sets forth "the Republic recognises to every citizen the right to work", Article 35 "the Republic protects work in all its forms and applications". Some more specific constitutional principles of law, largely used by the Courts, are:

- Article 36 about fair remuneration, maximum working hours, weekly and annual paid vacation
- Article 37 about protection of women and minors on the job
- Article 38 about social insurance for old age, illness, invalidity, industrial diseases and accidents
- Article 39 on Freedom of Association
- Article 40 on the right to strike.

The current types of employment relationship

There is no general requirement for an employment contract to be in writing. Statutory law sets forth that contracts of employment are deemed to be for an indefinite period of time, unless the statutory regulations provide otherwise.

Several new categories of employment contractual relationship have been established and regulated. The new categories of relationship are as follows:

- JOB SHARING, whenever two or more employees sharing joint & several liability for a single worker. Job sharing workers are entitled to set their own schedules at their own discretion. Each worker's pay is directly proportional to his/her own performance.

- JOB ON CALL, that relates to a professional activity performed on a discontinued or intermittent basis. Regardless of the nature of the professional activity it may be entered into by employees younger than 25 years and older than 45 years also retired. Job on Call contracts must be put in writing, and may be on fixed or open duration. They must also make provisions for a stand-by allowance which must be equal to at least 20% of the salary envisaged by the applicable collective labour agreement.

- STAFF SUPPLY, where the employment agencies are authorized to supply to their client companies the labour activity of workers who have entered into an employment agreement with an employment agencies. The clients and the employment agencies are jointly and severally responsible towards the employee for settlement of wage and social security contributions and for compliance with the employee's safety regulation (L. 626/94). Staff Supply contracts set forth the rights and obligations of the employment agencies and their clients. They may be either open term or fixed-term contracts.

- STAFF LEASING CONTRACTS (open term contracts) that are generally used for freight and warehouse services, managerial consultancy services (including the human resources sector), call-centre management, porter and cleaning work. The agreement between the employment agency and the employee they may be either a job sharing, part-time, job on call, training employment or an entrance contract. Fixed term contracts are generally used for technical, manufacturing-related, organizational and stand-in positions.

■ ANCILLARY WORK, that may cover either the no-profit sector, the occasional work by those at risk of social exclusion, or regularly-performed domestic help.

■ TRAINING EMPLOYMENT CONTRACTS. There are three kinds of training contracts *("contratti di apprendistato")* covering:
- Training and learning rights and duties obligations
- Apprenticeship aiming at a professional qualification as a result of on-site training and professional skills learning
- Training in connection with a diploma or other types of professional qualification.

■ ENTRANCE CONTRACTS *("contratti di inserimento")* that may apply to single projects for developing the skills of a worker within a specific field for his/her later reintegration in the job market. Employers must grant to the worker a salary scheme at least not lower than the two levels that the applicable collectively bargained labour agreements (CCNL) provide for those workers having a qualification corresponding to the qualification that the worker is aiming to through the project.

■ PART-TIME WORK that must be a working week of shorter duration than the full working week. It may be carried out for a reduced daily working time or full time in which latter case it must be for a limited period of time. It can be a combination of both as well. If the relevant CCNL does not provide otherwise, the prior consent of the worker is mandatory for part-time work.

■ SECONDMENT, that means the transfer of an employee to another manufacturing unit, situated beyond 50 kms from his usual work site. It is a practice permitted only if motivated with needs relating to productivity, business organization or replacement of another worker.

■ COORDINATED AND CONTINUOUS COLLABORATION RELATIONSHIPS (so-called *"collaborazioni coordinate e continuative")*, that may be adopted for one or more specific projects, work plans or development phases that the independent worker manages on a free-lance basis to achieve a specific result. Collaboration contracts for specific projects must detail in writing:
- Duration of the relationship, that can be either fixed or for an indeterminate period of time, and
- Overall remuneration package, which must be proportional to the quantity and quality of the work performed.

Collective Bargaining Agreements

Unions can freely negotiate collective agreements at provincial, regional and national levels. Collective agreements and accords must be registered with the National Council of Economy and Labour - CNEL within 30 days after they have been entered by the parties. The provisions of the collective agreements are binding for the employers of the category of workers falling into the agreement and prevail over the employment agreement that the employer and the employee have entered, save for those contractual provisions more favourable to the employee.

The so-called economic agreements are instead those covering some categories of self-employed (i.e. commercial agents, some doctors working for the National Health Service, etc, also known as *lavoratori parasubordinati).*

Collective bargaining can regulate all aspects of the employer-employee relationship, except those that the law sets forth. Collective agreements do not entitle the workers' representatives to any co-determination right, but only to the right to be informed and consulted about the most important decisions of the company.

Suspension of the employment contract

A provision of the Civil code establishes the suspension of the employment relationship, occurring under the following circumstances:

- Industrial accident sustained by the worker
- Her/his illness
- Maternity of the worker (two months before and three months after childbirth).

Sick employees are entitled to retain their job position and seniority, as well as their salary for a period of up to six months or more, depending on their job category and the related applicable CCNL.

Discharge

A preliminary distinction must be made between fixed-term and indefinite term contracts. As far as fixed-term contracts are concerned, termination is automatic at the end of the specified duration or on completion of the specified task.

Nevertheless, according to the provisions of Civil Code, the employer may terminate the contract earlier for "just cause". The Civil Code provides that each contracting party (the employer and the employee) of a contract of indefinite duration can terminate it, provided the notice period is respected, or without any notice in case of just cause. According to domestic Law an employee can be dismissed for the following reasons:

- Just cause *(Giusta Causa)* meaning a serious breach of the employee by her/his duties or other behaviour that prevents the working relationship to be carried forward

- Justified grounds *(Giustificato Motivo)* meaning with that either:

- A subjective reason that is a breach by the employee of his /her duties, which is not as substantial as to constitute Just Cause. The breach may consist, for instance, in failure to follow important instructions given by the management, material damages to machinery and equipment, low performance (the grounds for dismissal being "subjective reason")

- An objective reason whereby the employer needs to reorganize the manufacturing process or the workforce through redundancies.

Dismissals must always be in writing and detail the reasons for dismissal. Failure to do so makes the dismissal ineffective. Should the employee believe to have been unfairly dismissed, he/she can challenge the decision in court and the employer must observe the following rules:

If the company employs up to 60 workers in total throughout Italy, or up to 15 in a single working unit, the employer may chose between reinstating the dismissed employee or paying an indemnity (between two and half, and six months pay). Under all other circumstances, the employee is entitled to reinstatement and compensation for damages amounting to five months salary at least.

Failure to reinstate an unfairly dismissed employee usually results in an award of 15-month salary plus compensation for damages against the employer. Employees dismissed for reasons other than Just Cause are entitled to a notice period. Employers may exempt the employee from working during the notice period by paying him/her an indemnity equal to the salary payable during the notice period. Such an indemnity is liable to social security charges.

Under the provisions of the "collective dismissal procedure", whenever redundancy involves five employees at least within a 120 day period of time and an employer with fifteen or more employees, the company must preliminary consult with the trade unions. Termination without grounds is limited to trial periods, domestic workers, employees who have reached retirement age and directors.

Dismissals on the grounds of political opinion, trade union membership, sex, race, language or religious affiliation are null and void. Furthermore, members of workers' committees may not be dismissed or transferred for one year following termination of their duties on the committee without the authorization of the relevant regional trade union organization. This provision applies to directors and domestic workers as well.

Dismissal on the grounds of pregnancy, if the dismissal takes place between the conception and the end of the female employee's statutory period of absence on confinement leave or unpaid leave, until the child reaches one year of age, is also expressly prohibited. Dismissal on the grounds of marriage is also prohibited. Protection against unfair dismissal of managerial employees is regulated by collective agreements.

In case of unjustified dismissal, remedies are different according to the size of the firm: employers having more than 15 employees (or five in the agricultural sector) in anyone establishment, branch, office or autonomous department, and employers having more than 60 workers, wherever located, are required to reinstate the dismissed employee, and to pay damages at a rate of not less than five monthly salary payments.

Alternatively, the employee can refuse reinstatement and request payment of damages equal to 15 monthly pay. If the employer invites the employee to return to work and the employee does not take up the offer within 30 days, the contract is automatically terminated. Where there are fewer than 15 employees in a unit or fewer than 60 employees in total, the employee unfairly dismissed has no right to reinstatement, but is entitled to compensation ranging from 2, 5 to six times the monthly pay.

The employees of charity, union or political organizations are not entitled to be reinstated (Law nr. 108/90). The contract of employment may also be terminated by the resignation of the employee, provided a notice period is respected. However, an employee may resign with immediate effect in circumstances that Civil code Article 2119 specifies, like:

- Non-payment of wages or social security contributions
- Closure of the enterprise
- Failure to be included within the category or grade corresponding to the work effectively being undertaken
- Refusal to grant due holidays
- Unilateral changing of the employee's duties with a corresponding reduction in wages
- Offences by the employer against the duty to safeguard the physical and psychological well-being of the employee (Civil code, Article 2087).

Specific provisions of statutory law on collective dismissals, provides for special procedures of information and bargaining with unions before terminating contracts, and special indemnities for the employees that are to be made redundant, according to EU directives.

Severance pay (TFR)

For any termination of the contract of employment, on whatever ground, even for dismissal for just cause or resignation, the employee is entitled to receive from the employer a severance payment, which is usually referred to as "TFR - Trattamento di Fine Rapporto".

TFR is deemed to be a part of salary, must be set aside every year and kept by the employer, based on the formula of 7,5% of every year's salary, plus revaluation according to a composed index of 75% of price index increase +1,5%. The TFR may be partially paid off in advance, upon occurrence of the following two conditions:

- The employee has reached eight years of service
- She/he intends to purchase her/his household's residence, or needs to withdraw the TFR for health care, extended leave for child care or educational leave.

Equality

The Italian Constitution sets forth the principle of equality of all citizens before the law "without difference of sex, race, language, religion, and political views, personal and social position". Italy has also ratified the International Agreement of Economic, Social and Cultural Rights (New York, 16 December 1966).

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

Other provisions of statutory law provide for affirmative action to encourage equal opportunity for women in accessing to employment and during employment. Dismissals for discriminatory grounds as such as political and union views, religion, participation in union activities are prohibited.

Likewise, dismissals for discriminatory reasons, such as race, sex, language, political and union views, and religion are null and void and requires always the reinstatement of the dismissed worker. Other kinds of discrimination as such as age discrimination, handicap discrimination and AIDS base discrimination are forbidden.

A law on sexual harassment at work does not exist, though, there is case law on unfair dismissal based on this ground. The Constitutional Court has ruled that equality is a fundamental right of foreigners as well. For citizens of European Union member Countries, Article 48 of the EEC Treaty abolishes all discrimination at work, wage and other conditions of work. Law nr. 40/98 establishes equality between other foreign workers legally resident in Italy and Italian workers.

Social Security System

The *"Cassa Integrazione Guadagni"* is a State fund within the scope of the National Social Security Institute. It was established in 1954, with a view to protecting the workers' earnings in the event the enterprise has difficulties.

The Italian social security, managed by INPS, is compulsory and provides comprehensive benefits for all employees. The social security costs, which are calculated on gross earnings, are jointly financed by the contributions of employees and employer. Employers have to pay two-thirds of contributions and employees are responsible for the remaining third.

As far as wage compensation funds are concerned, domestic labour law sets forth special provisions for guaranteeing workers wages in case of a temporary lay-off or temporarily reduced company activity not attributable to the employer or to the employees or caused by the general economic situation. A Wage Compensation Fund *("CIG – Cassa Integrazione Guadagni")*

is available to industrial workers. The employer provides 80% of gross wage for hours not worked, and is subsequently reimbursed by INPS.

An Extraordinary Wage Compensation Fund *("CIGS - Cassa Integrazione Guadagni Straordinaria")* helps to secure employment once production resumes in a restructured, reorganized or converted company. Only companies employing 15 or more employees are eligible for CIGS. Compensation equals 80% of the worker's gross wage for hours not worked, and is payable in a 12 month continuous period.

The *"Cassa Integrazione Guadagni"* is mostly used in cases of suspension or temporary reduction of business activity of a company for reasons beyond market fluctuations and includes suspension of activity in the building industry due to weather damages.

Pension System

The Italian compulsory state pension system is financed by social contributions paid by the employer during one's working life, and is based on actuarial fairness. The retirement age ranges between 57 and 65 years. Starting from January 2008, retirement is possible for:

- Employed workers after 35 years of contribution and at 58 years of age.
- Self-employed workers after 35 years of contribution and at 59 years of age.

Specifically, the new statutory regulation provides that, starting from January 1 2008, the employee shall be entitled to choose within a six months term, at his discretion, as whether:

- Leaving the accrued severance pay within the employing company; or
- Contributing it to a pension fund.

Starting from July 1, 2009 the so called *"sistema delle quote"* will be in force. Based on this system the right to retirement matures once a specific figure is achieved, which is composed by the sum between age and years of social security contribution (at least 35 years of contributions), in accordance with the following scheme:

MINIMUM CONTRIBUTION REQUIREMENT OF 35 YEARS AT LEAST

	SUBORDINATE WORKERS		SELF-EMPLOYED WORKERS	
PERIOD	AGE & CONTRIBUTION SUM	MINIMUM AGE	AGE & CONTRIBUTION SUM	MINIMUM AGE
From 01/07/2009 to 31/12/2010	95	59	96	60
From 01/017/2011 to 31/12/2012	96	60	97	61
From 01/01/2013	97	61	98	62

It is possible to retire anyway, if 40 years of social security contribution has been achieved. The reform includes incentives for workers who decide to continue working, although currently eligible for a public pension. Such incentives provide for a compensation equal to 32.7% of the salary of the worker who has decided to continue working.

Integrative pension schemes in Italy are voluntary for workers and companies alike. The law guarantees freedom for individuals to subscribe to supplementary pension schemes, while leaving companies are free to chose whether to set up their own funds. Nearly all funds are based on a fixed contribution rate. Regarding disbursement, beneficiaries can generally withdraw up to 50% as a lump sum then the entire or remaining amount as an annuity.

Severance pay scheme

In 2005 a new statutory regulation was enacted (Legislative Decree No. 252/05) to the purpose of redefining, starting from January 1, 2008 the entire statutory regulation applicable to supplementary pension schemes for employees of private companies. The main features of the new regulation are the following:

- Increasing the amount of financing flows dedicated to supplementary pension schemes
- Harmonization of the supervision system applicable to the entire supplementary pension sector
- New taxation regime applicable to pension funds
- Monitoring of the management of the financial resources arising from the workers contribution
- New financing system though the contribution by the employee of its severance pay (so called "TFR").

Specifically, the new statutory regulation provides that, starting from January 1 2008, the employee shall be entitled to choose within a six months term, at his discretion, as whether:

- Leaving the accrued severance pay within the employing company; or
- Contributing it to a pension fund.

If such six months period elapses without any election by the employee, the accrued severance pay shall be contributed by the employing company to the pension fund mentioned in the relevant labour agreement based on his/her implicit consent.

→ Real Estate Law

Types of ownership

Real estate law is governed mainly by the Italian Civil Code, and by special laws for specific issues. Real estate development projects and renovation works require approval by local authorities entailing administrative licenses and permits. Real estate assets may be:

- Stand alone assets
- Part of a joint property *('condominio')*. Specific provisions of the Italian Civil Code (ICC) apply to assets forming part of a co-property
- Part of a going concern. Rules relating to the transfer of a business apply.

There are four titles for classifying real estate assets:
- Full ownership
- Long lease
- Lease of business
- Usufruct and Right of Common.

Land Registers

The databases of real estate registration in the Land Registers *(Conservatoria dei Beni Immobiliari and Catasto)* make available to the general public all the information regarding any real estate transaction. As a result, the information on the Registers is - by operation of the law – deemed to be known to all, making contractual rights so registered enforceable against any parties. Registration of a conveyance deed takes place at the Land Register of the province where the real estate property is located and regards the title and a short summary of the registered deed.

Transfer formalities

The agreements for purchasing or selling real estate properties, and creating or transferring real estate rights, must be in writing. These agreements are enforceable following registration with the local Land Register. A real estate sale in Italy is void unless the seller holds a valid administrative building concession for the property. Purchase contracts can be:

- Preliminary contracts
- Final contracts
- Forward sale agreements.

Preliminary contracts are the most common since both parties must fulfill certain conditions (eg, the satisfactory outcome of the necessary title searches) before entering into the final contract.

Construction

Recent Legislative Decree 20 June 2005 no. 122 has provided for a regulation aimed to protect purchasers of real estate under construction. Real estate under construction are deemed those buildings for which the construction permit has been released and whose building procedure is ongoing or those building whose construction procedure is at stage which does not enable the release of the fitness for use certificate. In particular the above mentioned Legislative Decree provides for:

■ The obligation of the construction company to file a performance bond for an amount equal to the amount paid by the purchaser, the obligation for the construction company to deliver an insurance policy aimed to cover the purchaser from eventual risks for defects showed up following the execution of the purchase contract; specific provisions to be inserted in the purchase contract;

■ A specific regulation for situations of financial crisis of the construction companies

■ The creation of a fund aimed to provide the reimbursement of the purchasers which have suffered a loss upon bankruptcy of the construction company.

Leasehold types and formalities

■ RESIDENTIAL AGREEMENTS - Specific provisions regulate residential rental agreements and apply to all properties except those seen as having historical, artistic, archaeological or ethnic significance. There are two general types of rental agreements:
- *Unregulated agreements:* the parties can determine the rental rate and any periodic increase. These agreements run for four years, renewable, with some exceptions, for additional four-year terms
- *Regulated agreements:* these must comply with the standards terms and conditions, national and local, of standard agreements negotiated between landlords associations and the main tenants associations.
In both cases, tenants may terminate their agreement at any time, but must give six-months prior written notice to their landlord. Clauses and agreements either indicating a term exceeding that set by law, or a rental rate higher than that declared in the written and registered rental agreement, or in the standard agreement, are null and void.

■ RENTAL AGREEMENTS FOR COMMERCIAL PROPERTIES - Rental agreements for commercial properties follow separate specific rules. Commercial properties include those for industrial, commercial, tourist, business, workshop or similar use. Commercial rental agreements must be for a minimum term of six years, or nine years for hotels and similar businesses. These are automatically renewed for another six, or nine- year term, unless either party gives the other twelve months, 18 months for hotels, prior written notice of its intention to leave. Also, a landlord can deny renewal upon expiration of the first contractual term if he/she needs to use the property:
- As his/her own domicile
- For productive activity carried out by himself/herself or by a close relative
- To carry out substantial restructuring of the property.

The rent is set by the parties, subject to any periodic increase required by law. If the landlord terminates the rental agreement other than for just cause, he/she must give the tenant compensation for the loss of goodwill, equaling 18 months rent, or 21 for hotels leases. Compensation doubles if the landlord then rents out the same property within one year to

someone in the same or a similar business as the original tenant. There is no right to compensation if the property is for:
- Businesses without direct contact with the general public
- Professional business or temporary activity
- Secondary properties in railway stations, ports, airports, highways, service areas, hotels and tourist resorts.

Any provisions or agreement limiting the contractual term set by law or introducing terms favoring the landlord in violation of the rent control *(equo canone)* law are null and void.

Real estate investment funds

The regulatory framework for real estate funds sets out:
- Terms and conditions for real estate assets contribution to closed-end real estate investment funds
- Terms of real estates assets contributions from, or sales of real estates assets to, managing company shareholders of the relevant fund, or companies affiliated with the managing company.

The investment fund can hold, at most, real estate of its managing group equaling 60% of the fund's aggregate value. It can take up loans amounting to 60% of the value of the real estate assets held. Also, it can hold interests in real estate companies active in construction.

Financing acquisition

Type of Acquisition Vehicle

The acquisition of real estate assets is through a special purpose vehicle. Limited liability companies *(S.r.l. - Società a responsabilità limitata)* are used especially for tax reasons.

Security Package

A customary security package in a real estate acquisition would include:
- Pledge on the shares or quotas of the vehicle
- Mortgage for the acquired estate
- Pledge on the bank accounts of the company holding the estate
- Pledge on the VAT receivables for the tax authorities.

Also, under Italian banking law, mortgages granted to secure mortgage loans are not subject to claw back action if mortgage registration takes place at least ten days before the bankruptcy declaration.

Financial Assistance Rules

Italian law prohibits financial assistance from a company to a buyer for the latter's acquisition or subscription of the company's shares. This applies to all types of limited liability companies, making it illegal to directly use the target's assets to finance the acquisition or to secure the loan received by the buyer. This provision remains in full force after the updating of Italian company law in 2004.

With the 2004 Company Law, merger-based leverage buy-out transactions are legal in Italy, subject to compliance with the Italian Civil Code. This applies to mergers between companies, one of which has incurred debt in order to purchase a controlling stake in the other, if, as a result of the merger, the latter's assets are an implicit guarantee or source for the repayment of the debt. Certain formalities apply when implementing a merger between an acquiring company that has incurred debt and the target company.

The merger plan must indicate the sources of funds available to the company after the merger for meeting its obligations.The directors must show that the surviving company has sufficient funds to repay the acquisition debt and file a business and financial plan giving details of such sources.

Due diligence checks

Due diligence verifications in real estate transactions cover various items relating to:

■ ENCUMBRANCES, restrictions on the seller's freedom of sale - Before purchasing real estate, prospective buyers should conduct an appropriate ownership (cadastral) search to ensure against encumbrances, in particular of mortgages or easements.

■ ARCHAEOLOGICAL RESTRICTIONS - Italy's Ministry of Culture has a pre-emptive right to the sale or transfer of any real estate property in Italy with historical or archeological value or significance. Perspective purchaser of real estate properties with historical or archeological value or significance must notify the Ministry of any transfer or sale involving such properties. Statutes or contractual provisions may also establish such pre-emptive rights.

■ TOWN PLANNING RESTRICTIONS - Each Italian municipality decides the permitted use of real estate properties under its jurisdiction in keeping with local laws and regulations. *Inter vivos* (inherited) property deeds, involving partition of co-owned so-called *diritti reali* (rights enforceable against third parties), are null without a certificate from the local authorities stating the property's intended destination. The certificate is mandatory for establishing or transferring any real estate rights, irrespective of type or destination. It must mention the intended destination of the property in accordance with local area regulations. Any subsequent change in the destination or use of the property requires the local authorities' advance approval. The certificate provides any prospective buyer with information on the terms, conditions and limits applying to the property under sale.

■ Constructions Permits - These are required only for:
- Construction of new buildings
- Urban restructuring
- Restructuring works modifying the structure, size and/or use of a property.

Other real estate works do not require prior authorization if the relevant local authorities receive administrative notice.

■ Environmental Issues - Italian environmental regulations are for public safety. Some provisions relate to reclaiming polluted land or facilities. If pollution levels exceed the legal threshold, the owner or occupier of the polluted property or the party responsible for the pollution is liable. He/she must bear all the costs necessary for reclaiming the area or implementing specific safety measures preventing future pollution. The reclamation process must respect administrative procedures and periodical reviews. Failure to implement the reclamation plan may result in fines and even criminal liability.

DISCLAIMER: While this chapter has endeavoured to go into length about the basic requirements imposed on companies in Italy by the current legislation, this is only intended to provide a glance at the legislation. Any business interested in setting up in Italy is advised to first consult legal and accounting professionals for individual advice and not rely on the content of this chapter.

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→ Panama

López, Villanueva & Heurtematte -LOVILL- is a law firm based in Panama City, Republic of Panama. The firm's partners are Isabel Cristina López, Patricia Villanueva Martinelli and Elizabeth Heurtematte Kochman. LOVILL is a leading full-service Panamanian law firm with experience in providing legal advice to local and international corporations, as well as individual investors. LOVILL's main areas of expertise are: Real Estate, Corporate and Tax, Mergers and Acquisitions, Litigation and Arbitration, Labour and Immigration, Intellectual Property, Securities, and Administrative Law. LOVILL is an expert in the Panamanian market and has strong connections with its key players. Our team works as a partner with its clients to help them navigate through the intricacies of the Panamanian business culture and legal system.

Our firm offers legal services in accordance with the highest standards of leading international law firms, without the cumbersome administrative processes normally associated with larger firms.

Our trademark is its commitment to meeting each client's needs with comprehensive, accessible, cost-effective and personalised service. The firm offers integral solutions, and one-stop shop for all its client's needs in Panama and the Latin American region, through strategic alliances with other leading law firms.

Main areas of practice

- REAL ESTATE LAW: LOVILL has highly qualified professionals offering legal advice on all matters related to Real Estate law in Panama, such as: purchase and sale of properties, residential and commercial real estate developments, incorporation of property into condominium structures, drafting of co-ownership regulations, zoning changes, tax planning, development permits, contracts, and development planning in general. LOVILL's real estate law practice is highlighted by specialized advice on ownership of "possessory rights" in Panama,

and titling. Our firm advises a number of Panamanian and international real estate development and construction companies throughout the different phases of their projects, always providing fast, accurate, strategic and comprehensive legal advice. LOVILL understands the fast pace of the real estate business and the client's need for timely responses.

■ CORPORATE AND TAX LAW: LOVILL assists its clients in the incorporation of a number of offshore vehicles such as corporations, private interest foundations, limited responsibility companies, and trusts. Additionally, our firm offers comprehensive advice on corporate structures, transactions, tax planning, and all types of commercial contracts.

■ MERGERS AND ACQUISITIONS: LOVILL's attorneys have extensive experience in mergers and acquisitions of local and international corporations in different industries.

■ LITIGATION AND ARBITRATION: LOVILL has an outstanding bilingual litigation and arbitration team with experience in complex civil and commercial cases.

■ ADMINISTRATIVE LAW: LOVILL assists international corporations and individuals to establish in the Republic of Panama. Our team advises clients on local taxation, licensing, business permits, contracts, employment, immigration, and all other matters associated with setting up a new business, venture or branch office in the Republic of Panama. LOVILL represents international and local clients before administrative and regulatory agencies in Panama in relation to financial, environmental, port, energy, consumer, securities, agricultural and tourism projects, among others. LOVILL advises clients on public biddings, including comprehensive legal assistance on the interpretation of bid specifications, obtention of permits, and homologation of the tendering process.

■ IMMIGRATION LAW: LOVILL offers comprehensive advice on immigration law. Its services include an analysis of each client's situation and needs, guidance on the different types of visas available, and assistance to select the visa type that best fits each client. LOVILL provides personalised service, accompanies and guides the client through the entire process, and offers timely responses and a systematic follow -up of the client's case.

■ LABOUR LAW: LOVILL advises clients on drafting, reviewing and terminating employment contracts, obtaining work permits for foreign nationals, and complying with labour laws. Likewise, LOVILL represents clients before the Conciliation Boards of the Ministry of Labour and Labour Development (MITRADEL).

■ INTELLECTUAL PROPERTY LAW: Our firm offers registration of trademarks and patents, as well as representation in patent and trademark litigation.

■ BANKING AND SECURITIES LAW: LOVILL provides advice to banks, securities exchanges, brokerage firms, investment managers, and other organization in regulatory matters, including compliance, licensing, and related processes. LOVILL's Banking and Securities attorneys are

experts in carrying out due diligence in connection with the purchase and/or sale of banks, brokerage houses, security advisory firms, among other financially regulated entities. LOVILL's attorneys have also experience in the preparation, negotiation and review of financing contracts, secured transactions, credit swaps, option contracts, repurchase agreements and other related and complementary financial contracts.

Clients

Our client portfolio includes: International banks established in Panama, local and international construction companies, telecommunications companies listed on the Israel stock exchange, local and international brokerage firms and investment funds, individual investors, leading South American manufacturer of oil and hydrocarbon pipelines, shipping companies, local and international residential and commercial real estate developers, foreign law firms, international hotel operators, international energy production companies, and national distributors, among others.

Introduction to the Republic of Panama

The Republic of Panama is a democratic country with a population of 3 million 405 thousand 813 people of which 880 thousand 690 live in the capital city according to the last census in 2010. Some economic points of interest are:

- Dollarized economy for over 100 years.
- No central bank, so no risk of convertibility or transferability.
- Service Economy that represents over 70% of the Gross Domestic Product (GDP).
- Strategic role due to location/logistics center: Panama Canal, Ports, Commerce Hub (Colon Free Zone), Transportation ("Hub of the Americas" for Copa Airlines), Telecommunications.
- Solid regional financial center: Banking, insurance, incorporation of companies, ship registry.
- Incentives Law for regional headquarters of multinational companies: there are more than 80 multinational companies which include companies such as Caterpillar, 3M, Procter & Gamble, Dell, Maersk, LG, among others.

Panama's economic growth has been one of the highest in Latin America during the recent decade, with an average GDP growth above 8% between "2006 to 2012" (World Bank). Of the $ 8.876 billion in Foreign Direct Investment income received by Central America in 2012, Panama was the most favored with $3.020 billion (34%). The World Economic Forum recognized Panama as the 2nd most competitive economy in Latin America in the "Global Competitiveness Report 2012-2013".

The banking sector is recognized as one of the strongest in the region with assets over $ 95 billion. In addition to the financial sector, Panama, due to its geographical positioning, has the largest Latin American ports and Free Zone (Colón Free Zone) with an area of 240 acres (2.4 km2) in size, being the largest in the Americas and the second in the world. According to the latest report from the Inter-America Development Bank (IDB) (July 2013), Panama is the third country that best manages the digital divide only behind Barbados and Brazil. Another point of interest is the importance of Panama as the "HUB" of the Americas since Copa Airlines operates 134 daily flights to over 45 destinations in 30 countries.

The Department of Economy and Finance, prepared the state budget for 2014 based on an 8.5% growth, however the International Monetary Fund (IMF) predicts that the Republic of Panama will grow a 9% by the end of 2013.

Throughout its history Panama has had an important banking center, a byproduct of its first regulation in 1970 and its 1927 corporate law that has attracted major foreign investment in various sectors although mainly dominated by the banking sector. According to figures of the Panamanian Banking Association, International Banking Center ("IBC") and The National Banking System ("SBN") 2012 closed with a 10% increase ($ 89, 771. 9 billion) and 10.5% ($ 72, 937 million) respectively.

As for the IBC, the most important banking product has been the credit portfolio shares with 62.4%, followed by liquid assets shares with 17.4% and investment securities shares with 16.4% showing proof of the dynamism of the economy in this country. On the other hand, the increase recorded by the SBN has been largely due to commercial and mortgage sectors which as a whole accounted for 37.3% growth and along with the personal consumption sector contributed 75% of SBN's total appropriations.

The Panama Canal, one of the wonders of the world, annually gives the Panamanian Treasury between $ 700 and $ 800 million dollars. Although, in 2012, it generated and consequently gave the Treasury the sum of $ 1.043 billion dollars, this being a record in the 12 years that the Panamanian government has administered the Panama Canal. Once the Panama Canal expansion concludes, these profits will increase and likewise the country's economic growth. Other sectors with high growing economy were: construction, due to public and private investment in 2012 a GDP of $ 1.802 billion was recorded and an estimated increase $ 1.995 billion GDP will be reported by the end of 2013; tourism in 2012 only in hotel and restaurant services generated more than $ 100 million; manufacturing grew by 2.3% during the first quarter of 2013 all making the Republic of Panama a safe country for foreign investment.

With the signing of double taxation treaties with the following countries Panama is considered to be transparent and to have a good reputation: Barbados, South Korea, United Arab Emirates, Spain, France, Holland, Ireland, Israel, Italy, Luxembourg, Mexico, Portugal, Qatar, United Kingdom, Czech Republic and Singapore, which has earned Panama worldwide recognition.

Likewise, Panama has signed treaties and trade agreements with the following countries and organizations: Latin American Integration Association (LAIA) Canada, Chile, Colombia, Costa Rica, Cuba, El Salvador, United States, Guatemala, Honduras, Israel, Mexico, Nicaragua, Peru, Dominican Republic, Singapore and Taiwan.

Touristically Panama has great attractions for its warm climate, beaches and historic sites such as the Casco Antiguo, considered by UNESCO as a cultural heritage of humanity. It is a cosmopolitan city with different cultures, races and religions, providing a favorable environment for commerce and investment.

→ Legal System in the Republic of Panama

Corporations Regime and Private Interest Foundations

■ CORPORATIONS: The following are among the most significant advantages for Corporations:
- No capital subscription required, nor the payment of any amount in order to begin activities.

- In terms of the object of the Corporation, Panamanian law is broad, since as well as authorizing the objects described in the Articles of Incorporation, it also enables the Corporation to engage in any lawful business whether or not similar to any of the objects specified in the Articles or its amendments. Business can be conducted in Panama or anywhere else in the world.

- Panamanian law does not require a certain number of shareholders; therefore one person can own all the shares and consequently the Corporation.

- The owner of the Corporation may have a broad general power of attorney, allowing the owner to carry out all kinds of activities on behalf of the Corporation.

- All shares into which the capital is divided may be issued to bearer. In this case no evidence, nor the need to disclose the identity of the shareholders. The above is without prejudice to bank policies that increasingly require shares to be issued in registered form.

- The Corporation may create and issue one or more classes of shares with the designations, preferences, privileges, voting powers, restrictions, requirements and other rights determined by the Articles of Incorporation. Thus allowing the creation of multiple-voting shares, banned in many European and American legislations.

- In terms of restrictions on shares, the Corporations Act authorizes the provision in the Articles of Incorporation of preemption of the Corporation, or any of its shareholders, to buy shares that another shareholder wishes to transfer.

In terms of taxes, as will be explained later in the section on Taxation, the Republic of Panama is governed by the principle of territoriality. Therefore, any Panamanian corporation will not be taxed on income derived from a foreign source, that is to say that, commercial activities abroad are exempt from paying taxes in this country.

Recently in the Republic of Panama, action was taken to immobilize bearer shares already issued and those subsequently issued by Panamanian corporations. The purpose of these measures is to maintain bearer shares under the custody of a natural person or legal entity, named custodian that is duly authorized to exercise as such. It is important and noteworthy that bearer shares may continue to be issued by Panamanian corporations and transferred by shareholders. These measures will not be put into effect until August 7, 2015. As to the authorized custodians, they may be fiduciaries as well as law firms that are duly registered.

■ PRIVATE INTEREST FOUNDATIONS: One of the most popular legal entities in the Republic of Panama is the private interest foundation. This country is one of the few Latin American countries that offer the possibility of creating a private foundation.

The private interest foundation is simply a legal agreement constituted by a unilateral will of a person named founder, which transfers some or all of its assets (assets that can be subject to transferred) to be managed by a foundation council for the benefit of one or more beneficiaries. They differ from corporations as they are not a commercial entity and do not have shareholders.

Private interest foundations offer many advantages that corporations cannot meet. The founder has the ability to revoke the foundation upon decision; provides confidentiality in relation to the management of assets and beneficiaries, the transferred assets are not part of probate proceedings after the death of the founder or the beneficiaries. It is also important to note that the transfer of assets from the founder to the foundation is considered a donation and therefore such transfer is not subject to any tax levy.

Private interest foundations in the Republic of Panama were inspired by Liechtenstein foundations (one of the first countries to legislate on private foundations). However, the Republic of Panama has demonstrated to have a more viable model providing simplicity during and after its formation. On the other hand, one of the most recent laws on private foundations was promoted by Jersey (widely recognized as an "offshore" jurisdiction) but it does not have advantages over Panamanian private interest foundations either. Among the most significant advantages between the Panamanian private interest foundation and those mentioned above we find the following:

- The Panamanian private interest foundations offer freedom and flexibility in the regulation of various topics such as administration, the reservation of rights and the right to information, while in Liechtenstein and Jersey; they are subject to the law.

- The Panama Private Interest Foundations do not require the appointment of a founding board member duly authorized by the state to exercise that function as in Jersey, nor requires the issuance of certificates by the foundation council regarding the foundations assets and capital as in Liechtenstein for the proper incorporation as a legal entity.

- Panama Private Interest Foundations do not require the payment of capital for their constitution, in other words, it is sufficient to only declare the amount of capital of such entity. In Liechtenstein, capital, which must be a minimum of 30 thousand dollars, euros or Swiss francs, must be available to the members that form part of the foundation council before its constitution in order for them to certify before the Public Registry that capital has been duly paid by the founder. On the other hand, in Jersey there is no form of capital, however if various assets will be transferred to the foundation, they need to be detailed in the foundation charter. In the Republic of Panama, the founder is not required to declare in the foundation charter the assets that make up the capital so to some extent there is confidentiality thereof.

- The Panamanian private interest foundations provide confidentiality of beneficiaries, while in Liechtenstein it is necessary to declare in the foundation charter who will be the beneficiaries of the foundation. Additionally, foundations in Liechtenstein, depending on their use, are subject to ongoing research by the state while in the Republic of Panama, this situation is not supported by law.

Commerce Regime

For the effect of the corporation regime and the present business guide, the commerce regime includes only the Notice of Operation formerly known as the business license.

NOTICE OF OPERATION: Any natural or legal person may exercise commercial or industrial activities within the Republic of Panama. The application and issuance of the notice of operation is the only procedure required to begin commercial or industrial activities in this country. It is important to mentioned, that the notice of operation should state a commercial name, which may not be similar to one already existing.

Trust Regime

The trust is an institution through which a settlor transfers property to a trustee in order to administer such property for the benefit of one or more of the beneficiaries. Unlike private interest foundations, the trust is a legal entity and therefore the owner of the property is the trustee. However, as well as private interest foundations, any assets that can be subject to transfer can be given in trust.

One of the peculiarities of the Panamanian law is that any person engaged in the trust business must apply for a license with the Superintendence of Banks. Therefore, any trust will usually

be managed by a company with experience in these matters which helps the trust produce greater benefits. Trusts are usually used as investment vehicles where the trustee uses the assets transferred to transact in the stock market; they can also serve as guarantors of bank bonds and as a means of wealth management. Dynamism is one of the main virtues of the trusts in the Republic of Panama.

Foreign Investment Regime

The Republic of Panama currently has no specific legislation on direct foreign investment. Foreigners rights are stated in articles 19 and 20 of the Constitution of the Republic of Panama, which dictate that in this country equal treatment to both domestic and foreigners prevail.

The Republic of Panama has a law to protect investment in the country. In Article 2 of this law, equal treatment is mandated for both domestic and foreign investors and companies. Additionally, through this article, the Republic of Panama aims to ensure the free disposition of the funds generated by investments.

For the reasons previously stated above, foreign investment does not require prior authorization from any authority, except for regulated activities such as: banking, which requires a license issued by the Superintendence of Banks and insurance activities and reinsurance, which also requires a license issued by the Superintendence of Insurance and Reinsurance Companies of the Republic of Panama.

Monetary Regime

In the Republic of Panama both the Balboa and the U.S. dollar are used. Both currencies for economic effect have the same value since 1904. The economic development that the Republic of Panama has had in recent years is a result of the use of the U.S. dollar as currency analogous to the Panamanian Balboa. Similarly, the economic product of the monetary regime has been possible due to historic low inflation, the absence of a central bank, free transfer of capital and an international financial center proven to be solid.

Taxation Regime

The Republic of Panama has traditionally had a territorial taxation system that has been one of the pillars that has led to its development and economic growth. The following will detail the different types of taxes in relation to this business guide, with the caveat that if not stipulated otherwise, the revenue generated outside Panamanian territory and not from Panamanian sources are tax exempt.

■ TRANSFER TAX OF MOVABLE GOODS AND SERVICE DELIVERY (ITBMS): The ITBMS, known in other countries as the VAT or IVA, is the tax payable by way of goods or services purchased in shops in the Republic of Panama. In 2010, the ITBMS increased to 7%, there was an increase of 2% from the 5% tax previously paid.

In terms of movable goods, this tax should be duly paid except in cases where the law provides exceptions. Goods such as items for the care of infants, food, freight and air, sea and land freight, sea and land transport of passengers, goods within the free zone (including transfer between them and in the customs area with document endorsement), logistics operation services performed in free zones and special economic zones are exempt from ITBMS. In the case of services, the tax applies to services provided by banks, brokerage firms, both audit and law firms and other financial institutions. It's worth mentioning that credit interest is exempt from ITBMS.

■ INCOME TAX:

Natural Persons. The income tax for natural persons in relation to taxable income has increased from $ 9,500.00 to $ 11,000.00 per year which represents a reduction of the tax burden to the middle class workers in the Republic of Panama. Individuals who earn taxable wages in this country must pay income tax as follows:
- Up to $ 11,000 – 0%
- From $ 11,001 up to $ 50,000 – 15%.
- From $ 50,000 – $ 5,850 for the first $ 50.000 and 25% over $ 50.000.

Legal Persons: Legal persons unlike natural persons in the Republic of Panama, pay single annual fee to the treasury according to their income. As per 2010 fiscal reforms, the income tax for legal persons has decreased annually for certain types of activities undertaken by companies and will later be later lowered on businesses that perform other activities. Since 2011, the income tax is 25% for all domestic and foreign companies, except those engaged in banking activities, insurance and reinsurance, telecommunications, generation or distribution of electricity, manufacturing cement, games of chance and casinos. Companies that engage in these activities are currently taxed 27.5% annually. However, as of January 2014, this tax will be reduced to 25% for both domestic and foreign companies. It is important to mention that in the Republic of Panama, legal entities are only taxed or pay taxes in regards to the taxable income, which is the income produced within the country.

■ DIVIDEND TAX: The dividend tax is nothing other than income earned by stocks and shares in a Panamanian corporation. This tax is triggered when a company decides to share profits with its partners or shareholders. Basically, any partner or shareholder of a corporation must annually pay 10% tax to the treasury of net income from a Panamanian source, 5% tax on exempt profits and / or exports, and 20% in cases where shares are subscribed in bearer form. It is very important to note that this tax should only be paid on stocks and shares of companies that operate commercially and that should declare income. The shareholders or partners of

companies that are not conducting commercial operations should not pay taxes given that there is no profit to be received.

■ MUNICIPAL TAX: Every natural and legal person performing business in the Republic of Panama must inform and therefore register before the municipality where they conduct such activities. Municipal taxes are paid on a monthly basis as opposed to state taxes and the amount thereof will depend on the amounts set by each municipality and according to the activity and gross income received. Persons engaged in liberal professions are exempt from municipal tax.

Labor Regime

The Panamanian labor legislation tries to be equitable between the rights of the employer and the employees without losing sight that the employee is seen as the weakest part of the relationship. It is a principal to labor law that neither domestic nor foreign employees may waive or diminish their rights properly established in the Labor Code of the Republic of Panama, defined as "acquired rights" which are: salary, thirteenth month bonus, seniority premium and vacation. Regarding the following points to be discussed, it is important to mention that there is no distinction between domestic and foreign employee. Without prejudice to the general labor and immigration laws, Panama has a special law in an area called Panama Pacific that has special regulations and is highly beneficial for foreign investment.

■ EMPLOYMENT CONTRACT: According to the Labor Code of the Republic of Panama, employment contracts can be for a definite or indefinite period or for a specific project. Contracts for a definite period can only be agreed to for a maximum term of one year. However, it may result in an indefinite contract if the yearly contract ended and the employee continued working in the company.

■ WORK SHIFTS: In the Republic of Panama there are 4 different work shifts:
- Day: consists of a maximum of 8 hours between 6:00 am and 6:00 pm with a maximum of 48 hours per week;

- Night, consists of a maximum of 7 hours between 6:00 pm and 6:00 am, with a maximum of 42 hours a week;

- Mixed, consist of 7 and a half hours including day and night shift with a maximum of 45 hours a week. Important to note that a mixed shift with over 3 hours in the nighttime period is considered as a night shift.

- Changing shifts: the labor regime in Panama allows employees to work during different shifts according to the activities and needs of the company.

■ OVERTIME: Work in excess of the maximum hours specified above must be paid as overtime. Minimum rates for overtime are:
- A surcharge of 25% for hours worked during the day shift;
- A surcharge of 50% for hours worked during the night shift, for excess hours worked in mixed shift that began during the day, or for work performed on a rest day (i.e. Sunday).
- A surcharge of 75% for excess hours worked in the night shift or a mixed shift that began at night.
- A surcharge of 150% for hours worked on a holiday or national day of mourning, plus an extra day to rest if required. Excess hours worked in a regular shift on a holiday shall be paid at the same rate described above plus a surcharge of 50%.

■ VACATION: Employees are entitled to 30 days annual leave. The annual leave accumulates at the rate of one day for every 11 days of work. The employee cannot waive their vacation for pay. However, may accumulate them for two years provided the employee has taken 15 days of the first period. The 30 day period cannot be split into more than two equal periods.

■ SALARY AND MINIMUM WAGE: The employer is free to pay the employee either on a monthly, fortnightly, weekly, daily, hourly rate or by project or specific job. The salary can include cash, bonuses, commissions, profit sharing and any other income or benefit that employees receive for their work. Employees must receive no less than 2 payments per month.
As for the minimum wage, this will depend on the business activity undertaken and the geographic area where the company conducts its operations. The current minimum wage is between $ 432.00 and $ 490.00 dollars.

■ TERMINATION OF EMPLOYMENT CONTRACT: The Labor Code of the Republic of Panama establishes the grounds for terminating the employment relationship between employer and employee. The following are some of the causes: by mutual consent, provided it is in writing and does not involve waiver of acquired rights, by the expiration of the agreed term, the death of the employee, dismissal based on good cause, the resignation of the employee; unilaterally by the employer, with the formalities and limitations set forth in the Labor Code etc. Following the termination of employment, the employee is required to pay certain benefits such as salary to date; proportional thirteenth month bonus; proportional vacation and seniority premium (one week salary per year worked since the beginning of the employment relationship). In cases of unfair dismissal on indefinite contracts, the employee is entitled to compensation equivalent to 3.4 weeks' pay for each year worked in the first ten years.

■ SOCIAL SECURITY: Social security in the Republic of Panama is overseen by an autonomous authority which is governed according to its own law and not by the Labor Code. The Social Security Bureau (CSS), authority of social security, aims to guarantee the rights for a secured retirement for old age, sickness, maternity, disability, accidents, widowhood, orphan hood and others to their policy holders.

All domestic and foreign employees, including the self-employed are required to participate in the CSS regime. In the case of foreign workers who provide services within the country, government authorities may not prohibit affiliation. On the other hand, it is the duty of national and foreign companies that operate in Panama and have employees, to sign up to the CSS. Likewise, the employer is required to enroll their employees and deduct from their salary the corresponding fees in order to enjoy the above benefits. As for the fee, the employer must pay 12.25% of the salary of each employee and the employee must pay 9.75% of their salary.

Immigration Regime

The immigration regime aims among other things to regulate the immigration that comes in and goes out for domestics and foreigners, the stay of foreigners in the Republic of Panama and to establish the requirements to acquire Panamanian citizenship by naturalization. Notwithstanding any general immigration rules, Panama has areas that are regulated by special immigration standards, such as Panama Pacifico which we will explain in a separate section.

■ ENTRY AND EXIT OF FOREIGNERS: Foreigners who do not have or are processing a residency permit in the Republic of Panama, may apply before the immigration authorities for a multiple entry and exit visa (multiple visas). The same may be granted for a maximum of five years at the request of the interested party and will allow them to enter and leave the country any number of times, while valid. The multiple visas represent a benefit to those foreigners that due to the nature of their occupation must travel regularly. Thus, while making appropriate arrangements for obtaining a residency permit, a foreigner can feel confident that they can continue traveling to the destinations of their choice without any immigration problem in the Republic of Panama.

■ VISAS OR RESIDENCY PERMITS: The Republic of Panama has numerous types of visas or residency permits for foreigners with the intention of living here. In 2012, a new immigration subcategory was created which has drawn the interest of many foreigners. This subcategory is the "Permanent Resident Permit for Foreigners of Specific Countries that maintain Friendly, Professional, Economic and Investment relations with the Republic of Panama (Friend Countries)." Nationals of countries like the United States, Spain, Great Britain, Argentina, Canada, among many others, can apply for this residency permit as long as their purpose is the pursuit of economic and professions of any kind. One advantage of this residency permit is its permanent and therefore the work permit (which will be addressed later) is also granted indefinitely. In addition, the Republic of Panama also offers foreigners the following permits:

- *Non Resident:* They are usually permits for short term stays in the country for traders and investors, conducting business, medical treatment, tourists and other.

- *Temporary Residents:* are granted on an annual basis, renewable for up to six years and include residency permit for workers within 10% of a private company, for investment reasons and others.

- *Permanent Residents:* residency permits that after two years, the person is eligible and may request for permanent residency. This permit may be requested by macro-business investors, economic solvency, retirees, dependents of permanent residents and others.

■ WORK PERMIT: Foreigners that require working in the Republic of Panama must obtain authorization through a work permit, issued by the Department of Labor and Social Welfare. Work permits are usually granted on an annual basis, subject to the rules for application and/or issuance. It is important to note, that companies may only hire up to 10% of foreign employees based on the total of administrative employees on payroll, and up to 15% for specialized or technical staff.

Special Economic Regime and Colon Free Zone as a Free Trade Zone

The Republic of Panama in recent years has sought out to attract multinational companies by creating special schemes that aim to grant such companies numerous benefits in tax, labor, and immigration, among others. This country has different laws focusing on various areas such as: special economic areas Panama-Pacifico, the special regime for Headquarters of Multinational Companies in the Republic of Panama, Colon Free Zone, and the special regime for Free Trade Zones.

■ PANAMA PACIFICO: In 2004 a special regime for the establishment and operation of a special economic area called Panama-Pacifico was created. It is administered by the Agency of Panama Pacifico, which is an autonomous State entity. Any company that establishes within the Panama Pacifico Special Economic Area enjoys special benefits or incentives.

Panama Pacifico is primarily an area or tax-free zone for companies operating within this territory. This area offers tax incentives in relation to indirect taxes, for example, companies are exempt from paying taxes on imports entered in Panama Pacifico; ITBMS exemption, tax exemption with respect to the fuel or other hydrocarbons and their derivatives; tax exemption for export and re-export of merchandise, products, services, or goods etc.

Furthermore, Panama Pacifico offers legal stability for companies set up there and special immigration incentives. Foreign workers in Panama Pacifico may request special residency permits with 3 to 5 year duration, renewable.

Panama Pacifico is geared towards both national and international companies engaged in the performance of a number of commercial activities, among companies today that are established in this area are; Dell Panama, Panama 3M, Caterpillar, Citibank, Covidien, PPG Industries, VF Corporation (all these belong to Fortune 500) and many others that have discovered the value of locating its operations for Central and Latin America in Panama Pacifico.

■ HEADQUARTER OF A MULTINATIONAL COMPANY (SEM): Since 2007, the Panamanian government has been promoting the establishment of headquarters of multinational companies in the country requesting only the obtainment of a License from the Headquarter Multinational Company (SEM) which is indefinite in nature. Multinational companies that establish their headquarters in the Republic of Panama will be exempt from income tax and ITBMS on all services provided to companies or entities not resident in the Republic of Panama. Likewise, there are immigration and employment benefits. As for immigration benefits, the law has created a special category for foreign workers of multinational companies that hold the SEM license. These workers have the advantage of being able to apply for a residency permit for the same duration of the employment contract (a maximum of five years). Also, these workers do not require work permits or affiliation with the Social Security Bureau. In regards to employment benefits in the Republic of Panama, as we have already mentioned, there is a limit of 10% and 15% for foreign workers. This limitation does not apply to companies that hold the SEM license. Important multinational companies as Proctor & Gamble, Maersk, LG Consulting, Western Union, Heineken, Bosch, Nestle, Adidas and many others have decided to locate their headquarters in the Republic of Panama since this country is offering simplicity, legal stability and all the benefits described above.

■ COLON FREE ZONE: The Colon Free Zone is the main free trade zone, not only in the Republic of Panama, but also of the Western hemisphere. It is the main commercial center for Latin America and the Caribbean because of its excellent location and connectivity by sea, air and land. The Panamanian government seeks to ensure legal stability of all companies that conduct business in the Colon Free Zone. The institution has been certified under ISO 9001 Normal: 2008 so it offers first class service.

Companies that conduct business within the Free Zone are exempt from paying taxes on imports, exports and manufacturing of goods, re-export revenue, billing and various federal and province taxes. More than 3000 companies operate within the Colon Free Zone which together generated 30.8 billion dollars in 2012.

Industrial Property Regime

The Republic of Panama, through the Department of Commerce and Industries, recognizing at the same time protects industrial property rights which include inventions, utility models, industrial designs, trade secrets, product and service trademarks, indications of provenance, designation of origin and propaganda slogans and signs.

■ INVENTIONS: The patent protects new inventions resulting from an inventive step and capable of industrial application. Invention means, every idea practically applicable for solving a specific technical problem. These inventions can be either product or process, they may be apparent (tangible) or not apparent (unobvious use of a product or process or method). The

patent application must be filed by an attorney to the Directorate General of Intellectual Property Registry (DIGERPI) stating that the invention is new and is capable of industrial application. The DIGERPI for such purposes, accepts inventions that have been reported anywhere in the world up to 12 months prior to the filing. The patent will last for 20 years non-renewable.

■ UTILITY MODEL: The utility model patent protects all types of devices or mechanisms that enable better or different operation, use or manufacture of the object to which it is incorporated. For such patent to be registered, the utility model must be new and industrially applicable. Utility models that do not provide discernible feature regarding previous inventions and utility models will not be registered. Application must be submitted by an attorney before DIGERPI and the patent will have a non-renewable term of 10 years from the filing of the request.

■ INDUSTRIAL MODELS AND DESIGNS: You can register as a model and industrial design, any two or three dimensional forms incorporated in a utilitarian product that gives a special appearance and makes it suitable for use as a type or model for manufacture. All industrial models and designs will be protected if registered or by first disclosure in the Republic of Panama. It must be new and cannot present only minor or secondary changes to previous industrial designs. It may be registered for 10 years which at maturity may be extended for another 5 years.

■ TRADE AND COMMERCIAL SECRETS: The Republic of Panama also protects trade and commercial secrets, which are qualified as any industrial or commercial application that as a matter of confidentiality a natural or legal person retains because it represents them with a competitive advantage over others in carrying out economic activities.

■ TRADEMARKS: It is understood as a trademark, any sign, word combination thereof or any other means, that by its character is capable of distinguishing a product or service. Unlike patents and utility models, the exclusive right is acquired by registration and not by use. To register a trademark, it must adhere to the International Classification of Niza which is responsible for categorizing products and services.
A trademark registration lasts for 10 years from the date of filing and may be renewed indefinitely for similar periods.

■ INDICATIONS OF PROVENANCE AND DENOMINATION OF ORIGIN: The expression or sign used to indicate that a product or service is from a country or group of countries, a region or a specific place is considered an indication of provenance. The geographical name of a country, region or locality which serves to designate a product originating therein, the quality and characteristics are due exclusively or essentially to the geographical environment, the natural and/or human factors is considered a denomination of origin.

Thus, by written request to the DIGERPI, any industry, merchant or service provider is entitled to use the respective geographic name as an indication of origin of their products or services.

The denominations from the Republic of Panama are excluded from this since prior authorization from the Panamanian Executive Branch is required.

■ PROPAGANDA SLOGANS OR SIGNS: Any propaganda, advertising sign, legend, phrase, combination of words, design, recording or similar, as long as original, distinctive and that it is used to attract the attention of consumers or users, about a product, commodity, service or establishment is considered a propaganda slogan or sign.

Trademarks and trade names may be part of a propaganda slogan or sign provided they are pre-registered for the same owner and the same can be used on posters, murals and any other advertising medium. It is also important to note that the propaganda slogan or sign is protected in whole and not in parts.

Real Estate Regime

It is understood by real estate property, any object, building or land, subject to appropriation and transfer, which cannot be moved from one place to another. For the purposes of this business guide, only consider the transfer of real estate, such as buildings attached to the land and/or land in its natural state and mortgages attached to them.

■ BUYING REAL ESTATE PROPERTY: The purchase of real estate property either through a sale/purchase agreement, assignment of rights and others, is closely linked to the Public Registry of the Republic of Panama, which is accessible online and inquiries about properties and Panamanian and foreign registered corporations can be made. This institution is responsible for the registration of all transfers of real properties (property identified with a unique number) and levies and/or limitations they may have.

The Republic of Panama, in addition to optimum registration of real estate, also offers the publishing of them thus facilitating proper investigation of any property. Therefore, before purchasing a property in the Republic of Panama, it is recommended to perform a due diligence and research to ensure that the potential buyer knows of any liens, limitations, levies, embargoes and pending litigations which it may have or ownership limitation or restriction of the domain. Another important consideration before purchasing a property is in relation to the transfer tax. In the Republic of Panama, the tax on the sale of real estate property is as follows:
- 2% transfer tax must be paid to the treasury.
- 3% of the total sales value or the assessed value of the property must be paid in advance.

With regard to the 3% advance, it replaces the 10% capital gains tax based on the assessed value of the property. However, if the 3% advance exceeds the amount which would have been paid with the 10% capital gains tax, the return of the difference between the two percentages may be requested to the ANIP.

■ MORTGAGES: Mortgages directly and immediately hold the asset on which imposed, for the fulfillment of an obligation for which the security is constituted, whomever the possessor may be. Therefore, it is an accessory contract agreement or constituted in order to secure payment of an obligation. In order for the lien to take effect on a third party, the agreement or contract that contains the mortgage must be registered before the Public Registry of the Republic of Panama. Usually mortgages are of medium to long term given that they last for between 5 to 30 years. Additionally, in the Republic of Panama the right to receive profits from real estate property is also part of the mortgage agreement or contract.

Administration of Justice Regime

The administration of justice in the Republic of Panama is public, free, speedy and uninterrupted. The Judicial Branch is the institution responsible for the resolution of conflicts within the country. However, there are other mechanisms which may conclude with the same purpose such as mediation, conciliation and arbitration which are well accepted in the country, legal certainty as well as efficient and timely.

■ ADMINISTRATION OF JUSTICE THE JUDICIAL WAY: The Judicial Branch is constituted, in hierarchical order, by the Supreme Court of Justice, The Judicial District Courts, Circuit or Sectional Courts and Municipal Courts. The law is responsible for attributing to these chambers the corresponding cumulative exclusive jurisdiction or cases.

■ ARBITRATION: The Republic of Panama recognizes the use of arbitration for the administration of justice. It is considered an institution of conflict resolution by which any person with legal capacity to be bound submits disputes which have risen or which may arise with arbitration through the subscription of an Arbitration Clause.

■ INTERNATIONAL ARBITRATION: International arbitration is widely known and regulated in Panama by Law Decree No. 5 of 1999 which regulates international commercial arbitration and whose main principles are:

- The resolutions from arbitration abroad will be recognized and enforced in the Republic of Panama in accordance with the Treaties and Conventions which this country is part of or failing at, by the rules contained in Law Decree No. 5 of 1999.

- The Supreme Court of the Republic of Panama, through its Fourth Chamber, is in charge of recognizing and enforcing judgments or awards from abroad, upon request of an interested party.

- For international commercial arbitration, internationalization is determined according to the ability of the parties, the law applicable to the arbitration agreement and / or the law used by

arbitrators to resolve the conflict. It will also be taken into account trade usages and rules of international private contracting.

Panama seeks to become, in the short-term, the most important international arbitration center of the Hemisphere being supported by competitive advantages and its tradition as a service country. Panama has great potential for international arbitration, as it has the proper infrastructure, international litigation lawyers and above all, a great tradition of service.

The Center for Conciliation and Arbitration of Panama founded in 1994 is an institution sponsored by the Chamber of Commerce in this country and other business associations, whose primary objective is to promote the use of arbitration, mediation and conciliation, as forms of resolution of disputes in the national and international business community, through its various services. The Center has a Board of Directors, which is its governing body, and administratively has two Secretaries, an Administrative Coordinator, a Legal Assistant and administrative staff that allow them to offer management services for arbitration, conciliation and mediation processes as an international center for hearings, consulting and training services.

■ CONCILIATION: Conciliation, duly recognized by the Republic of Panama, is a method of peaceful settlement of disputes, through which the parties manage conflict resolution through the intervention of an impartial facilitator, duly authorized to exercise that function. With regard to the competence of the conciliation process, only issues subject to trade, withdrawal and negotiation can be addressed. In areas of law such as labor, the parties must first try to resolve their disputes through conciliation, before a judge may intervene in the matter. Thus, the decisions taken and subscribed by the conciliation process cannot be modified and the same are binding.

■ MEDIATION: Mediation is an alternative method of conflict resolution intended to seek out and facilitate communication in order to achieve an agreement between the parties through the intervention of a qualified mediator. Like the conciliation process, only issues subject to trade, withdrawal and negotiation can be addressed. It should be noted that mediation can occur in a judicial or extra-judicial proceeding.

Cinematographic Regime

The Republic of Panama is currently developing a cinematographic law in the interest of attracting companies involved in the film industry. This law will grant tax incentives to companies that perform such economic activity within Panamanian territory. The undersigned, Irene Fernández de Galindo, authorized public translator with License No. 460 issued on August 25, 2004, certifies that the above is a correct translation of its original in Spanish. October 18, 2013

SOUSA MACHADO, FERREIRA DA COSTA & ASSOCIADOS
www.smfc.pt
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→ Portugal

The law firm SOUSA MACHADO, FERREIRA DA COSTA & ASSOCIADOS, Sociedade de Advogados ("SMFC") was founded in 1991 by 4 partners and now comprises the 4 founding partners, 8 associates and 5 trainee lawyers. SMFC offers legal advisory services particularly in the following practice areas:

- Business law, including commercial law,
- Labor law and commercial contracts
- Civil law in general and in particular civil contracts,
- Law of obligations (contract),
- Insurance law,
- Family and inheritance law;
- Litigation, pre-litigation and debt recovery, notably in areas of mobile telecommunications,
- Credit insurance and motor vehicles (financial lease contracts) and in the chemical, agri-foodstuffs, pharmaceutical and cosmetics, etc., industries

→ Corporate Law

The most relevant legislation to companies in Portugal is:

- the Commercial Code *("Código Comercial"*, dated 1888);
- the Portuguese Companies Code *("Código das Sociedades Comerciais"*, Decree law no. 262/86, dated September 2 – , as further amendments);
- the Portuguese Securities Code *("Código dos Valores Mobiliários"*, Decree law no. 486/99 dated November 13, as further amendments);
- several specific laws and regulations.

There are four types of corporate entities available in Portugal: general partnership companies *(sociedade em nome colectivo),* private limited liability companies *(sociedade por quotas),* public limited companies *(sociedade anónima)* and limited co-partnership companies *(sociedade em comandita).*

European Companies *(Societas Europaea)* may be incorporated in Portugal, provided that they have their registered office in Portugal or if they are participated by companies governed by Portuguese companies law.

Notwithstanding, the three most common legal structures that may be considered when envisaging the settlement of a business or activity in Portugal are the following:

- Representation office or branch
- *Sociedade Anónima* (SA)
- *Sociedade por Quotas* (Lda.)

Branch

A branch is merely a permanent representation of a foreign company, organized to conduct the business outside its original country. It differs from a company due to the following characteristics:

- The branch is not legally independent from the head-office, while a subsidiary company operates as a different legal entity;

- The branch shall appoint a legal representative to manage the business, while limited liability companies must appoint members of the corporate bodies (management body and an audit body).

The procedure for registering a branch in Portugal is simple and consists mostly on the submission of a resolution from the head-office and other documents evidencing the legal existence of the foreign company.

Companies

SAs and Lda.s differ from other structures available where the shareholders' liability is unlimited *(sociedade em nome colectivo and sociedade em comandita),* although the latter are rarely used nowadays.

When deciding what legal form the subsidiary should assume, the foreign investor must take into consideration the differences between a SA and a Lda., which may influence significantly their business operations. From a day-to-day point of view, the two can be managed in broadly similar terms, although Lda.s may in some cases be less formally managed due to the fact that

they comprise a lighter corporate structure, hence being more appropriated for short-term investments. As for SAs, they are usually recommended for enduring investments, especially where a large number of investors is envisaged.

Share Capital

The minimum share capital for a SA is € 50,000.00, of which at least 30 percent must be fully paid up until the date of incorporation.

The statutory capital for a Lda. is freely set in the articles of association of the company and will correspond to the sum of the quotas subscribed by the quota holders. However, it is not possible for this value to be below the minimum nominal value of the quota set by law, which is € 1.00 (one euro). The Portuguese Law also allows the quota holders to decide to pay the value of each quota on the date of incorporation or at the end of the first economic year.

Under general Portuguese Companies Law, a S.A. must have at least five founding shareholders. Notwithstanding, a company is entitled to incorporate a SA of which it will initially be the sole shareholder under the special regime applicable to groups of companies. Conversely, a Lda. must have at least two shareholders unless it adopts the structure of a single quota holder company (sociedade unipessoal por quotas) in which case the share capital is totally held by a sole quota holder.

Shares and quotas

The share capital of a SA is divided in shares, these can either be nominal or without nominal value (but both cannot coexist in the same SA), furthermore, all shares must have the same nominal value (of no less than € 0,01 per share). Share certificates are issued to represent one or more shares in accordance with the Company's by laws.

Shares can be nominative or bearer *("ao portador")* and may be represented either by certificates or dematerialized. Bearer shares can be transferred simply by physical delivery of the certificate, whilst nominative shares are transferred by endorsement statement signed by the transferor on behalf of the transferee and the correspondent registration with the Company (or the financial institution, if applicable).

Each class of shares must have something that makes it different from the other classes and all the shares within one class must confer the same rights. Common *("ordinárias")* shares are the securities that represent ownership in a corporation. Holders of common shares exercise control by electing the management board and voting on corporate policy. Preferred *("preferenciais")* shares bestow some sort of rights and privileges upon common stock. The nature of these rights or privileges shall consist of patrimonial advantages (mainly concerning dividends).

The share capital of a Lda. is divided in quotas, which can have different nominal values with a minimum of € 1,00. Quotas are not materialized in a document and its transfer must be executed by written agreement, followed by the respective deposit with the Commercial Registry Office.

Liability of shareholders

In both SAs and Lda.s, the liability of each shareholder is limited to the nominal value of his interest in the company. However, the quota holders of a Lda. are joint and severally liable for any unpaid capital contributions foreseen in the company's by-laws.

Corporate Governance

SAs management and supervision bodies' composition depends on the organization system adopted, which may be organized either on (i) a traditional 2-tier structure consisting of a Board of Directors (or a sole Director, should the share capital not exceed € 200,000.00) and an Audit Board or a Single Auditor; or (ii) under a 1-tier structure consisting of a Board of Directors, which shall comprise an Audit Commission and a Chartered Accountant; and (iii) under a 3-tier structure consisting of an Executive Board of Directors, a General and Supervisory Council and a Chartered Accountant. SAs with a capital not exceeding € 200.000,00 may have only one Director instead of a Board of Directors.

The corporate bodies of a Lda. are the General Meeting of Shareholders and the Management (which may be composed of one or more directors). Although a Supervisory Board is not mandatory, in some situations Lda.s are required to appoint a statutory auditor.

General Meeting of Shareholders*

Although most powers to run the company are vested in the directors, the following resolutions are reserved to the Shareholders:
- Approval of financial statements and distribution of profits.
- Appointing and removal of the Directors and members of the Audit Board.
- Amendments to the Bylaws.
- Merger, spin-off, transformation or dissolution of the company.
- Transfer and encumbrance of real estate properties (only applicable to Lda.s).
- Issuance of Preferred Shares.
- Issuance of Bonds.
- The division and consent for the transfer of quotas to third parties (only applicable to Lda.s).

Quorum Majority

■ SAs

	QUORUM	MAJORITY
First call	No quorum or 1/3 for matters comprising the changing of articles of by-laws, merger, spin-off, transformation or dissolution	Majority of votes cast or 2/3 for matters comprising the changing of by-laws, merger, spin-off, transformation or dissolution
Second call	No quorum	Majority of votes cast or, for changing the matters described above, 2/3 of the votes cast or simple majority if at least 50% of the share capital is present or represented

■ Lda.s

QUORUM	MAJORITY
No quorum	Majority of the votes cast or 3/4 of the share capital for matters comprising the changing of by-laws, merger, spin-off, transformation or dissolution

**Certain resolutions may require unanimous vote or other majority according to the company's Bylaws.*

Directors

SAs are required to have a board of directors (or an Executive Board of Directors and a General and Supervisory Council, depending on the organization structure adopted). Lda.s are managed by one or more directors *("gerente/gerência plural"),* although there is not a formal management board.

Managing corporate bodies of SAs and Lda.s have very broad authority to bind the company. Although restrictions may be contained in the by-laws, these are not enforceable against third parties provided the actions of the directors are within the limits of the corporate purpose.

In a SA, the shareholders appoint the board of directors, generally for a four-year term (but the by-laws can provide for a shorter term). There are no requirements for independent directors (except for listed companies). In a Lda., the directors may be appointed for terms of office or without a definite term, in this case remaining appointed until dismissal or resignation. The directors may be remunerated or not.

Annual Accounts

Portuguese law foresees that all companies must approve, at the annual general meeting, the respective year-end accounts within a 3-months period (as from the end of the financial year) and, in special cases, within a 5 months period (in case of companies with consolidated accounts). The documents to be approved are: (i) the year-end financial statements (comprising a detailed balance sheet), (ii) the management report, (iii) a report issued by the audit body, and (iv) in case of SAs, a legal certification of the accounts must be issued by a Chartered Accountant.

Once approved by the general meeting, the accounting documents must be submitted, by Internet, under a new system called *"Informação Empresarial Simplificada" (IES),* under which the annual financial and accounting information is sent simultaneously to all the relevant public services (tax authorities, commercial registrar, etc.).

In case of permanent representations of foreign companies in Portugal (Branches), the process is even easier, as it is only required a declaration confirming that the head-office received the supporting documents of the branch's accounts.

Incorporation of a company

The incorporation of a company (except when depending on special approvals or when the start-up capital is to be made through contributions in kind) may be fully performed in one day, if the shareholders choose to create a company under the special regime that allows a company to be incorporated "in one hour" (on the spot company – *"empresa na hora"*), with or without acquiring or possessing a trade mark. This process is carried out before a Commercial Registry Office or a Company Formalities Centre (CFE). On the other hand, it is now possible to launch and set up a company throughout digital means – the so-called "online company registration".

Regarding the special regime of incorporation "on the spot company" above mentioned, in April 2008, it was also created a special regime that allows a branch from a foreign company to be dully incorporated "in one hour" (on the spot branch – *"Sucursal na hora"*). With this procedure it can be created, immediately and in one place, permanent representations of foreign companies in Portugal, with the simultaneous appointment of their representatives.

In 2008, some measures were approved to simplify the companies' incorporation process as well as other companies' day-to-day procedures, namely:

- COMPANY'S CARD *("Cartão da Empresa"):* as from now on, Companies shall have a sole Identification Card that evidences the three essential numbers: the Company's Tax Identification Number, the Company's number of registration at the Commercial Registry Office and the Company's Social Security number. The Company's Card may be requested online

(www.empresaonline.pt) or at the Commercial Registry Office, remaining the respective issuance dependent on the enrolment of Company with the Tax Authorities and with the Social Security.

■ SICAE (Portuguese Information and Classification System of Economic Activities): this system consists on a permanent and actualized database concerning the companies "economical activity code" ("CAE"), allowing a simplified process of modification regarding this matter.

Listed companies

Listed companies have to comply both with the Portuguese Companies Code and with the Portuguese Securities Code. This act establishes cooperation, communication and publicity duties for corporations, as well as the regulation and supervision of the respective activities by the Portuguese Securities Market Commission.

→ Real Estate Law

Types of Ownership

According to the Portuguese Civil Code, ownership consists in the full and exclusive right of use, enjoyment and disposal of a real estate property or personal property (commodities), including all direct advantages resulting there from (as revenues). Portuguese law foresees other property rights such as the right to use the property *("usufruto"),* the naked property *("nua propriedade"),* the surface property, the timesharing, the horizontal property, and others.

The adverse possession *("usucapião")* is one method of acquiring property through actual, continuous, open occupancy of the property, for a prescribed period of time, under claim of right, and in opposition to the rights of the true owner.

Land Register

All transactions concerning real estate property must be duly registered with the Real Estate Registry Office (which may be submitted online). In order to impose that obligation the law establishes that definitive registration constitutes legal presumption of the existence of the right and its ownership by the person who is inscribed in the registry records. This means that the land certificate *("título de registo da propriedade")* confers to the owner of the property the power to exclude any alien pretension over the registered right.

The onerous acquisitions of property rights made by third parties, in bona fides, from a person who appears in the Registry records as entitled to transfer such right shall be held harmless against any property claims.

All registered records are made available so as to allow the assessment of information concerning the ownership and/or any existing encumbrances on a real estate property.

Transfer formalities (Public deed)

According to Portuguese Law, the constitution, transfer, acquisition or extinction of property regarding real estate assets may be made through a Public Deed or a Simple Document duly authenticated by a Lawyer. Additionally, other documents may be required, as well as the execution of legal and prior formalities, including the payment of taxes, such as:

- Occupation or construction license issued by the city hall (for urban buildings);
- Land registry title, proving the ownership of the transferor;
- Payment of the Real Estate Transfer Tax ("IMT") - between 0% and 8%, depending on the real estate value;
- Real Estate Tax Record *("caderneta predial")* issued by the competent tax services.
Energetic Certificate of the Property (which certifies the class of energy efficiency of the property);
- Technical Datasheet of the Property *("Ficha Técnica da Habitação")* – it is only mandatory for properties build after March 30th, 2004;

Additionally, all real estate properties are subject to the payment of a Property Tax which ranges between 0,2% and 0,8% of the patrimonial value of the real estate. It recently entered into force a new project of the so-called *"Casa Pronta"* (House on the Spot). This regime allows purchases, encumbrances or registrations of real estate properties to be carried out immediately and by a sole entity. Thus, the public deed, the payment of the IMT and the attaining of all necessary documents (habitation license, land registry title and real estate tax record) may be all carried out simultaneously by the same authority, significantly reducing the bureaucratic procedures of the real estate transfers in Portugal.

Mortgages, main rights of mortgages

A Mortgage is a lien by virtue of law (security in rem) that confers to the creditor a preferential right over the other creditors, and that can be defined, in simple terms, as an ancillary guarantee aiming at assuring the fulfillment of contractual obligations.

The law provides for three different types of mortgages: voluntary, judicial and legal. The voluntary mortgage must be constituted by means of a public deed (or will) and must specify the mortgaged property. All kinds of mortgages should be registered, in order to have existence and to produce effects against third parties.

Pre-emption rights

There are pre-emption rights in specific cases, such as:
- The owners of confining buildings;
- The owner of real property burdened with easement of access;
- The co-owners in the case of property transfer;
- The tenant in case the leased property is sold; and
- By the owner of the right of surface, in case of transfer.

In all these cases, the person detaining that specific condition has a pre-emption right over third parties that intend to acquire the respective property. Portuguese law also foresees the so-called "sale secured by a lien on property" that confers to the buyer the possibility of reserving to himself the property of the land until the total fulfillment of the other party's obligations.

Restrictions on acquisition (e.g. by foreigners)

The Portuguese law has no restrictions to what concerns the possibility of property acquisition by foreigners.

Construction and use restrictions (e.g. permits, zoning)

The exercise of rights related to ownership is not absolute, considering that Portuguese Law determines the compliance with restrictions and boundaries imposed by the social and dynamic function of ownership.

Besides the general clause of *"proibição do abuso de direito"* (prohibition of abuse of right), the public expropriations and temporary requisition, we have to note on two different types of restrictions: "public law restrictions" and "private law restrictions". As to public restrictions, we have to consider specific legislation linked to, e.g. town planning law (inspections and supervision of construction works) that covers areas like waters, environment, air quality protection, forests, industry, work licensing, natural parks, sanitation, noise, etc. Concerning the private law restrictions, they are foreseen in the Portuguese Civil Code, and are numerous, as for example easements, excavations, water flowage, right of demarcation, right of dividing and joining rustic buildings, etc.

Lease formalities e.g. written, time limit for lease term and possible registration of lease interest

The urban lease agreement must be made in writing and the contract must include several essential elements, such as Occupation's license, Real Estate Tax Record issued by the tax services, etc.

Unless the parties decide to stipulate an effective term for the lease, the landlord can only prevent the automatic renewal of the contract by means of a notification of such intention sent to the tenant with a minimum prior notice of 60 days or 120 days, depending on the duration of the lease agreement. Nevertheless, either party (tenant or landlord) may terminate the contract in case of breach or default by the other party.

→ Labour Law

This chapter provides a brief overview of the main aspects of Portuguese labour law, specially on the employment contracts and social security related matters. Portuguese Labour law is governed by the Labour Code, which entered into force on late 2003. On 2009, a new version of the Labour Code has been published and it still provides the regulation of the main employment-related features, such as types of employment contracts, holidays, absences to work, professional training, gender equality, maternity rights, termination of employment contract and health and safety at work.

In general terms, the Labour Code 2009 is not very different from the Labour Code 2003 and, from the companies' standpoint, it could have gone further in respect to the flexibility of the labour relations. In the meantime, in the extent of the Memorandum for Financial Assistance entered into between the Portuguese State, the IMF, the European Commission and the European Central Bank, some relevant amendments to the Labour Code have been implemented, namely in respect to the compensation for termination of employment contracts in the cases of individual redundancy and collective dismissal.

Employment Contracts

Under Portuguese law, there are 3 main types of employment contracts: permanent, fixed-term and uncertain term.

Additionally, we also highlight the management employment contract, due to the wider flexibility it offers to companies when hiring top employees.

Common provisions

The following aspects are common to every type of employment contracts:

- RETRIBUTION: besides the base salary, employees are entitled to an annual holiday allowance and Christmas allowance, which amount is equivalent to the base salary. The minimum national wage is currently €485,00, although the applicable collective agreement usually provide higher minimum amounts per each professional category.

Employees may also be paid other allowances, depending on the terms under which the work is performed, such as the nightshift allowance or the shift allowance. Generally, some of these allowances - such as the shift allowance or the meal allowance - are provided in the applicable collective bargaining agreement, as its payment is not mandatory by law. Besides, the payment of the meal subsidy is a common practice, even if not provided in any collective bargaining agreement.

■ WORKING HOURS: as a general rule, employees may be committed to a maximum working schedule of 8 hours per day and 40 hours per week. The parties may also agree on a part-time working schedule.

The work performed beyond these limits (and also on resting days) is considered as overtime work, which, itself, is limited to a certain number of hours per day and per year. The performance of overtime work entitles the employee to a special allowance per each hour of overtime work rendered. Recently, the additional salary for overtime time has been reduced to a half and the employee is no longer entitled to, additionally, have a day-off.

Depending on the type of functions, the employer and the employee may agree on a working hours exemption schedule, case where said daily and weekly limits shall not apply. Being the case, the employee is entitled to a monthly allowance, which amount is equivalent to, roughly, 20%/25% of the base salary, save if provided otherwise in the applicable collective agreement.

The Labour Code 2009 has introduced new types of scheduling the working hours in order to adapt the working schedules to the production needs, enabling the employer to concentrate a greater number of hours of work per day and per week or to manage the daily and weekly limits of hours of work in accordance with the production flows. Initially, the implementation of some of these schedules has to be previously agreed with the employee's representatives in the applicable collective bargaining agreements. Recently, Law n. 23/2012 of June 25 has amended the Labour Code and the employer and the employees (directly of through its representatives) may agree on these flexibility schedules regarding to the working hours, even if not provided in any collective regulation.

■ HOLIDAYS AND DAYS-OFF: employees are entitled to a paid annual holidays period of 22 working days. Recently, the aforementioned Law n. 23/2012 has revoked the provision that entitled employees to additional 3 working days of holidays if their level of absence did not exceed 3 justified absences in a one year term.

In the year of admission, employees are entitled, after 6 months of execution of the contract, to 2 working days of holidays per each month of duration of the contract. Employees are also entitled to a mandatory rest day (usually, on Sundays) and to a complementary rest day (usually, Saturdays). Additionally, there are 9 paid public holidays and 2 non-mandatory public holidays

(local holiday and Mardi Gras). Please note that law n. 23/2012 has reduced the number of mandatory public holidays from 13 to 9.

■ MATERNITY AND PATERNITY LEAVE: this is one of the matters that has been amended by the Labour Code 2009, extending the duration of parental leaves and allowing it to be taken jointly or alternatively by the employee and the spouse.

The main difference is now between parental leave taken exclusively by the employee (whether female of male) or jointly with the spouse. As a general rule, the parental leave is 150 or 180 days after the birth, where 6 weeks are mandatory for the female employee. The spouse (male employee) is always entitled to a leave of 10 working days (consecutive or not) after the birth.

If the parental leave is exclusively taken by one of the spouses, its duration may vary from 120 to 150 days. During the parental leave, these employees are entitled to a subsidy paid by the social security, as the salary is not due by the employer. In some cases where parental leaves are extended by decision of the employee, the subsidy paid by the Social Security may be reduced and salary will still not be due by the employer.

There are also other leaves supported by the social security, for purposes of assistance to family, which duration has also been extended by the Labour Code 2009. The employer and the employee may, at any time, agree on an unpaid leave.

■ SICKNESS AND INJURY: absences to work due to illness or injury are deemed as justified absences. In these cases, the salary is not due by the employer as employees are entitled to a subsidy paid by the social security.

In case of labour accidents, the insurance company shall be responsible for the payment of the salary and other compensation for any damages suffered by the employee as a result of the accident. To such extent, under the law, the employer has to enter into an insurance, otherwise it shall be liable for every costs and compensation due to the employee. Moreover, the non-compliance with this obligation constitutes a serious infringement, subject to a fine applied by the Labour Authorities.

■ TERMINATION: as a general rule and save in the cases of termination with cause for disciplinary reasons, the employer is absolutely prevented from unilaterally terminate the employment contract.

However, during the trial period, either party may unilaterally terminate the employment contract with immediate effects and no compensation is due, save if agreed otherwise. Should the employer wants to terminate the contract in the trial period and if the contract has been in force for more than 60 days, the termination has to be communicated 7 days prior notice and if it the contract is being executed for more than 120 days, said prior notice is extended to 15 days.

The employee may terminate the employment contract at any time by means of a prior written communication, which varies according to the type of contract (see below). The employee may also terminate the employment contract with cause, if the employer has breached any legal or contractual rights, case where it shall be liable for the payment of a compensation, to be settled by the court, ranging from 15 to 45 days of base salary per each of seniority, with a minimum equivalent to 3 months of base salary.

Termination with cause. The termination with cause requires a previous internal written proceeding, where the employee may file a reply and require the hearing of witnesses and other means of proof. This internal proceeding is detailed in the law and should the company fail to comply with certain formalities the dismissal is deemed as wrongful. In the course of this proceeding, the workers' committee (if existing) and the trade union (if the employee is an union representative) have also to be consulted. Additionally, in the case of pregnant and breast feeding employees, the dismissal requires a favourable opinion from a governmental body committed to gender equality and maternity protection.

The law defines cause for termination as a serious and intentional conduct of the employee, which determines the immediate impossibility of maintenance of the employment relation, i.e., the breach of legal and contractual duties. The employee may judicially dispute the dismissal within the year subsequent to the dismissal. The burden of proof of the existence of cause for termination relies on the employer.

Should the dismissal be ruled wrongful, the employee may opt to be reinstated in the company or to be paid a compensation, to be settled by the court, ranging from 15 to 45 days of base salary per each of seniority, with a minimum equivalent to 3 months of base salary. In the case of small companies (less than 10 employees) or management employees, the company may oppose to the reinstatement, case where the compensation shall vary from 30 to 60 days of base salary per each year of seniority.

Additionally, the company has also to pay to the employee a compensation for any moral or patrimonial damages resultant from the dismissal and also the unpaid salaries due since the date of the dismissal until the date of the court's ruling. In the case of term employment contracts, the amount of this compensation cannot be lesser than the unpaid salaries due since the date of the dismissal until the term of the contract (or until the date of the court's ruling, should it occur before the term of the contract).

Individual redundancy and collective dismissal. Besides termination with cause, the employer may only terminate the employment contract grounded on objective reasons, specifically market, financial or technological reasons. The burden of proof of the existence of these grounds for termination relies on the employer.

If, within a 3 months period, the employer intends to terminate, at least, 2 or 5 employees (whether the company has up to 50 employees or more than 50 employees, respectively) the collective dismissal shall apply, otherwise the individual redundancy procedure shall be the applicable one.

In order to terminate the employment contract, either by redundancy or in the extent of a collective dismissal, the employer has to enact a procedure, which involves the affected employee(s), the workers committee and the Ministry of Labour.

In short, the procedure comprises 3 stages: (i) initial written communication to the affected employee(s), (ii) information and consultation with the employees and their representatives and (iii) decision of the procedure, which has to be communicated with prior notice, from 15 to 75 days, depending on the seniority of the affected employee(s). The Labour Code 2009 has reduced the duration of these stages but, in some cases, has increased the prior notice period, which in the Labour Code 2003 has 60 days to every employees, irrespectively of their seniority.

The compliance with the several legal requirements foreseen for the initial communication and for the decision is most relevant, otherwise the termination shall be deemed as wrongful. Please note that, in respect to the individual redundancy procedure, Law n. 23/2012 has brought a relevant amendment: if there are 2 or more employees performing the same functions, to select the position to be terminated, the employer is no longer subject to criteria exclusively based on the seniority of the employees; in fact, the selection of the employee to be terminated in now based on "relevant and non-discriminatory criteria" determined by the employer. However, this amendment has recently been ruled as unconstitutional by the Constitutional Court, thus, the seniority criteria shall remain in force.

The termination by redundancy or by collective dismissal entitles the employee to a compensation. As referred above, this matter has been subject to relevant amendments, implemented by Law n. 53/2011 and, more recently, by Law n. 69/2013 of August 30. The compensation will be calculated in different terms, whether the employment contract has been entered into before of after November 1 2011.

For contracts prior to November 1 2011, compensation shall be calculated in the following terms: (i) in respect to the period of execution of the contract until October 31 2012, compensation is equivalent to one month of base salary per each year of seniority; (ii) in respect to the period from November 1 2012 to September 30 2013, the compensation is equivalent to 20 days of base salary per each year of seniority and (iii) in respect to the period from October 1 2013 until the date of termination, the compensation is equivalent to 18 days of base salary per each complete year of seniority (in the first 3 years, when the contract has not reached 3 years on October 1 2013) and to 12 days of base salary per each complete year of seniority (in the subsequent years until the date of termination). The compensation calculated in accordance has the following with these rules cannot be lesser than the equivalent to 3 months of base

salary. In respect to the periods referred in (ii) and (iii), the relevant salary cannot exceed 20 times the minimum national wage (€485,00) with a maximum amount equivalent to 12 times the monthly base salary or, if the monthly salary exceeds €9.700,00, the compensation cannot exceed €116.400,00 (240 times Portuguese minimum wage).

For contracts entered into between November 1 2011 and September 30 2013, the compensation shall be calculated in the terms referred in (ii) and (iii), with the maximum limits referred above. However, these rules have the following exceptions:

- When the first parcel of the compensation (i.e, from the admission to October 31 2012 or from the admission to September 30 2013, as the case may be) is equivalent or exceeds 12 times the monthly salary of the employee or 240 times the Portuguese minimum wage (i.e., ¤116.400,00), the remaining parcels of the compensation shall not be calculated, thus, the compensation shall be exclusively calculated until said dates.

- If the part of the compensation calculated until the dates referred in (a) above does not exceed 12 times the monthly salary of the employee or 240 times the Portuguese minimum wage (i.e., €116.400,00), the total amount of the compensation cannot exceed these limits.

- If the parts of the compensation for contracts prior to November 1 2011 referred in (i) and (ii) above is equivalent or exceeds 12 times the monthly salary of the employee or 240 times the Portuguese minimum wage (i.e., €116.400,00), the parcel (iii) shall not apply. If the same parts of the compensation referred in (i) and (ii) does not exceed 12 times the monthly salary of the employee or 240 times the Portuguese minimum wage (i.e., €116.400,00), the total amount of the compensation cannot exceed these limits.

For contracts entered into after October 1 2013 compensation is equivalent to 12 days of base salary per each complete year of seniority. If the court rules the termination as wrongful, the terms referred above in respect to termination with cause shall apply.

Termination by agreement. The employer and the employee may, at any time, agree in written on the termination of the employment contract. The law does not provide any minimum or maximum limits for the compensation to be paid (in fact, the payment of a compensation is not mandatory). The employee may revoke the termination agreement within the 7 days subsequent to the date of its signature, save if it is entered into before a public notary, where it shall produce its effects irrevocably as of the date of signature.

Permanent employment contracts

This is the standard type of employment contracts, as term employment contracts may only be entered into under specific conditions (see below).

The contract does not have to be executed in written, although under the law, the employer has to render to the employee information on the basic terms of the agreed employment. The trial period for these contracts varies according to the functions to be performed: (i) 90 days for standard employees, (ii) 180 days for employees holding a trust position or committed to functions requiring high technical skills and (iii) 240 days for management and senior employees. However, the parties may agree on the reduction or exclusion of the trial period.

Save in the cases of termination during the trial period, termination with cause, individual redundancy or collective dismissal, the employer is absolutely prevented from unilaterally terminating the employment contract.

The employee may terminate the contract at any time by means of a written communication addressed to the employer with 30 or 60 days of prior notice, whether he/she has up to 2 years or more than 2 years of seniority, respectively.

Term employment contracts

This type of employment contracts may only be entered into to face a temporary need of workforce and for the period of time strictly necessary. Although the law provides an open clause to define said "temporary need of workforce", it also foresees some situations which generally enable the employer to hire term employees, from which we highlight the following: (i) replacement of employees temporarily prevented from rendering their activity, (ii) exceptional increase of the company's activity, (iii) execution of a determined work or project (e.g., a services agreement entered into by the company), (iv) start-up of a new company or activity and (v) hiring of first-job seekers or long term unemployed persons.

Failure to comply with these requirements determines that the contract shall be deemed as a permanent one. There are fixed-term employment contracts and uncertain term employment contracts, where the first are the most common.

Fixed term employment contract may be entered for a maximum of 3 years and within such period be subject to 3 renewals. Uncertain term employment contract are limited to a maximum duration of 6 years. The employee may terminate the fixed-term contract at any time, by means of a written communication addressed to the employer with 15 or 30 days prior notice, whether the contract has been entered into for less than 6 months or for 6 or more months, respectively.

The fixed term contract terminates in the end of the agreed term (or of its renewals). To such effect, the employer has to communicate the termination to the employee by means of a written communication with 15 days notice before the said term, otherwise the contract shall be automatically renewed or converted into a permanent employment contract (if it cannot be renewed again or if it has reached its maximum duration).

The employee may also terminate the contract in these terms, by means of a written communication addressed to the employee with 8 days prior notice. The termination of the contract by the employer upon its terms entitles the employee to a compensation. The provisions on the calculation of the compensation were also amended by Law n. 23/2012 and by Law n 69/2013, as follows:

For contracts entered into before November 1 2011, compensation shall be calculated in the following terms: (i) in respect to the period of execution of the contract until October 31 2012, compensation is equivalent to 2 or 3 days of base salary per each month of duration of the contract, whether the contract has been in force for more than 6 months or up to 6 months, respectively one month of base salary per each year of seniority; (ii) in respect to the period from November 1 2012 until September 30 2013, compensation in equivalent to 20 days of base salary per each year of seniority and (iii) in respect to the period from October 1 2013 until the date of termination, compensation is equivalent to is equivalent to 18 days of base salary per each complete year of seniority (in the first 3 years, when the contract has not reached 3 years on October 1 2013) and to 12 days of base salary per each complete year of seniority (in the subsequent years until the date of termination).

The exceptions and limits to the amount of the compensation provided above for permanent contracts shall also apply. The termination of a term employment contract by the employee does not entitle him/her to be paid any compensation.

The recent amendments to the provisions on the compensation have enacted a new system of payment of the compensation, applicable only to employment contracts entered into after October 1 2013. To ensure that the compensation is paid by the employer, two public Funds have been created (although the employer may opt by a private Fund). These Funds are funded by the employer, which has to deliver monthly an amount equivalent to 1% of the employee's salary. When the contract terminates – except in the cases of agreement – the compensation is paid by the employer but the Find shall support half of the amount paid.

Management employment contracts

These contracts are less common in Portugal but represent more flexibility to the employer as it may terminate it at any time. The Labour Code has extended the cases where this contract is admissible. Therefore, besides the cases of employees committed to managing (or equivalent) functions directly dependent from the board of directors, as well as to the admission of personal secretaries of employees holding such management positions, management employment contracts may now also be entered into for the so called 2nd line directors (directors dependent of the General Manager).The main aspects of these contracts remain unaltered, as follows:

- 180 days trial period (may be reduced or suppressed by agreement of the parties);-

- Either party may terminate the contract by means of a written communication addressed to the other party with 30 or 60 days of prior notice, whether the employee has up to 2 years or more than 2 years of seniority, respectively (the parties may agree on the extension of the notice period);

- Termination by the employer entitles the employee to a compensation equivalent to 20 days of base salary per each year of seniority, with a maximum amount equivalent to 12 months of base salary, or, if the monthly salary exceeds €9.700,00, the compensation cannot exceed €116.400,00 (240 times Portuguese minimum wage). In any case, the amount of the base salary for calculation of the compensation cannot exceed the equivalent to 20 times the Portuguese minimum wage (currently, €485,00, thus, the limit is €9.700,00).

Social Security

The employer and the employee have to pay contributions to social security, which are calculated over the regular salaries paid to the employee, through a 34,75% rate, where 23,75% is supported by the employer and 11% is supported by the employee under a PAYE system.

In respect to members of the board, since January 1 2013 the social security rate is the same. In this case, the rate is applied over a conventional salary, varying from ¤419,22 to ¤5.030,64 (figures for 2013). The director may opt to pay contributions over the real salary, when it exceeds said maximum limit, as long as he has, in 2010, less than 56 years old and the company authorizes it.

Unemployment subsidy

The termination of an employment contract shall entitle the employee to the unemployment subsidy whenever the unemployment has not resulted from a decision of the employee (save in the cases where the employees terminates the contract with cause).

The unemployment subsidy is granted by the social security services. Its amount is calculated in accordance with the salary of the beneficiary in the 14 months preceding the unemployment and shall be equivalent to 65% of that salary. The amount of the unemployment subsidy is limited to 2,5 times the Social Benefits Index (currently, €1.048,05 = €419,22 * 2,5).

This subsidy is granted for a period which duration varies in accordance with the age and the contributive record of the employee/beneficiary, from a minimum of 150 days to a maximum of 780 days. The maximum amount of the subsidy and the periods of granting have also been recently reduced by Decree-Law n. 64/2012 of March 15.

The beneficiary is prevented from cumulate the unemployment subsidy with other income resultant from a professional activity, save in limited cases of low income.

Retirement

The statutory age for retirement is 65 years old – although it is expectable to raise to 66 years old in 2014 - with a minimum of 15 years of registered and paid contributions to social security.

However, employees may require the retirement with, at least, 55 years old, but the amount of the retirement pension shall be reduced per each month of anticipation. As a general rule, the beneficiary may cumulate the retirement pension (except in the case of anticipated retirement) with income resultant from the performance of a professional activity.

ILP ABOGADOS
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→ Spain

The team in ILP ABOGADOS work together in integrated and multidisciplinary teams to provide the full service capabilities to our clients need for litigation, corporate & commercial law, corporate finance, tax, restructuring and other interdisciplinary matters they retain ILP to handle. Our Firm´s success stems from key strengths:

- Client focus
- Legal skill
- Depth of people, experience and resources
- Team orientation
- A one-Firm organization

We are proud of the recognition we have received from our clients for our commitment to service, and we value their satisfaction as the only measure of our success. We have a solid reputation for our representation of companies seeking financing, as well as financing sources such as venture capital firms, private equity firms, institutional investors, and angel investors. ILP ABOGADOS has been involved in all facets of capital raising transactions, including seed and angel financings, mezzanine financings, venture capital financings, leveraged acquisitions, and recapitalizations.

Our corporate finance attorneys are experienced in all aspects of corporate transactions, including private placements, mergers, acquisitions and divestitures, joint ventures, distributorships, public offerings, tender offers, venture capital financing, equity and debt restructuring, project finance, workouts, corporate governance and general corporate law.

Because of the variety of litigation we handle, we have extensive experience with the breadth of remedies that are sought in business cases. Litigation is a core strength of ILP ABOGADOS, and a principal foundation of the Firm´s success.

We develop and tailor our litigation strategies to the specific facts of each case, and our goal is to achieve a resolution that best addresses the client´s particular business needs. Understanding and complex commercial contracts and the ability to litigate their terms is at the heart of what we do.

ILP ABOGADOS has represented businesses of all sizes in all sorts of litigation, ranging from how our clients structure and conduct their businesses to how they deal with customers, suppliers, partners and competitors.

Our attorneys have decades of experience counseling clients on establishing or altering their distribution systems (agency contracts, franchise ...). We have a track record of success in that field.

We represent management in labor, employment, and workers compensation matters. We serve clients of all sizes, from large companies with multiple locations to companies with a single office and few employees. We are prepared to work with clients as:

- An extension of in-house human resources department. We will work as a partner to help prevent problems through providing training programs and/or implementing cost-effective solutions.

- Labor and employment law counsel. We will counsel management teams on effective personnel management strategies in union and non-union environments and provide training to help avoid costly litigation.

In many instances, the firm serves as outside general counsel to mid-sized companies, coordinating all legal requirements and serving as a key advisor in tandem with a client's other professional service firms.

The firm's work includes breach of contract, breach of warranty and disputes involving closely held companies, as well as asset recovery. The Business Litigation Team also draws on ILP ABOGADOS full range of in-house capabilities including Tax, Real Estate and Corporate Finance.

ILP ABOGADOS´s insolvency services extend far beyond litigation in Bankruptcy Court. Our Bankruptcy lawyers are both deal-makers and trial attorneys. We possess the ability to negotiate and close highly complex bankruptcy transactions, or to litigate and try cases to conclusion.

→ Corporate Law

Regulations and Rules

The legal framework of Corporate Law in Spain consists of:

- The Code of Commerce (1885) (Articles 116 to 150; 169 to 237)
- The Joint Stock Companies or Public Limited Companies(RD 1/2010 *Ley de Sociedades de Capital, LSC)*
- The Private Limited Companies (RD 1/2010 *Ley de Sociedades de Capital, LSC*)
- The Rules of Mercantile Register (RD 1784/1996)
- Private Equity Act 25/2005
- Bankruptcy Act 23/2003
- The Securities Exchange Act (24/1988)

In European Law, the main sources are:

- Law of Mercantile Adaptation to the European Community Standards (Act 19/1989)

Types of Companies and Liability of shareholders

Joint Stock Companies *(Sociedades Anónimas)*, Private Limited Liability Companies *(Sociedades de Responsabilidad Limitada),* Collective Companies *(Sociedades Colectivas),* Partnership Companies - both simple and with registered shares *(Sociedades Comanditarias Simples o por acciones)* - and other associative forms have a diverse range of commercial uses

For setting up a business in Spain there are different legal forms. The forms most commonly adopted by foreign investors are:

- *SOCIEDAD ANÓNIMA (S.A.)* (Public Limited Company or Joint-Stock Company): Corporation with a minimum capital stock of 60,000 euros of which at least 25% must have been paid at the time of incorporation, divided into freely transferable shares (similar to: UK: PLC; Germany: A.G.; France: S.A., Italy: SpA)

- *SOCIEDAD DE RESPONSABILIDAD LIMITADA (S.L.)* (Private Limited Company or Company Limited by Shares): Small sized corporations (a minimum capital of 3,000 euros, fully paid at the time of creation) which are subjected to lower reporting and auditing requirements than the S.A., and which may not issue stock (similar to UK: Ltd.; Germany: GMBH.; France: SARL., Italy: SRL)

- *SUCURSAL* (Branch): a division of a foreign company with separated accounting.

Other less common but valid legal forms are:

■ *EMPRESARIO INDIVIDUAL* (Proprietorship): an individual manages the business, providing the capital and assuming unlimited responsibility.

■ *COMUNIDAD DE BIENES* (Co-ownership): a business is not an independent legal entity and belongs to two or several proprietors who assume unlimited responsibility.

■ *SOCIEDAD COLECTIVA* (General Partnership): an independent legal entity which is owned by two or more general partners, all assuming unlimited responsibility.

■ *SOCIEDAD COMANDITARIA* (Limited Partnership): an independent legal entity which is owned by one or more general partners assuming unlimited responsibility and by one or more limited partners whose liability is limited to the amount of capital contributed.

■ *SOCIEDAD PROFESIONAL* (Limited or Join Stock Companies): their corporate purpose is to develop the exercise of professional activities.

The establishment of a branch - amended by the Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State - requires:

■ A formal resolution of the foreign head office governing authorizing the establishment of a branch in Spain and appointing a representative.

■ The resolution must be duly legalized to be valid in Spain, in order to constitute the branch with a Spanish Notary.

■ Application for CIF (tax identification number) in the Tax Office´s of the registered branch office with the articles of the association and the DNI or NIE of the representative agent in Spain.

■ Sell off the ITP tax *(Impuesto de Transmisiones Patrimoniales y Actos Jurídicos Documentados);* it is mandatory to lodge it, but there is an exemption for the incorporation and for the capital increase.

■ Registration of the public deed in the Mercantile Registry in Spain (of its register office), including a copy of the head office's corporate bylaws duly stamped with an Apostille issued under the Hague Convention and a sworn translation into Spanish.

Share Capital (minimum and minimum paid in amount)

COMPANY	MINIMUM (S)	MINIMUM PAID IN AMOUNT (S)
PLC or Joint-Stock Company (SA)	60.000	25%
Company Limited by Shares (Limited Liability Companies) (SRL)	3.000	100%
Banks	18.000.000	100%
Insurance Companies	9.015.181,57	50%
Real Estate Investment Company	9.015.181,57	100%
TV Channels	6.010.121,84	50%
Chartered Stock Brokers	4.507.590,80	100%
Sociedades de Capital Riesgo (SCR) Venture Capital (Private Equity)	1.200.000	50%
Sociedades Gestoras de Fondos de Capital Riesgo (Venture Capital Fund Management) (Private Equity Management)	300.000	100%
Private Equity Funds	1650000.00	100%
Private Equity Companies	120000000	50%
Hedge Funds	3000000.00	100%

Classes of shares (registered/bearer, preferred/ordinary) Registered/Bearer

Bearer shares are corporate stock certificates which are owned simply by the person who holds them, the "Bearer". These shares are not registered on the books of the issuing corporation and are transferred by delivery. These shares are only allowed when capital stock has been fully paid up.

Registered Shares are those which are registered on the books of the issuing corporation *(Libro Registro de Acciones Nominativas)* and certificates the name of the owner. Common *(ordinarias o comunes)* Stock and Preferred (privilegiadas o preferentes) Stock.

The shares can grant different rights. The shares that have the same content of rights constitute the same class. When inside a class several series are constituted, those that integrate a series must equal nominal value.

The preferred stocks grant some privilege out of the ordinary ones, there will be necessary to observe the formalities prescribed for the modification of By-laws. If there is only one class of shares issued, they may be called "common shares", "capital shares", or just "shares" or "stock".

Common Stock

They represent ownerships in a corporation. Holders of common stock exercise control by of the society electing a board of directors and voting on corporate policy.

Preferred Stock

These shares bestow certain rights and privileges not accruing to common stock. These rights or privileges shall be financial (mainly concerning dividends); but never political, such as "the right of vote" or "the preferred subscription right". After the incorporation, the issuance of Preferred Stock is an amendment to the By-Laws.

Shareholders Meetings

Decisions reserved to the Shareholders (160 LSC):

- Approval of financial statements and distribution of profits and Approval/Censure of Management (Art. 160).
- Appointing and Removal of Directors (Art. 209- 252), Auditors (Art.264), Liquidators (Art. 376-382).
- Changing the By-Laws: (Art. 285-345)
- Winding-Up or Dissolution (Art. 360-370)
- Approval of the liquidating balance sheet
- Approval legal merger, spin-off, disposals of existing fixed assets
- Other matters determined by the By-Laws or the LSC

The board members must meet minimum once a year (Annual General Meeting -AGM) in order to approve the financial statements, distribution of profits and Approval/Censure of Management.

Classes and Power of Directors

- Sole Director *(Administrador Único)*
- Sole and several Directors *(Administradores Solidarios)*
- Joint and several Directors *(Administradores Mancomunados)*
- Board of Directors *(Consejo de Administración)*

Appointment of Directors

- Directors shall be appointed by the Shareholders Meeting (Art 214 LSC and Art. 142 Rules of Mercantile Register).
- When the administrative body is constituted by a board of directors, this one shall be formed by a minimum of three directors and in the SRL (Private Limited Liability Companies) shall not be more than twelve members.

Minimum number of independent Directors

There is no binding rule. Nevertheless, "The Olivencia Report" and "The Aldama Report" - two Codes of Best Practice - provide some recommendations concerning this question.

Term of appointment

- For Joint-Stock Companies (SA): The term of appointment shall never be longer than 6 years (Art. 221.2 LSC and and 145 Rules of Mercantile Register)

- For Companies Limited by Shares (SL): Directors may be appointed for an undetermined period of time (Art. 221.1 LSRL)

Range of Directors' liabilities

- Does Law require an specific agreement - or disclosure - for determining the remuneration of Directors? On the Joint stock companies, the scope of Directors' duties shall be determined by the By-Laws. On the limited liability companies, the Directors'duties are generally not remunerated, unless the By-Laws establish a remuneration and the method of calculation. Remuneration is often in the form of a percentage of after-tax profit.

- Any limit? (SA) The Directors' remuneration is set only after allocating the legal and statutory reserve and at least the 4% - or other higher percentage determined in the Estatutes – of dividends in favour of shareholders. (SRL) The aggregate amount of Directors' remuneration must not exceed 10% of the after tax profit.

Liabilities

(SA and SRL) Directors' liabilities, contribution to damages caused in the course of their duties and the procedure of claiming against them, are set in detail in Articles 236-241; 25LSC

Annual Accounts-Financial and operating results: Duties and Liabilities

Necessary Documents: 1) Profit and Loss Account; 2) Balance Sheet; 3) cash flow statement; 4) Statement of Changes in equity;5) Memory; 6) Management Report; 7) Auditors Report; and 8) the certification of the AGM Minutes in which the approval of Annual Accounts took place.

Time Limit for delivery of documents

Directors will draft the Annual Accounts *(Cuentas Anuales)* no later than 3 months after the end of the corporate year (December, 31). The AGM will examine and approve or refuse these Annual Accounts no later than 6 months after the end of the corporate year. Time Limit for deposit/application/registration:No later than 30 days after the AGM approves the Annual Accounts.

Authentication

Secretary and Chairman's signature in the certification of AGM Minutes in which the approval of Annual Accounts shall be authenticated by a Public Notary.

Publication in a Legal Gazette/Mercantile Register

The Legal Gazette *("Boletín Oficial del Registro Mercantil")* shall publish a report on the fulfilment of corporate duties, and a notice that the Annual Accounts are publicly available in full. By-Laws are also publicly available in Mercantile Register.

Private Equity Companies

The Private Equity Act (November 2005) regulates the so-called "Venture Capital Entities" and their Management Entities. A Venture Capital Company is legally qualified as a Financial Entity with the purpose of investing in: (i) Non-Financial Business, or (ii) Business that are not dedicated to non-listed Real Estate businesses. These Entities may acquire listed companies within the term of 12 months of acquisition; squeeze-out measures have not been approved yet, to facilitate taking 100% of shares.

Bankruptcy

The reform of the Spanish Insolvency Act (Ley Concursal) carried out in September 2003 was a very relevant change because it finished off a legal system which had finally become obsolete. The modification of credit categories and its preferences was one of the most important elements of this reform.

Quoted Companies

Regulation:
- Ley de Sociedades de Capital (Arts. 495-528)
- Ley 24/1988, de 28 de julio, del Mercado de Valores.

"The Olivencia Report" and "The Aldama Report" - two Codes of Best Practice - provide some recommendations concerning Quoted Companies. However, there is a new -January 2006 - specific Best Practice Blueprint for quoted Companies, known as "The Conthe Report" and properly named "Unique Code for Best Practice Corporate Governance of Quoted Companies". This Code includes the European Commission Recommendations (2005/162/EC) and (2004/913/EC).

→ Tax Law

CORPORATE INCOME TAX

Tax rate

The prevailing general rate is 30% from January 2008. For small size companies (turnover below of 10.000.000), the first 300.000 will be levied at 25%, the rest to 30%.

Corporate Residence

Any company, which is considered as resident, that generates incomes in the Spanish territory is subjected to corporate income tax, through a subsidiary, branch office. Permanent establishments opened in Spain: non-resident's tax at a 30% rate on their tax profit from 2008. Non-established foreign entities/individuals obtaining incomes in Spain are also subjected to non-resident's tax (24%).

Branch income

The incomes generated by a branch in a foreign territory, will be part of the incomes of the head office. Nevertheless, any income obtained in Spain through a branch of a foreign entity, will be

taxable at general rate, applying the general rules for Spanish entities. Incomes remitted from the Spanish branch to the head office are subject to a 19% withholding tax. Exemption is applied to EU head offices and to those territories that signed double taxation treaties with Spain.

Income determination

If the law does not say anything on the contrary (transfer pricing new policies are highly relevant in this particular area), the Spanish Accounting Rules *(Plan General de Contabilidad Español - PGCE)* will be applied to the income determination. If the law is applied in a different direction, two kinds of differences between the P&L financial and taxable will be generated:

- TEMPORAL DIFFERENCES: They generate advance or deferred corporate tax, their appearance is conditioned to the specific moment of the deducibility of the costs

- PERMANENT DIFFERENCES: It includes the non deductible costs, such as: capital retribution, corporate tax, penalties and sanctions supported from the Tax Administration, liberalities (with the exception of PR costs with clients or suppliers, sales promotion costs, moderate costs to employees, between others).

Tax incentives

The main tax incentives (to be done on the next tax due) are the following:

TYPE OF INCENTIVE	AMOUNT	LIMIT
(1) Business incentive:		
■ Full business circle in Ceuta and Melilla	50% CIT	35% (in all cases)
■ Local public services provided	99% CIT	
(2) Promoting specific kind of investment:		
■ Increase of number of disabled workers.	€6.000	
■ R+D expenses(2)	30%-50%	
■ Cultural assets/book publishing/films industry/coproduction (1)	5%-15%-20%	

(1) This incentive will be removed in 2014. (2) This tax incentive will be removed in 2012.

Group taxation (tax consolidation)

It is permitted for corporate tax effects, and the withholding on account of this tax. The decision must be taken and notified to the Tax Authorities at the beginning of the fiscal year. At this moment, the consolidated corporation should have more than the 75% of the capital of the Spanish entity, directly or indirectly.

Special tax regimes

■ CANARY ISLAND ZONE (ZEC): All the companies incorporated between June 2000 and December 31, 2013 can apply to this special regime, and receive the tax benefits until December 31, 2019. The registration requires: (1) a minimum investment of 100.000 (Gran Canaria y Tenerife) in the first two years of activity, (2) to create at least 5 new jobs in Gran Canaria or Tenerife or 3 in the other islands. The corporate tax is 4%, and limited to specific taxable base amount. The general rate will be applied over this base. There are exemptions regarding IGIC and transfer tax. The EU Parent-Subsidiary Directive are applie for non EU countries, with the exceptions of tax haven.

■ ETVE COMPANIES (Spanish holdings of foreign entities): Main features of the ETVE: (a) Their corporate purpose must primarily be the management and administration of shares in entities that are not resident in Spain. (b) They must have the corresponding organization of human and material resources.(c) The shares (or participations) held by the ETVE must be all nominative. (d) Incompatible with the regime of fiscal transparency. (e) It is required to communicate to the Ministry of Economical Affairs about the regime going to be used:

- Dividends resulting from benefits obtained by entities not resident in Spanish territory are exempt of Corporation Tax upon fulfillment of the following conditions:

  • The investment is at least 5 % and is maintained continuously during the fiscal year prior to the day when the dividends or shares become due.
  • The entity that is not resident in Spanish territory must be subjected to and not exempt of a tax that has an identical or similar nature as the Spanish Corporate Tax.
  • The income of the entity not resident in Spanish territory from which the dividends have been obtained must carry out business activities abroad, this condition is complied with in the event that at least 85 % of the income of the accounting period corresponds to:
    - Income obtained abroad not imputed by means of the regime of international fiscal transparency (passive income).
    - Dividends resulting from benefits, as well as gains resulting from the transfer of the stake in entities not resident in Spanish territory.

- Capital gains resulting from transfer of shares in entities not resident in Spanish territory, upon fulfillment in all the cases of the following requirements, are exempt
  • Those indicated in point a) above (referred to all the accounting periods during which the stake was held, except the first one, referred only to the day of the transfer).
  • That the acquirer is not resident in a Tax haven.
  • This regime is also applied to the rent resulting from the events of separation of a shareholder or liquidation of an entity.

The most important difference with the general tax system is the treatment of the dividends paid by the Spanish Holding to its non-resident shareholders or the capital gains obtained by the non-resident shareholders in the case of transmission of the shares of the Spanish Holding.

In this case a distinction must be made between the perception of dividends and the obtaining of capital resulting from the transfer of shares in the Spanish Holding (or in the events of separation or liquidation of the entity).

DIVIDENDS: The distributed benefit, when it results from income not integrated in the taxable base because of its exemption, it is considered not obtained in Spain and consequently not subjected to taxation in Spain.

Capital gains resulting from transfer of shares: The capital gains corresponding to either the provisions to cover exempt rent or to the differences in value imputable to shares in entities not resident in Spanish territory are considered gained out of Spain and are consequently not taxed in Spain.

Venture capital companies and funds and collective investment institutions.

The venture capital companies, regulated under Law 25/2005 will be exempted in a 99% of the revenues generated by shares transmission of related companies, if the investment has been in their assets at least 1 year and no more than 15. During the investment of the venture capital in the related company, at least the 85% of the buildings of the related company must have been used for the main activity of the company. The exemption is available for dividends received from related companies, no matter how long the shares have been in the venture capital assets.

There are other special tax regimes such us:

- Temporary consortia of companies.
- Restructuring transactions.
- Fiscal transparency (international-controlled foreign corporation rules)
- Special tax regime of the Basque country

Double taxation deduction

According to the Spanish regulations, a Spanish entity should be taxable in all the incomes perceived, even when some of them were generated abroad. Nevertheless, the Corporate Tax law considers a special deduction to avoid some activities are taxable in two territories, or in other entity.

- Internal double taxation deduction: It is focused in the double taxation over a single income for two different entities (generally dividends).

■ International double taxation deduction: There is a juridical double taxation, system which is applied to the same income taxed in two countries (withholding tax at source), and an economic double taxation, the same income taxed in two companies and/or in two different territories.

■ The dividends or profit-sharing income from a foreign entity are exempt in Spain if:
- The Spanish entity has at least 5% of the shares of the foreign entity, during the last fiscal year,
- The foreign entity is subjected to a similar tax to the Spanish corporate tax, and it is not a tax haven country. When a double taxation treaty is signed between that country and Spain with exchange of information clause, this clause is presumed;
- The income of the dividend was generated in foreign activities of the foreign entity carried out abroad.

About the double taxation, the imputation method is used, it means, gross foreign income (including the withholding tax already paid) is considered for Spanish tax calculation purposes, and then a tax credit for the foreign withholding tax is applied, limited to the corporate tax that would be paid if such gross income (with the deduction of all associated costs), had been obtained in Spain.

Tax administration

Returns. If there is a tax credit, a return can be applied.

Payment of Tax

The last day of payment is 25 th of July. After the first year of activity, three advanced payment are required (Oct. 20 th , Dec 20 th , Apr 20 th). The advance payment may be calculated according to the company size:

■ Large entities: 25% of the profit at Sep 30th, Nov 30 th and March 30 th .
■ Small entities: Can decide at the beginning of the fiscal year between the large entities system, or applying the 18% to the corporate tax paid the year before.

Withholding taxes

COUNTRY	DIVIDENDS	INTERESTS	ROYALTIES
Algeria	5	5	7 - 14
Arab Emirates	5	0	0
Argentina	10	125	3 - 15
Australia	15	10	10
Austria	10	5	5
Belgium	15	10	5

Bolivia	10	15	15
Brazil	10	15	15
Bulgaria	5	0	0
Canada	15	15	10
Chile	5 - 10	5 - 15	5- 10
China P.R.	10	10	10
Croatia	15	8	8
Cuba	5-15	10	5
Czech Rep.	5-15	0	5
Denmark	5-10	10	6
Ecuador	15	10	10
Egypt	12	10	12
Estonia	5-15	10	5-10
Finland	10-15	10	5
France	15	10	5
Germany	10-15	10	5
Greece	5-10	8	6
Hungary	5-15	0	0
Iceland	5-15	5	5
India	15	15	10-20
Indonesia	10-15	10	10
Iran	5-10	75	5
Ireland	15	0	5-10
Israel	10	10	5-7
Italy	15	12	4-8
Japan	10-15	10	10
Korea	10-15	10	10
Latvia	5	10	5-10
Lithuania	5-15	10	5-10
Luxembourg	5-15/10-15	10	10
Macedonian	5-15	5	5
Malta	5	0	0
Mexico	5-15	10-15	10
Morocco	10-15	10	5-10
The Netherlands	15	10	6
New Zealand	15	10	10
Norway	10-15	10	15
Philippines	10-15	10-15	10-15-20
Poland	5-15	0	10
Portugal	10-15	15	5
Romania	10-15	10	10
Russian Federation	5-15	5	5

Slovakia	5-15	0	5
Slovenia	5-15	5	5
Sweden	10-15	15	10
Switzerland	10-15	10	5
Thailand	10	10-15	5-8
Tunisia	5-15	5-10	10
Turkey	5-15/5-25	10-15	10
United Kingdom	10-15	12	10
United States	10	10	10
USSR	10-15	42278	10
Venezuela	10	10	5
Vietnam	7	10	5
Non teatry	15	15	25

Vat

VAT is levied in good supplies and services given and provided inside Spain, import/intra EU acquisitions of goods. There are three different rates: general at 21%, reduced at 10% and super-reduced at 4%. These rates have been changes the last July. In Canary Islands, VAT does not apply, but the IGIC *(Impuesto General Indirecto Canario)* with an ordinary rate of 7%.

Transfer Tax (Tt)

It is used in *"inter vivos"* transfers when there is no VAT. The rate can vary, depending on the Autonomous Region.

Stamp Duty

Notarial documents of valuable transactions (fix rate: 0,15 per sheet, variable rate:0,5). Other documents submitted to the Public Administration, administrative documents and mercantile documents (such as a bill of exchanges), have a scale. Compatibilities between the three taxes and the VAT:

	COMPATIBILITIES BETWEEN THEM			COMPATIBILITIES WITH VAT	
	COMPATIBILITY	INCOMPATIBILITY		COMPATIBILITY	INCOMPATIBILITY
TT versus CT	-	X	Transfer tax	-	X
TT vs SD	-	X	Capital Tax	-	X
(variable)	X	-	SD (Variable)	-	X
TT vs SD (fix)	-	X	SD (Fix)	X	-
CT vs SD (variable) CT vs SD (fix)	X	-			

→ Labor Law

In Spain the Labor Jurisdiction is quite protective for workers. It's difficult to obtain a favorable ruling defending investor's rights against the worker. Likewise, there are no court costs before the Labor Jurisdiction, so suing the employer is easy in Spain because no legal costs are incurred if the worker is defeated by the Company.

Contracts

It is generally possible to form verbal contracts, when the employee is over 18 (except for freelance workers). Contracting under Labor law in Spain is a broad subject, but can be summarized as follows:

■ PERMANENT CONTRACTS: unlimited in time. When we use this modality for hiring people with some specific conditions, we can benefit from reductions in Business Social Security contributions, if the firm is up to date with its tax and social security payments and has not been sanctioned for infringements. Those special workers are those aged under 30 years or over than 45 years, long-term unemployed (over 2 years), handicapped unemployed for more than 3 months, and unemployed women.

■ PART-TIME CONTRACTS: This is not strictly speaking a different type of contract, but rather a form of dividing the working day. There must be always a written contract and is divided into two forms: part-time and relief work. All contracts can be full-time or part-time (except for training). The part-time mode denominated 'relief' is used to hire a worker to progressively substitute a worker who is going to retire.

■ CONTRACTS OF DEFINED DURATION (TEMPORARY): There are three types:

- *For Works*: it is used for a particular work or service, always with an uncertain duration, but always subordinated to the work or service to be performed. Maximum duration limited to 3 years.
- *Temporary:* Serves to substitute a worker until his/her reincorporation, e.g. Forced Absence (exercise of Public Positions); must be written.
- *Casual:* it is used to attend to market conditions (circumstances and production) resulting from the accumulation of orders and/or an excess of tasks. Cannot exceed 6 months within a period of 24 months (Otherwise the contract must be made permanent). The contract must be in writing if the period is longer than 4 weeks.

The transformation of these contracts (Works, Temporary and Casual) to permanent contracts once that maximum duration has been completed operates automatically. In case the contract stop fulfilling all the requirements for a modality (Works, Temporary and Casual), the contract can be renamed as a permanent contract, and the worker can ask the employer or the Public Entity in change for a document to prove his/her new status.

Training Contracts

It consists on providing the worker with knowledge and techniques to develop his/her work, there are two types:

■ TRAINING: once the student has finished his education, he/she participates in a business as an intern, and the employer must provide a certificate of the training received at the end of the period. It shall last minimum 6 months, and maximum 2 years. The number of these contacts in the firm is limited depending on its size. The salary cannot be under the minimum inter-professional, and must be between the 60 and 75% of the official salary according to the applicable Collective Convention.

■ APPRENTICESHIP: This is for workers to obtain diplomas, degrees and equivalents. For professions where no higher education is required. The age of the worker must be necessary between 16 and 21 years old, in case of unemployed it may be rise to 24, and not to be in possession of the qualification required for the post. It may last minimum 6 months and maximum 3 years. It can be part-time, but the program must necessary include at least a 15% of lessons.

Other special contracts

■ Group work is for a group of workers having a link with the firm and a group leader; not necessarily written.
■ Working from home, without supervision by the firm, written
■ Substitution, to cover anticipated premature retirements, in written.

Contracts for the handicapped

If the contract is Permanent, a 33% of disability is required and must be accredited with a certification, and the worker cannot be related to the employer more closely than the second degree. The contract must remain in force for at least three years, and in the case of a justified termination, there is an obligation of hiring for the remaining period. These contracts give access to an automatic subvention for the firm and a bonus of four monthly social security quotas.

If the contract is Temporary , it must be for at least 12 months and not more than 3 years. The rest of requirements of this modality are the same as for the permanent contract. It includes a bonus of social security quotas, and its conversion to a permanent contract generates a subvention. It can be offered for Training; the training in this case has no age limit and the firm is not limited in the number of contracts it can offer. Bonuses are paid in social security. If the contract is for Apprenticeship, the handicapped person must provide the disability certificate, as well as the education certificates. The apprenticeship period may start up to 6 years from completing the studies.

Contracting Administrative and Top Management Staff

The Authorised Employers and/or Top Manager of the business must be distinguished from the ordinary labor relation. If the employer chooses to be self-employed, he/she is inscribed in the self-employed regime and with regard to Social Security, works for him/herself. However, in the case of a limited or non-limited company, non-labour, he/she can work either as self-employed or as employed because the regime will vary depending on his/her functions and participation as capital partner of the company.

■ If a partner performs management or advisory functions, or personally offers other services, and also possesses effective control of the company, either directly or indirectly, he/she should register in the self-employed regime (SELF-EMPLOYED). It is understood that effective control of the company in terms of participation is possessed when: The related parents to the second degree or less constitute more than or equal to 50%; his/her share alone is equal to or more than 33%; or he/she is the managing director of the company in possession of at least a 25% shares.

■ In any other case, the inscription is made in the Social Security Offices: NORMAL REGIME for executives or persons in charge, and PROFESSIONAL REGIME for top managers with certain executive power.

As far as the General Professional Regime is concerned its main singularity is that the contract finishes it does not involve right to un-employment benefit (Worker unemployment). Top Management personnel are regulated under Real Decreto 1382/1985, 1st of August. The general characteristics of top management indicate a specific regulation in terms of previous

notice of contract termination, non-simultaneity agreements, indemnification for contract termination, etc...

Contract Suspension

In specific circumstances, the worker or employer can suspend the labor contract, which involves to interrupt it without terminating it. During the suspension of the contract, the employer does not pay the salaries. The worker will continue in his/her position when the causes that motivated the suspension are over. The contract may be suspended : a) By mutual agreement between the parties, b) For causes set out in the contract, c) For temporary incapacity . Here the employee continues to pay social security, (if the incapacity becomes total, absolute or great invalidity, the contract will be cancelled), d) For maternity of the working woman: The suspension for maternity is 16 weeks, 18 weeks in the case of multiple births. The woman can opt to take 6 weeks before childbirth. The father can use the last 4 weeks, if both work. e)For privation of freedom (in the absence of a condemning sentence), f) By temporary major force, g) Because of strike h) Due to legal closure of the workplace, i) Due to the suspension of work and salary for disciplinary measures; j) For training permission or professional development ; k) To take part in an adaptation or retraining course (maximum of 3 months), l) For adoption and fostering of minors under 5.

There are other circumstances that imply suspension of the contract :

■ For leave of absence : a) Forced : In some cases, the firm is obliged to suspend the contract and maintain the job post for the employee. The period of leave in calculated according to seniority. b) Voluntary: The position is not maintained, but rather preferential treatment is given when a vacant position arise. c) For child care : With a maximum duration of 3 years, from the birth of the child. Only one of the parents can apply for it, and it doesn't leads to the conservation of the position, except during the first year. d) Circumstances stated in Collective Conventions .

■ Due to economic, technical, organizational or production causes, or those derived from force majeure. The existence and temporary character of this causes must be proved and the contract suspension requires future viability. In order to obtain the suspension, the employer must undertake the same process as for an *Expediente de Regulación de Empleo*, in art. 51 of Worker Law. This circunstancies can also be solved with a reduction between a 10% or a 70% of the working day, week, month or year.

Permits and Holidays

The worker has the right to absence for diverse causes. The Holiday Period cannot be less than 30 natural days. Holidays cannot be compensated economically and the dates must be known two months beforehand.

Employees' Years of Service

Dismissal compensations are calculated depending specially on employee's years of service in the company that is the reason of temporary contracts lasting over their limits shall be presumed to be for an indefinite period: i.e. temporary contracts (training, relief...) or for a determined duration (a particular works or services) in which the cause is not justified or accredited. Law 35/2010, on September 17th about the improvement of growth and employment, provided a new wording for article 15.5 of the Workers' Statute, with the following literal reading:

Without affecting the provisions set down in sections 1.a), 2 and 3 of this article, employees who have been contracted for a period over twenty-four months in a period of thirty months, with or without a continuity solution for the same or different work position with the same company, through two or more temporary contracts, whether directly or by being made available through temporary employment companies, with the same or different contracting modes, shall acquire the condition of fixed contracts.

This prevention will be also applied to those cases of fusion or combination of societies. With regard to the peculiarities of each activity and the characteristics of the job, collective bargaining shall establish requirements aimed to prevent the abusive use of temporary contracts with different employees for performing the same job. The provisions of this section shall not be applied to the use of training, relief or substitution contracts.

Termination of The Contract – Dismissals

Contracts can be terminated for various reasons, and in all of them the parties are obligated to notify it to the other party. The employer must calculate the appropriate quantity owed to the worker (settlement), always including the proportional part of extra pays and spear holidays, discounting to the worker the advanced payments and holidays in excess.

The causes for TERMINATION are:

- Mutual agreement between the parties.

- Causes agreed in the contract.

- End of the work or service contracted. Temporal contracts, except for temporary and training contracts, grant the employee the right to receive an indemnification of eight days of salary for every year worked. Since September 2010 this regime is being gradually changed:
  - Contracts celebrated before December 2011: 8 days of salary per year of service
  - Contracts celebrated after January 2012: 9 days of salary per year of service
  - Contracts celebrated after January 2013: 10 days of salary per year of service

- Contracts celebrated after January 2014: 11 days of salary per year of service
- Contracts celebrated after January 2015: 12 days of salary per year of service

■ Resignation of the employee.

■ Permanent total incapacity, absolute or great invalidity of the employee. In case of total permanent incapacity of the worker is declared, the firm can choose to offer him/her another position more fitting with his/her capability. In case of permanent total incapacity or great invalidity, the work contract is terminated, but the position is reserved for a period of two years.

■ Death, retirement, incapacity or termination of the judicial character of the contractor

■ Collective dismissal. When the process affects a determined number of employees during a minimum period of 90 days. There must be economic, technical, organizational or production causes. The employer must provide proof of their existence and the character of these causes, which might be provoking negative results, or might produce a continued decrease of the incomes. It generates the right to an indemnification of 20 days of salary per year worked, to a maximum of 12 months. In order to articulate these dismissals, an *Expediente de Regulación de Empleo* is required, which requires a period of discussions between the employers and the representation of the workers, to try to verify the causes of the redundancies, and to set some measures of readaptation for workers that can reduce the damages.

■ A unfair cause. When the dismissal is based on causes out of the Law, the judge shall declare by sentence the dismissal was unfair, so the employer will have 5 days to decide the compensation, which might be: a) the readmission of the employee and the salaries unpaid since the dismissal date; or b) 33 days for each year worked, to a maximum of 24 monthly payments and the salaries unpaid since the dismissal date. However, in order to obtain the indemnification, it is necessary to apply for it in the Social Court of Law. (i) Substantial modification of the work conditions that damage the workers professional training or dignity; (ii) Unpayment or continued delays in the payment of the salary agreed; (iii) Any other grave breach of the obligations of the employer (except force majeure) and the refusal of the employer to reintegrate the employee in the same position when a legal sentence has declared it unjustified.

■ For legally causes. There are some objective causes which turn a dismissal declared as fair. Objective DISMISSAL of the worker, with an indemnification of 20 days per year worked, limited to 12 monthly payments, in limited circumstance: a) Ineptitude, b) Lack of adaptation of the employee to his/her position, after technical modifications, c) Absenteeism, during a 20% of labor days in two continued months, or 25% of labor days in four discontinuous months, not taking into account periods of: strike, maternity, risk during the pregnancy, holidays, or illness or accident. d) Amortization of job places. (e) Substantial modification of the work conditions that damage the workers professional training or dignity when it does not affect a number of workers enough of collective dismissal.

In all of these cases, the dismissal must be notified in written, within previous 15 days expressing the cause and paying the legal indemnification.

DISCIPLINARY DISMISSAL: Must be based on a grave and guilty breach of the workers' obligations, such as: Repeated and unjustified branches of attendance or punctuality; lack of discipline or disobedience; verbal or physical offences against the employer, fellow workers or relatives that live with them; breach of contractual faith or abuse of confidence in the course of the job, continued and voluntary decrease in the normal or agreed work yield, habitual and serious drunkenness or drug-addiction with negative repercussions at work.

In relation to Dismissal, it is important to note that: If a Legal representative or trade union delegate is dismissed, the process is initiated through an *"expediente contradictorio"* and the rest of the members of the representation and/or trade union of affiliation are heard.

■ Trade union affiliation, being a candidate to represent a trade union, race, sex, civil status, pregnancy, religion, political opinions, etc. can never be a cause for dismissal.

■ The Dismissal can be legally challenged within a period of 20 working days, but before going to Court, the case must be heard by the *Servicio de Mediación, Arbitraje y Conciliación (SMAC).*

■ The Dismissal is declared , in the SMAC (by the parties) or in the Court (by the Judge) as:
- Fair, in which case, there is no indemnification.
- Null, for violation of basic rights or discrimination, in which case, the employee must be reinstated immediately.

■ Unfair, because the circumstances were not as claimed by the employer, in which case, the employee must either be rehired within 5 days or indemnified with 45 days of salary for each year worked, to a maximum of 42 monthly payments. If the employer acknowledges the unfairness of the dismissal within 48 hours of the ruling by the SMAC or the Court, the worker need not claim its legal recognition.

If the employer chooses readmission, the worker must be notified within 10 days from the sentence and readmit the worker within a further 3 days. As an exception to the indemnification for unfair dismissal, in the permanent contracting of disabled workers, the indemnification is 33 days salary for each year of service, with a maximum of 24 monthly payments and 12 days of salary for temporary contracts.

Summary Table of Termination of Contract (Royal Decree 3/2012)

Cause of extinction Unemployment Compensation Maximum legal

CAUSE OF TERMINATION	COMPENSATION	MAXIMUN	RIGHT TO COLLECT UNEMPLOYMENT
1. Mutual consent	If agreed		No
2. Temporary work or service	From 8 to 12 days per year		Yes
3. Termination clause included in contract	If included		Yes
4. Worker resignation with compensantion	20 days/year	9 to 12 months	Yes
5. Unfair cause with judicial resolution	45 days/year	42 months	Yes
6. Unfair cause	33 days/year	24 months	Yes
7. Worker resignation	No		No
8. Incapacity	No		Yes/No
9. Died	15 days		No
10. Retirement	No		No
11. Died, incapacity or retirement of the employer	1 month		Yes
12. Termination with extinction of the corporation	20 days/year	12 months	Yes
13. Objective/Fair causes	20 days/year	12 months	Yes
14. Unfair causes	33 days/year	24 months	Yes
15. Promoting for permanent contracts: - Unfair - Fair	 33 days/year 20 days/year	 24 months 12 months	 Yes Yes

The Salary of the Worker. Salary and economic rights for services rendered

In consideration of services rendered, the employee may receive money or payment of any kind, and also accrues a right to a month of vacation pay. Two bonus payments per year are obligatory, the amount being fixed by the applicable Collective Convention. IRPF (income tax) and social security payments must be withheld by the employer on these amounts.

The salary comprises the salary base and/or "salary extras". Remuneration in kind may not exceed 30% of the total salary. The minimum inter-professional wage is the minimum for all professions, is reviewed annually and its amount may not be embargoed for debts of any kind. The minimum wage for any activities in agriculture, industry and services, without distinction between the employees' sex or age, is set at 21 euros/day or 641 euros/month, depending on whether the wage is set by days or by months. Both monetary remuneration and remuneration in kind are computed in the minimum wage. This wage is understood to refer to the legal working day for each activity, without including in the case of daily wage the proportional amount for Sundays and public holidays. If the working day is lower than standard then the pro rata amount is to be received.

The delay in salary payment generates an annual interest of 10%. In case of insolvency, the first to receive payment are the employees. In the case of insolvency, the employees are paid by the *FONDO DE GARANTIA SALARIAL (FOGASA).* All employees and representatives have the right to receive advances. The employer must keep salary receipts and contribution slips for at least 4 years.

Non-salary items are the amounts paid for expenses incurred at work, social security payments and indemnifications for transfers, suspensions and dismissals.

Employees' Representatives and Union Representation

The participation of the workers in the Firm can take place through Unitary and/or Trade Union Representation. According to the number of workers in the firm, the Unitary Representation is by the delegation of personnel or firm committees elected by the employees. The Trade Union is the representation of the employees affiliated to the Union . The Law establishes a minimum number of trade union delegates for trade union representation.

Specific responsibilities are conferred to these representatives by Law: to receive information from the employer, to report on certain matters, to carry out monitoring and to control of certain rules, to negotiate agreements with the employer, to participate and to collaborate in the business activity, etc,...and to facilitate exercise of these functions, the employer must provide specific materials (use of premises, notice board) and time (paid), and not to do it may be considered a crime against trade union freedom.

Personnel delegates or committee members are elected every 4 years. The period can be shortened if the representative stands down, is substituted in partial elections or if he/she is revoked by the same employees who elected the delegate or member.

In disciplinary matters, they have the right to receive a prior disciplinary file before any sanction is applied, and if the dismissal is unfair, they can opt for indemnification or readmission.

On June 2011, Spain´s Government approved new labor reforms, affecting the collective bargaining system. The bill aims to introduce more flexibility within companies so that when they undergo changes or go through difficult situations they can adapt to new conditions.

The main change implies that company pacts shall have more legal weight than Sectoral agreements when conflicts arise. Thus, the COMPANY AGREEMENTS must respect the minimums of national and regional Legislation, but they shall be over Sectoral Agreements in the following areas: Base salaries and incentives, Overtime, Flexible work hours, Job classification and Contract modality. Another measure to increase the flexibility consist on allowing the employer to redistribute 5 percent of employees' work time.

Social Security Contributions And Basis For Contributions

The employer pays monthly contributions to social security, consisting of: The Firm's Quota + the Employee's Quota. The payment is made in the month after the month of payment to the employee, through two forms: I) contributions register, where the wages and contributions to be paid are detailed); and II) which is obligatory via Internet if the workforce consists of more than 10 or 15 workers.

To calculate the value of the contributions, we shall multiply the rate legally established by the basis for contribution, deducting the bonuses applicable to the case. The basis for contributions is the employee's monthly salary plus the proportional part of the extra payments and other income of the worker with a periodicity greater than monthly. Although there are various special regimes, (such as sea workers, artists, bullfighters, etc.) but we will only consider the contributions to the general regime that consist of the following:

- Common contingencies;
- Work accidents and illnesses
- Professionals;
- Unemployment ;
- Fondo de Garantía Salarial;
- Professional training ;
- Overtime

Employers must make contributions for all of the above, whereas employees only contribute for common contingencies, unemployment and professional training. The contributions depend on the salary and professional category of the employee, as well as if the contract is permanent or not and the professional activity in which he/she works.

Social Security Bonuses

Recent labor reforms establish bonuses for permanent contracting, which effectively reduce the employer's social security contributions (Information from the Minister of Labor website).

Social Security Bonuses

COMMUNITIES	DESCRIPTION	AMOUNT (EUROS)	TERM
BONUSES PERMANENT CONTRACTS			
Gender or family violence victims		1.500	4 years
Older than 45 years old unemployed during a min. of 12 months before the contract, and registered in the unemployment office.	Unemployed	1.300	3 years
	Women	1.500	3 years
Young people between 16 and 30 years old and registered in the unemployment office.	Unemployed	1.000 1st year; 1.100 2nd year; 1.200 3rd year.	3 years
	Women	1.100 1st year; 1.200 2ndyear; 1.300 3rd year.	3 years
Other communities under special circumstances	Workers under social exclusion situations	600	4 years
Handicapped people	Handicap women	Handicap people up to 45	During all the term
General: 4.500	5.350	5.700	During all the term
Extremely handicapped: 5.100	5.950	6.300	During all the term
Change of Part time contracts to permanent contracts or hiring in substitution of a retirement	Men	500	3 years
	Women	700	3 years

EXCEPTIONAL BONUSES TO TEMPORARY CONTRACTS					
Handicapped people hired through the temporary	Men up to 45	Men up to 45	Women up to 45	Women up to 45	Term
General	3.500	4.100	4.100	4.700	All term
Extremely handicapped	4.100	4.700	4.700	5.300	All Term
Gender or family violence victims	600				All Term
People under social exclusion	500				All term

BONUSES FOR THE MANTEINANCE OF PERMANENT CONTRACTS		
Permanent contracts with employees older than 60 and working during a minimum of 5 years	50% of the corporation's payments for contingencies excepting termporary leaves, increasing 10% in yearly basis until 100%	All Term

BONUSES FOR CONTRACTS TO HANDICAP PEOPLE BY SPECIAL EMPLOYMENT CENTERS		
Permanent contracts, temporary contracts or change of Part time contracts to permanent contracts or hiring in substitution of a retirement	100% of the Social Security Quotas	All Term

Retirement

The authorities have recently modified the Retirement Policy. Taking into consideration the important repercussion of its effects, it will be implanted progressively. So that from 2013 to 2027 the age of retirement will increase proportionally month by month, and in the end the age of retirement will be 67 years old, and the compensation will be calculated over the incomings of the last 25 years.

→ Foreign Investment

In the context of implementation of the European Union Maastricht Treaty, Spain made significant revisions to its legislation on foreign investment. Royal Decree 664/1999 has set up as a general rule complete freedom of capital movements, both in relation to foreign investments in Spain as well as to Spanish investments in other countries. However, this general regime does not apply to certain specific sector legislation such as the defense sector. These exceptions to the general regime of complete freedom of capital movements are only allowed on the basis of public order and security, public health, and the exercise of sovereign authority.

Foreign investments:
- Participation in Spanish companies;
- Establish and increase capital allocated to branches;
- Subscription for and acquisition of marketable debt securities issued by residents;
- Participation in mutual funds recorded in the Registers of the Spanish National Securities
- Market Commission (CNMV)
- Acquisition by non residents of real estate located in Spain valued at more than 3.005.060,52€ (or regardless the value if the investment is originated in a tax heaven defined in Royal Decree 1080/1991 of 5 July).
- Formation or participation in joint ventures, foundations, economic interest groupings, and cooperatives if the total value of the investment exceeds 3.005.060,52 € (or regardless the value if the investment is originated in a tax heaven defined in Royal Decree 1080/1991 of 5 July).

Governmental Declarations (of capital), authorizations and permits.

Order of 28th May 2001 puts into effect the guidelines from the Royal Decree 664/1999. It establishes the necessary procedures to declare foreign investments and its liquidation, as well as procedures for obtaining authorizations and annual reports. Direct foreign investments are subjected to a notification after the investment has been made. The form and the deadline of the declaration are determined by the 1st July 2010 Resolution.

Foreign investments in Spain, as well as their liquidation, must be declared to the Register of Ministry of Industry, Tourism and Trade, for administrative, statistic or economic purposes. These documents can be downloaded at http://subsede.comercio.mityc.gob.es ↗ Proceeds and Electronic Services ↗ Download assistance programs.

Typically, non-resident investors are required to report the investment once it has been made. The general regulation may be suspended in exceptional cases by decision of the Council of Ministers, so a prior authorization is required in the certain circumstances:

■ When the declaration concerns an investment coming from a tax haven jurisdiction, the declaration must be made by the investor prior to the actual investment. This declaration is in addition to the declaration to be made subsequent to the actual investment.

No prior declaration is required in the following cases:

- Investments in negotiable instruments, as well as participations in investment funds registered in the records of the *"Comisión Nacional del Mercado de Valores (CNMV)"* (Securities and Investments Board).
- Where the foreign participation does not exceed 50% of the capital of the Spanish company target of the investment.

■ Prior declarations of investments are made by the investor on the preprinted applications DP- 1 (Previous declaration of foreign investment coming from tax havens in non listed companies, branches and other type of investment) or DP-2 (Previous declaration of foreign investment coming from tax havens in real assets). No documents are annexed to these applications.

■ Foreign investments in Spain in activities directly related to national security, such as those intended for the production or sale of weapons. Except when the foreign investment does not exceed 5% of the share capital of the Spanish company and it is not allowed to be a member of the management board of the company, directly or indirectly.

■ Foreign investments in Spain that affect or might affect activities related to the enforcement of the public order or which affect or might affect public security and health.

■ Direct or indirect investments in Spain by non EU member states for the acquisition of property intended to be used as diplomatic and consular offices.

The prior declaration of investment is valid for six months, from its filing, so that, when the investment not materialize in that time, a new prior declaration is required. It should be pointed out that once the prior declaration has been made investors can make their investment without having to wait for prior notification from the government, even though they are still subjected to the notification after the investment has been made.

Order of 28th May 2001 establishes that the actual investment shall comply with the following rules, such as declarations related to investment operations in privately held companies, branches, real assets and other type of investment.

The declaration (application D1-A for the declaration of foreign investment in privately held companies, branches and other types of investment) shall be addressed to the Investment Registry of the Ministry of Economy within a maximum period of one month from the actual investment, supporting documents shall be attached to the said declaration to evidence the following:

■ non resident status of the investor.
■ where applicable, compliance with any requirement of sector legislation.
■ Having obtained an authorisation in the hypothetical cases of a suspension of the liberalization regime.
■ Having made a prior declaration, if required.

For investments in real assets, a concise explicative report which states the main features of the investment. Declarations related to investments in real assets. The declaration shall be submitted to the Investments Registry through the printed application D- 2A (Declaration of foreign investment in real assets) within one month from the actual investment.

Declarations related to investments in negotiable instruments. Non residents who subscribe to or purchase negotiable instruments in the Spanish market, on their own account or that of third parties, shall maintain their securities and assets in a registered account opened with an authorized market compensation and liquidation institution.

The depositary or administrator for the assets represented by account entries, shall submit to the *"Dirección General de Comercio e Inversiones"* (General Direction of Trade and Investments) about a report on flows in the ordinary or extraordinary market operations for non residents, subscriptions to share capital made directly with the issuing company or through the Bank, registrations and discharges of non resident deposits related to security transactions other than sales and purchases thereof.

These reports are rendered on a monthly basis between day 1 and 20 of each month for transactions during the previous month.

Likewise, the deposits and balances in accounts of non residents on the Entries Central of the depository, as at 31 December must be declared during the month of January
Transfer of dividends, interests and royalties

The acts, businesses, transactions and operations of any kind which suppose, or require, charges or payments between residents and non residents, or transfers to or from abroad, on a general basis, are free.

However, as an exception to this general rule, the Ministry of Economy, may forbid or limit certain categories of transactions with specified foreign countries or specified operations of charging, payment or transfer, whenever these dramatically affect the interests of Spain, or in application of measures adopted by international bodies of which Spain is a member. Likewise, whenever short term capital movements are exceptionally ample and may cause significant tension in the foreign exchange market or dramatic alterations in the direction of the economic and foreign exchange policy, the Government, at the request of the Ministry of Economy, is able to adopt safeguard measures as necessary, submitting certain types of transactions to a regime of administrative authorisation.

The charges and payments between residents and non residents, as well as the transfers to or from outside of Spain, may be coded in euros or in foreign currency, and must be made through a Deposit Entity inscribed in the *"Registros Oficiales del Banco de España"* (Official Registrar of the Bank of Spain, "Registered Entities" hereinafter).

In any case, the resident shall declare to the "Registered Entity", his name or company name, domicile, tax identification code, name or company name and domicile of the non resident sender or beneficiary of the charge or payment, amount, currency, country of origin or destiny, and concept of the operation by which the charge, payment or transfer takes place. The "Registered Entities", in their case, shall provide, in the manner determined by the Ministry of Economy and within thirty days after each calendar month, such information.

The "Registered Entities", as well as the resident natural or corporate persons who carry out this type of operations, shall be subjected to the obligation of providing the competent bodies of the Government Administration and the Bank of Spain, in the manner established, the data required for the purposes of statistic and fiscal follow-up of the operations.

Repatriation of capital

Procedure of liquidation of investments in privately held companies, branches, real assets and other types of investment.

For the total or partial liquidation of such investments, the holder of the same, commissioner for oaths or other person obliged to declare, as the case may be, shall submit the declaration of liquidation in the printed application D- IB (Declaration of liquidation of foreign investment in non listed companies, branches and other types of investment) duly filled in and subscribed. Each holder shall fill in a single application for each liquidation referred to even if there are several documents of declarations of investment in one same Spanish company.

Procedure of liquidation of investments in real assets

For the total or partial liquidation of a foreign investment in real assets, the holder or the commissioner for oaths shall submit the declaration of liquidation in the application D-2B (Declaration of liquidation of foreign investment in real assets) duly filled in and subscribed by the non resident holder.

In case of partial disinvestments, either for the change of one or several of the holders of a property *"pro indiviso"*, either for the transmission of a part of the real assets declared in one same instrument of declaration, such partial disinvestment shall be declared to the Registry of Investments.

In the event of the exchange of securities in a privately held company for negotiable instruments of another company, the printed application D-1B (Declaration of liquidation of foreign investment in privately held companies, branches and other types of investment) of the investment liquidation, through the intervention of the company or Securities Brokers or the member of a secondary market, official or not, of values which are part of the operation, along with the Significant Participations Communication, if deemed suitable, shall be submitted. The values acquired through the exchange shall be included as the "purchase flow" in the mandatory report by the depositary or administrator.

In those cases where the exchange of negotiable instruments for values of other privately held companies takes place, the relevant Significant Participations Communication for the securities delivered in exchange shall be submitted, if suitable, along with the printed application D-1A (Declaration of foreign investment in non listed companies, branches and other types of investment) of foreign investment declaration in non negotiable instruments, with the intervention of the entity which orchestrated the transaction, shall be submitted. The values delivered in exchange shall be included as the "purchase flow" in the mandatory report by the depositary or administrator.

Annual Report

Spanish companies participated by non-resident must file an Annual Report on investments to the Administration in the following cases:

- Branches in Spain, in all cases
- Spanish companies with capital or shareholder´s equity of over 3.005.060,52 euro and in which 50% or more of the equity capital is held by non-resident investors.
- Spanish companies with capital or shareholder´s equity of over 3.005.060,52 euro and in which a single non-resident investor holds 10% or more of the company´s equity capital or of the total voting rights.
- Spanish companies that belong to a company group or in which 50% or more of the equity capital is held by a non-resident investor or in which a single non-resident investor holds 10% or more of the company´s equity capital or of the total voting rights. In such cases, neither the capital nor the shareholder´s equity is taken into account.

The report must be presented within 9 months from closing the accounting period. For this procedure the application D4 must be completed, and a copy of the Business Tax or the annual accounts must be attached to it.

Foreign personnel; permits and other aspects to be considered

Prior work permits are required for all foreign citizens over sixteen years of age who wish to carry out in Spain any lucrative, work-related or professional activity, on their own behalf or that of others.

This regime shall not be applied to the nationals of the member States of the European Union, to the nationals of Third States to whom, by reason of relationship, the communitarian regime can be applied, except the nationals of the new States (save for Cyprus and Malta) that joined the European Union on 1 st May 2004, for the application of a transitory period of two years from that date.

Work permits will only be delivered to new immigrants only if in Spain it is not possible to find adequate workers with the skills needed in order to perform the work as determined by the State agency which handles job offers.

The application for work and residency permits must be presented personally by the prospective immigrant to the appropriate State agency. In the event that the applicant is also an employer, the application must be submitted by the applicant or a legal representative of the employer.

Where the applicant resides outside of Spain, the application may be submitted before the Diplomatic Mission or Consular Office in the district where he may live.

The application will be processed in the following manner: Upon completion of a review of the application, the relevant authority (Government Vice Delegate or Government Delegate in the autonomous communities made out of one sole region) shall deliver a unique resolution by which the foreign citizen is authorised to work and live in Spain, the beginning of his work activity

and carry out his membership of, registration in and quotation to the "Seguridad Social" (Social Service).

The resolution shall be notified to the businessman, indicating the amounts that need to be satisfied in concept of taxes, expiring if after a month from the date of such notice the corresponding visa was not, in its case, requested.

Once the application has been submitted to an Embassy or Spanish Consular Office, the resolution shall be notified to the interested party by the mentioned instance, through the Ministry of Foreign Affairs. The resolution and notice shall be carried out within a three month period, counting from the day after that one of the date in which the entry of the application in the registry of the competent body to handle it has taken place. After that period has expired, the initial work permit applications shall be understood as dismissed.

→ Real Estate Law

The Registry System development has stamped Real Estate in Spain. The Spanish Registry System is a mixture of the French system (where inscription is voluntary) and the German system (where inscription is compulsory). Estate transfer takes place unrelated to the Registry while estate inscription or registration is made by properties: one property per register sheet. Other basic element that distinguishes the Spanish Registry System from other systems around the world is the Land Registrar, with professional qualifications and his/her enrolled to the office (by a Civil Service Examination).

In Spain, any property is firstly related to legal businesses, and later registration in the Registry provides a pledge to their purchasers before any third party. The Land Registry provides a secure, stable and trustworthy record of land ownership and recorded interests therein, so it promotes social and economic reliability and contributes to national development.

The protection of third party's rights by Law in Spain is so high that one of the purchaser's duties of care is to previously enquiry at the Registry about the ownership and encumbrances of the property he/she wants to purchase.

The information and protection provided by the Spanish Land Registry is basic to understand Real Estate in this country. The Spanish Registry System has replaced fiduciary and trustee systems (more frequent in Anglo-Saxon countries) in the field of Real Estate.

In fact, practice shows that it is becoming really complex to apply Directive 94/47/EC (Timesharing) through the *Ley de Aprovechamiento por Turno de Bienes Inmuebles* (Act 42/98), because it is very difficult to match the "Club System" with the Spanish Registry System. The

situation is becoming really delicate as Spain is the second country in the world (after USA) on the number of Timesharing resorts.

Types of Ownership

In Spain there is the so-called actual right of "ownership" regardless other real property rights such as leasehold, possession - in deed or bare or bona fides ... -, accretion , easement, emphyteusis, antichresis, usufruct, mortgage, acquisitive prescription... All of them are inspired by Roman Law, on which Spanish Law is based.

Timesharing is called *"Aprovechamiento por Turno de Bienes Inmuebles"* in Spain; it is an atypical real property right and is regulated by Act 42/98 in Spain. Act 42/98 requires the resorts to register their structure and working in the Land Registry; it mixes thus the Anglo Saxon Fiduciary system with the Spanish Registry System, and creates some missfunctions very difficult to solve. For instance, any clause that may exonerate promotor's liability is null.

Land Register

The Real Property Registration in Spain is managed by Land Registry Offices throughout the whole country which registers, stores and manages documents such as deeds, mortgages, plans of survey and a wide range of property real rights. All registered and deposited records are available to the public (for a fee) to search title or to obtain information about the ownership of any real property.

The Land Registry's object is to register the acts and contracts related to ownership and other real rights on real estate (rentals, usufructs...) However, the bare (or naked) possession can not be registered in the Land Registry.

To be registered those acts or contracts must be have been recorded as a public instrument or been acknowledged by a judicial authority or by the Government. Moreover, any acts or contracts granted in a foreign country which are having effects in Spain (Apostille ...), have to be entered in the Spanish Land Registry.

The Land Registry attests the title against third-parties.Th ose who acquire their right from a person who appears in the Registry as entitled to transfer that right, are supposed to possess the real estate according to bonas fides requirements. So their possession is going to be presumed as according to Law once that they register their right. Even though the seller's right is set aside or discharged for reasons that are not recorded in the Registry.

The third party's bona fides is presumed as long as any third party can proved that the information recorded in the Registry was not accurate. Caution: Holders of any title acquired gratuitously do not enjoy the same protection.

The parties in a contract are not required to register the acquisition of a real right. However, the registration is highly recommended, because it implies a presumption of legality and it is a prove itself against third parties who claim a right on the same real estate. The rights that have not been recorded in the Land Registry are presumed as a " manifest negligence and a clear breach of duty of care "; it does not mean it is illegal but it may cause damages to the purchaser or the real right holder that has not entered it.

Another important question is the difference between the Land Registry and the Cadastre or Land Survey. The Land Registry records and states real estate ownership. On the other side, the Cadastre represents real estate through a more detailed and graphical description. The Cadastre's purpose is related to its tax functions.

Reliance on register positive-negative

Registration is considered negative because once a first entrance is registered in the Land Registry, any intend of registration coming afterwards are going to be refused, until you prove the transfer. Transfer formalities e.g. notary deed

To be able to reap the benefits of the protection provided by the Land Registry, any holder must communicate the acts or contracts which can modify, transfer or extinguish any real right on any real estate. Moreover, any real estate leasehold for six or more years must always be entered in the Registry.

Mortgages. How they are created, and main rights of mortgagees

A mortgage gives a security for all kind of liabilities and does not alter the debtor's limitless responsibility. A mortgage covers improvements and betterments as well as any compensations granted or due to the owner. However, a mortgage does not cover any personal property, proceeds or any earnings due and not paid, express agreement excepted. Any real estate, any real property rights (save easements), any legal usufruct (save the usufruct granted by the widowed spouse) can be mortgaged.

Construction and use restrictions

The carrying out of any works or building requires a licence: *Licencia de Obra Mayor* (with a large budget or works on structural elements) and *Licencia de Obra Menor* (a sensu contrario). In any case, the Municipal Ordinances and the Local Building Code define the differences between a *Licencia de Obra Mayor* (Large Works Licence) and a *Licencia de Obra Menor* (Minor Works Licence). Moreover, any land or underground usage (partitions, land movements, demolition ...) requires a permit that is regulated in the Local Zoning Regulations.

The Zoning Regulations ascribe different usages (residential, turist, tertiary) to each land class (urban land, land which may be developed, or protected land that can not be urbanized). Land usage and land classes limit building rights. In addition, each type of land has a percentage of urban development permitted.

Any license is subjected to the payment of a fee called *Impuesto sobre Construcciones Instalaciones y Obras* which has to be paid by the owner. This tax is calculated by applying to the current costs of the building or the works, a rate that is determined by the Town Hall, and will NOT be over 4%.

The application for the permission requires a Technical project signed by an Architect and approved by the Architects Professional Association. The Technical Project is carried out by the Work Manager -who is responsible for it- who may be or not the author of the Technical Project. Local Building Codes do not require a dateline of the works. It is usual for the owner to keep an amount of money (a percentage) from the promotor as a guarantee for the proper completion of the works.

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→ Ukraine

ARZINGER (prior to March 2009, Arzinger & Partners Ukraine) is one of the leading independent legal experts in Ukraine. The firm was founded in Kyiv in 2002 by two Ukrainian lawyers, Sergey Shklyar (currently the firm's Senior Partner) and Timur Bondaryev (now Managing Partner). A German lawyer, Wolfram Rehbock (now Senior Partner), joined the team in 2002. The firm has a team of 57 seasoned legal professionals led by 6 partners.

Arzinger & Partners Ukraine has become the network's largest and most dynamic office. Every year since 2002 our business has grown dramatically, annually doubling both revenue and the number of lawyers we employ. In 2007, Arzinger was one of the first Ukrainian legal firms to open a second office in Lviv – the heart of Western Ukraine. In September 2010 Arzinger opened its office in Odesa. Attorneys of the South Ukrainian Branch will represent interests of clients in Odesa, Mykolaiv, Kherson, Zaporizhzhya regions and AR Crimea. Today, the Arzinger team consists of 92 employees.

To sustain solid growth, in January 2009 the firm launched a new strategy, which includes: change of status to an independent local firm; development of and expansion into new markets and practice areas; and joining international associations of independent law firms. In line with our new strategy we have created a number of new posts, in order to make the practice more efficient. These include positions in Knowledge Management, IT, HR and Communications.

The firm specialises in M & A, Corporate Law, Real Estate and Construction, Antitrust and Competition, Litigation and Arbitration, IPR, Tax, Banking & Finance, PPP, Public Procurement, Employment, Administrative Law, Capital Markets and IPOs. We serve clients operating in financial services, energy, real estate, pharmaceuticals, food & beverages, telecommunications, retail, aerospace, agriculture, and the infrastructure & transport industries.

The firm has built close working relationships with high-profile law firms in Germany, Austria, the United Kingdom, the United States, Russia, and many other jurisdictions. As a result, our clients have access to global legal services of unsurpassed quality. These relationships have developed and proved invaluable over many years, but they are non-exclusive: accordingly, Arzinger is able to work on any transaction - in coordination with the client – with those law firms which we consider to have the most appropriate expertise.

→ Real Estate Law

In accordance with the legislation of Ukraine the term "real estate" is defined as land plots and the property located on land plots which cannot be relocated without its depreciation or changing its purpose.

A land plot is a part of the earth's surface with fixed boundaries, exact location and the defined rights attributed to it. The freehold (ownership) covers, within the boundaries of a land plot, the surface (soil) layer and water bodies, forests and perennial plantations located on such land plot, unless otherwise provided by law and provided that it does not affects third parties' rights, as well as the space above and beneath the surface for the height and depth necessary for construction of buildings.

Based on the above definition, to qualify for real estate, the property (if other than land) should have a foundation and should be inseparably attached to a land plot, so that it cannot be removed from a land plot without its depreciation or changing its purpose.

The following types of property do not fall within the category of real estate as they do not meet all the requisite qualifications: temporary constructions, small architectural forms, stationary outdoor advertising, the so-called "Finnish constructions", wagons used for temporary residence (hotels, inns) and for other purpose (restaurants, entertainment establishments, etc.). At the same time, an integrated property complex of an enterprise is treated as being equivalent to real estate. As for the construction in progress, its disposal as a real estate property can be carried out upon registration of title to such construction in progress in accordance with the legislation of Ukraine.

Rights to Real Estate

In Ukraine, a building and the underlying land plot enjoy a separate legal treatment. The Ukrainian legislation defines the following types of rights to real estate:

- IN RESPECT OF A LAND PLOT: ownership (private, state and communal), lease, permanent use, emphytheusis, superficies, and servitude (easement);

■ IN RESPECT OF OTHER REAL ESTATE: ownership (private, state and communal), lease, right of operational management, right of full economic use, and servitude (easement).

The right of ownership to a land plot includes the right to own, use and dispose of a land plot. Land lease is a contract-based possession and use of a land plot required by a lessee for conducting commercial and other activities for a defined period and in consideration for an agreed payment. A leased land plot can be further sublet by a lessee to a third party upon prior consent of a landlord.

The right of permanent use of land is the right to possess and use the land plot being in state or communal ownership without limitation of the term of use. The following entities are currently entitled to have the right of permanent use of a land plot: (1) enterprises, institutions and organizations being in state or communal ownership; (2) Ukrainian non-profit organizations of disabled persons, their enterprises, institutions and organizations; and (3) religious organizations of Ukraine, whose charters (regulations) are registered in the established order. These can use land plots under the right of permanent use solely for the construction and servicing of religious or other buildings necessary for supporting their activities.

An easement (land servitude) is the right of an owner or a user of a land plot to use third party's land plot either for free or on a chargeable basis for pass, laying out cables, electricity transmission lines etc. Land servitudes can be either permanent or temporary. The existence of an easement does not entail the seizure of a land plot or termination of owner's title to it.

Emphytheusis is the right to use a third party's land plot for agricultural purposes, while superficies means the right to use a third party's land plot for construction purposes. Emphytheusis and superficies are rarely applied in practice.

In contrast to ownership and lease which are applicable to both land and other real estate, the right of operational management and the right of the full economic use are normally related to buildings and constructions.

The right of operational management of state property may be granted to state and municipal institutions and organizations, which do not conduct commercial activity; for instance, ministries, local state administrations, government agencies, etc. An organization or institution which holds real estate property on the right of operational management is not entitled to dispose of it with the intention of gaining any profits. The respective ministry or department, acting on behalf of the state or local community, exercises control over the use of the granted property and they may withdraw the property from the operational management if is used in breach of its designated purpose.

The right of the full economic use is defined the Commercial Code as the right of an entity that possesses, uses and disposes of the property assigned to it by the owner (or its authorized

representative), with the limited authority to dispose of certain types of the property with the owner's prior consent only. The right of the full economic management is provided to the state-owned or municipal enterprises for the purposes of their commercial activities. The owner of the property exercises direct or indirect (i.e., through its authorized representative) control over the use and management of the property without interference in the day-to-day business activities of the enterprise.

Registration of Property Rights to Real Estate

Since the beginning of 2013, a new system of registration of real estate rights has been enacted in Ukraine. The essence of the reform lies in the introduction of a unified State Register of Property Rights to Real Estate and their Encumbrances, which contains records on all registrable rights to real estate and their encumbrances, and replaces the former multiple registers with fragmented information on property title. Most of the data contained in the register are not publicly accessible, with only title or interest holders and authorized bodies being entitled to access.

The State Register is maintained by Ukrderzreestr subordinated to the Ministry of Justice. State registrars of Ukrderzreestr are exclusively allowed to register the title to newly-created property. Notaries perform functions of state registrars while certifying a property deed, which allows simultaneous conclusion of an agreement and registration of the respective title.

Under the Ukrainian legislation the following rights and encumbrances are subject to compulsory registration: right of ownership, right of use, easement (servitude), emphyteusis, superficies, right of economic use and operational management, lease, right of permanent use of land, mortgage, trust management as well as other property rights, tax lien and other real estate encumbrances.

The right of ownership to a real property or a land plot arises upon its state registration with the State Register. At the same time, since the corporeal rights (such as lease or mortgage) are derived from the ownership title, registration of the ownership title precedes registration of such proprietary rights. The state registration of all rights to land is carried out after the state registration of land with the State Land Cadaster. All the property rights to real estate duly registered with previous registers (before 2013) and those, which had not to be mandatory registered under the previous legislation, remain valid.

The Principle "Land Follows the Property"

The past years saw the general trend toward the gradual implementation of the principle "Land Follows the Property". In pursuance of the above principle, the amendments have been adopted to both the Civil Code and the Land Code to the effect that the indication of the cadaster number

and the total area of a land plot are qualified as the material term and condition of an agreement for alienation of a building located on such land plot (except for multifamily apartment buildings).

The principle "Land Follows the Property" is further supported by the amendments introduced to the Civil Code, the Land Code as well as the Law "On Land Lease", which can be summarized as follows. In case of acquisition of title to a building, a freehold or leasehold of the owner of such building in respect of the underlying land plot terminates. The freehold of the land plot or part of it underlying the property passes to an acquirer without change of its designated use. Where the underlying land plot is not a freehold, but is rather in use (lease), the new owner acquires such right of land use in the same scope and on the same terms and conditions as available to the former land user (lessee). Where an acquirer is not entitled to own land under Ukrainian law, it acquires the right of land lease instead.

Despite certain promising signs of the "automatic" transfer of land following the property, the above principle does not work properly yet. As before, the parties would have to comply with the ordinary formalities and procedures to execute the transfer of title to land.

Restrictions on Foreign Ownership to Land

In accordance with the legislation of Ukraine, foreign legal entities, foreign citizens and joint ventures with foreign participation may purchase and lease buildings, constructions and their parts as well as lease both agricultural and non-agricultural land plots equally to Ukrainian citizens and legal entities without foreign participation. However, they may purchase land plots only according to the procedure and with limitations set out by the Land Code.

Foreign individuals, foreign entities and foreign states are prohibited from acquiring agricultural land into private ownership. As far as non-agricultural land is concerned, foreign citizens and stateless persons are entitled to purchase non-agricultural land plots within residential areas without limitations and non-agricultural land plots outside residential areas only if such persons own real estate located on such land plots.

Foreign entities and joint ventures may only acquire land into ownership (i) within residential areas if they acquire real estate and for construction of the property involved in the commercial activities; or (ii) outside residential areas if they purchase real estate.

State or communal land may be sold to a foreign legal entity provided also it establishes and registers its permanent establishment in the form of a commercial representative office in Ukraine. State-owned non-agricultural land is sold by the Cabinet of Ministers of Ukraine, subject to the prior approval of such sale by the Ukrainian Parliament. Communal non-agricultural land is sold by the relevant municipal authorities, subject to the prior approval of such sale by the Cabinet of Ministers of Ukraine. The legislative guidance on the procedure for

the obtaining of approval of the Cabinet of Ministers is lacking. In practice, the obtaining of such approval appears lengthy and complicated.

Those state-owned lands underlying the property which is subject to privatization may be sold to foreign legal entities by a state privatization body upon approval of the Ukrainian parliament. Communal land plots may be sold to foreign legal entities by respective local councils upon consent of the Cabinet of Ministers of Ukraine.

Please note that any land plot which is in state or communal ownership as well as the rights to it (lease, superficies and emphyteusis) should be sold on a competitive basis (at a land auction) subject to the extended list of exceptions. For example, when a land plot is underlying building owned by an individual or a legal entity, or a land plot is granted for subsoil use and special water use pursuant to a special permit (license), etc.

The Land Code does not specifically provide that enterprises with 100% foreign investment may purchase state-owned or communally-owned land plots. Under the conservative interpretation of this gap, enterprises with 100% foreign investments are not thus entitled to own any land plot, including private land plots.

From the effective risk management perspective, investors are often recommended to consider a "two-tier" structure. Under this structure, which has become quite common in Ukraine, a "first-tier" Ukrainian subsidiary company is created, whether (i) fully owned by a foreign legal entity or a foreign natural person, or (ii) jointly owned by foreign and Ukrainian legal entities or natural persons. The "first-tier" subsidiary company would then establish a "second-tier" Ukrainian subsidiary company. Because the "second-tier" entity will directly involve a Ukrainian founder(s) only, it will not qualify for a foreign legal entity or a joint venture under the Land Code of Ukraine and, consequently, it will not be subject to the above restrictions while acquiring land in Ukraine.

When structuring acquisition transaction, the following important requirement should also be considered. The Civil Code expressly prohibits the establishment of the consecutive chain of two sole shareholder companies, i.e. a sole shareholder company cannot found another sole shareholder subsidiary company. Therefore, the "first-tier" subsidiary must be founded by at least two shareholders to enable the establishment of the "second-tier" legal entity with a sole participant. Alternatively, the "second-tier" subsidiary company must be founded by at least two participants, if the "first-tier" subsidiary company has a sole participant.

Land Moratorium

An important factor preventing the development of the land market in Ukraine is the temporary moratorium on alienation of agricultural land plots. Firstly introduced in 2001 the moratorium was initially planned to remain in force for five years – considered a reasonable period in order

to properly prepare a legislative and institutional framework essential for the establishment of a well-governed land market. However, it has been extended several times and at the end of 2012 the members of Parliament voted for the yet another extension – this time the moratorium is set to remain in force until the adoption of the law on agricultural land turnover, but not earlier that January 1, 2016.

According to the wording of the governmental draft Law "On Agricultural Land Turnover" it is likely that foreign investors will not be allowed to directly invest in Ukrainian agricultural land, thus the only available option will be lease.

Acquisition of real estate

There are two forms of real estate acquisition: a direct purchase of real estate ("asset deal") or acquisition of shares in the company holding real estate ("share deal"). In choosing the preferable form of real estate acquisition, the following advantages and disadvantages of each option should be considered.

The main advantage of an asset deal is that the purchaser acquires a specific asset and it does not succeed to any debts and liabilities of the seller. Additionally, the registration of the property title is carried out simultaneously with the conclusion of the respective agreement.

The *disadvantages* of an asset deal are:

- It is necessary to re-register the right of ownership to the real estate property;
- The date of transfer of the right of ownership is postponed till registration of the respective right with the relevant state register;
- Increased transactional costs (state notary fees and payment to the State Pension Fund, does not apply in the case of land sale) amount to 1% + 1%;
- In the case of the sale of a real estate property which is built on a leased land plot, a land lease agreement will not be automatically assigned to the new owner of such real estate property. Upon transfer, a land lease agreement should be concluded with the new owner;
The purchase price is subject to VAT (save for the sale-purchase of land which is not subject to VAT);
- Ukrainian law is applicable to the agreement as the property is located in Ukraine;
- In the event of sale of a land plot, construction documents and other permits for construction activities on a land plot may not be automatically transferred to the new owner. Respective documents should be re-registered for the new owner;
- Limitations for foreign capital in respect of land relations.

The *advantages* of a share deal are:

- A relatively fast procedure for registration of documents necessary for transfer of ownership to a participatory interest (share);
- VAT does not apply;
- An offshore exit is possible;
- A foreign governing law and foreign arbitration may be considered;
- It is not necessary to re-register the right of ownership to the real estate property;
- No limitations for acquisition by foreign investors;
- Land lease agreements, licenses, building permits, project documentation and licensing documentation for an investment project remain in force and do not need to be re-executed;
- Relatively low transaction costs.

The *disadvantages* of a share deal are:

- All the liabilities and debts of the target company are transferred to the purchaser;
- Acquisition may require a prior permit from the Antimonopoly Committee of Ukraine.

→ Labour Law

The Ukrainian legislation deals with employees in general, making no distinctions based on their positions (with some minor exceptions). The Labour Code of Ukraine dd. 10.12.1971 is the principal legislative act governing employment relations in Ukraine. However, a number of its provisions are elaborated in the subordinate legislative acts. The specification of working conditions, remuneration and social privileges are commonly left to collective bargaining agreements provided that the agreements do not limit the guarantees established for employees, by law. The following defines some principal requirements vis-à-vis labour relations, established by the Labour Code and other legislative acts.

Working Hours

Working hours may not exceed 40 hours per week. For certain categories of employees, the working week is established at the level of 36 or 24 hours and for some categories irregular working hours are allowed. Overtime work is allowed by the legislation only in exceptional cases and may not exceed four hours within two days on the row or 120 hours per annum and is compensated at double rates.

Time Off

Employees are allowed to have breaks for resting and taking meals which last up to two hours. The breaks are not included into the working time. By a five-day working week employees have two days-off, and by a six-day working week – one day-off. The usual day-off is Sunday.

If a public holiday or a free day concurs with a day-off, the day-off is postponed to the next working day after such public holiday or a free day. In general, no work shall be done on days-off. It is allowed in exceptional cases that single employees work on such days. Work on public holidays is allowed in exceptional cases according to the legislation.

Work on public holidays is remunerated in double amount. Upon request of an employee he/she can also get another day-off. Work on days-off is remunerated either in double amount or by giving another day-off (mutual consent is required).

Vacation and Holidays

Statutory paid annual vacation is 24 calendar days. For certain categories of employees the law provides for a longer vacation period or additional vacations, including social one. In case of dismissal of an employee he/she receives a monetary compensation for all unused days of the annual vacation and the additional vacation for employees with children. There are some additional vacation types in Ukraine:

- additional annual vacation for work under arduous and harmful work conditions;
- additional annual vacation for special work nature;
- additional study vacation;
- research leave;
- maternity leave;
- childcare leave up to three years of age;
- adoption leave;
- additional vacation for employees with children;
- unpaid vacations.

Salaries and Wages

The salary amount should be established by an individual employment agreement with an employee. The minimum monthly salary for unqualified labour may be no less than the threshold established by the labour legislation (currently UAH 1147.00). The minimum salary does not include any additional payments, benefits, bonuses or compensation payments.The salary is subject to personal income tax that is presently levied at the rate of 15% (17% with respect to excess amount of a threshold of 10 minimum monthly wages). Salaries are paid in Ukrainian currency at least twice a month.

Guarantees and compensation payments

The labour legislation stipulates cases in which employees are entitled to salary even if they did not perform their work under the labour agreement – guarantee payments. Such payments are provided for employees in elective offices, donors, employees sent to qualification courses during working hours and some other categories.

Compensation payments are such remunerating expenses of an employee, which are connected to performance of the labour duties (in case of transfer, assignment to work in another region, business trips, amortization of tools owned by an employee for needs of an enterprise etc.).

Pension and Social Insurance

The employer is required to make obligatory payments to the State Pension Fund on behalf of employees. The rate of the unified social security contribution is between 36,76% and 49,7 % of an employee's remuneration (depending on the class of the occupational hazard). Any other social insurance (voluntary) is left to the employer's consideration.

Employment of foreigners

Foreign nationals may be employed by Ukrainian employers subject to prior obtaining of the Ukrainian work permit according to the procedure, established by legislation. A work permit is issued as a rule for one year and is subject to renewal.

Disabled persons

The current legislation of Ukraine provides a quota of work places for disabled persons in the amount of 4% of the average number of employees per annum or, if there are 8-25 employees, in the amount of one work place.

Activity of trade unions

Citizens of Ukraine are entitled to participate in professional unions in order to protect their labour, social and economic rights and interests. A trade union is a voluntary, non-profitable non-governmental organization of citizens united by mutual interests by the nature of their professional (labour) activity (study). Trade unions are established in order to represent, exercise and protect labour, social and economic rights and interests of their members and can have a status of primary, local, district, regional, republican, or all-Ukrainian. Foreign citizens and stateless persons are not allowed to establish trade unions, but are entitled to join them, if this is provided by their statues.

Collective Bargaining Agreements

A collective bargaining agreement is concluded in order to regulate production, labour, social and economic relations and to coordinate interests of employees, owners and their authorized bodies. In a newly established enterprise a collective bargaining agreement shall be concluded upon initiative of one of the parties within 3 months after registration of the enterprise and shall be preceded by collective bargaining negotiations, in which both parties of the collective bargaining agreement shall participate.

There is no liability for lack of collective bargaining agreements, only for avoiding negotiations as to their conclusion. A collective bargaining agreement signed by the parties is subject to a notifying registration by the local state authorities. Any changes or amendments to a collective bargaining agreement shall be registered pursuant to the procedure for registration of collective bargaining agreements.

Labour agreements

Under a labour agreement the employee obliges to work as provided by the agreement with adherence to the internal labour policy, and the employer obliges to pay the employee for the work and to ensure labour conditions necessary for work and as provided by the labour legislation, collective agreement and agreement of the parties.

It is not obligatory in Ukraine to conclude labour agreements in writing, except for some categories of employees (minors, work under some special conditions etc.) and in case if an employee insists on concluding the labour agreement in writing.

Terms of labour agreements which make the position of employees worse compared to the current legislation are null and void. Even though an employee may agree to such conditions, they may not be applied. A labour agreement may be concluded for an unlimited period of time, fixed-term or concluded for the period of execution of certain works. The laws of Ukraine prohibit unreasonable refuse in conclusion of a labour agreement (employment).

Labour contract

A labour contract is a special labour agreement form for certain categories of employees where its validity term, rights and obligations of the parties (including material liability), financial conditions and organization of the employee's work, contract termination terms, including early termination, may be stipulated pursuant to the parties' agreement. Contracts are to be made in writing.

The laws of Ukraine directly stipulate the exact list of employees with whom the labour contracts may be concluded, for example scientists, employees of collective agricultural enterprise, directors of companies, policemen, teachers etc.

If the current legislation does not stipulate any possibility for contract conclusion in the respective case, the owner and the employee are not entitled to conclude the contract even upon their mutual consent.

Documents to be provided for employment

At conclusion of a labour agreement the future employee shall provide the following documents:

- passport or any other ID;
- labour book;
- a document on education (in cases provided by the legislation);
- a health status certificate (in cases provided by the legislation for workers on heavy, harmful and hazardous jobs and annually for persons younger than 21);
- military registration document;
- a copy of the individual tax number (for taxation purposes in regard to employee's salary);
- a copy of the social insurance card;
- copies of child birth certificates (if the employee is entitled to child care privileges and guarantees).

The Labour Code prohibits to require provision of documents which are not stipulated by the legislation as well as of information on employee's party membership or nationality, domicile or temporary residence registration etc. Refusal in employment due to non-submission of documents not provided by the legislation is deemed to be unreasoned and is prohibited.

Employment order

After agreement on work conditions with a potential employee, employment application submission, and in some cases conclusion of a labour agreement or contract in writing, an employment order shall be issued.

There is a standard approved form of the employment order, but in practice another more simple form of the order is used. The employment order is signed by the executive officer or any other authorized person. The employee reviews and signs the order. On the basis of the order an entry is made in the labour book.

The labour agreement is deemed to be concluded also if there is no order but the employee has been actually admitted to work. Besides, if there is no employment order, the fact of the labour relations between the employer and the employee can be established by the court.

Employer's actions before employee's admission to work

Before admission to work pursuant to the labour agreement the owner (an authorized body):

- explains to the employee his/her rights and obligations and informs his/her on work conditions, any harmful or hazardous production factors at the work place and possible consequences for the health, his/her rights and privileges for work remuneration according to conditions set out by the legislation and the collective agreement;

- provides to the employee for reviewing the internal labour regulations and the collective agreement;

- assigns the employee with a work place and provides all tools and accessories necessary for work;

- instructs the employee on safety and fire safety rules.

Probation period by employment

In order to determine whether the employee complies with the work at the beginning of his/her employment, a probation period is established for the employee upon agreement of the parties.

- persons under 18;
- young employees after graduation from career scientific-educational institutions;
- young professionals after graduation from higher educational institutions;
- persons retired from military or alternative (non-military) service;
- disabled persons sent to work pursuant to recommendations of a medical and social expert examination;
- seasonal and temporary workers;
- workers in case of employment in other region or transfer to other enterprise, institution, organization, transfer to other position within the same enterprise;
- in other cases, provided by the legislation.

There is no need to record information on employee's probation period in the labour book. During the probation period the employee has all the rights and all the obligations provided by the labour legislation. The only exception is an additional reason for dismissal of the employee as such who did not pass the probation period.

Duration of a probation period cannot exceed:
- one month – for workers (at this, in order to define the term "worker" the Occupational classification shall be used);
- three months – for any other employee categories;
- six months – in certain cases upon agreement with the trade union committee.

Change of essential working conditions

According to the Ukrainian legislation in case of changes in production and labour organization it is possible to change the essential work conditions (system and amount of payments, privileges, work regime, establishment or cancellation of part-time work, professions overlapping, change of categories or name of positions etc). In such situation the employer shall provide respective employees with a two months prior notice before the changes come into force. If the previous essential work conditions cannot be preserved and the employee does not agree to continue work under the new conditions, the labour agreement shall be terminated.

Termination

Generally, employment relations, established for a definite period of time terminate after the employment term has expired. Employment relations, established for indefinite period, may be terminated by employee at any time by giving two weeks prior notice. Employers may terminate employment only in limited circumstances enumerated by the Labour Code. The labour legislation of Ukraine provides following reasons for termination of a labour agreement:

- agreement of the parties;
- end of the labour agreement term, except for cases when labour relations actually continue and neither party demands their termination;
- call or enrolment to military service, assignment to alternative service;
- transfer of the employee upon his/her consent to another enterprise or to an elective office;
- refusal of the employee to be transferred to work in other region together with an enterprise as well as refusal to continue work due to change of the essential work conditions;
- coming into force of judgment pursuant to which the employee is sentenced to imprisonment or any other punishment excluding possibility to continue work;
- reasons as provided by the labour contract;
- determination of employee's inconsistency with work within the probation period;
- upon employee' initiative;
- upon employer' initiative:
    - change in production and work organization, including liquidation, reorganization, bankruptcy or conversion of the enterprise, decrease of the personnel number or the staff
    - determined employee's inconsistency with position or work due to insufficient qualification or health condition hindering continuance of such work
    - systematic non-performance of duties stipulated by the labour agreement or the internal labour order without reasonable excuse if disciplinary penalties have been previously imposed on the employee
    - truancy (including absence from work for more than 3 hours within business day) without a reasonable excuse
    - nonappearance at work during four months on the row due to temporary disability, except for maternity leave, if the legislation does not stipulate longer period of work

(position) preservation for certain illnesses. If an employee has lost its ability to work because of a labour injury or a professional illness, his/her place of work (position) shall be preserved for the period of rehabilitation or assessment of disablement
- reinstatement at work of the employee who previously performed this work
- appearance at work under alcohol, drugs or toxic influence
- stealing at work place (including petty theft) of employer's property determined by the court - decision which came into force or resolution of a body authorized to impose administrativenpenalties or apply measures of public influence
- single gross violation of labour relations by the director of an enterprise, institution, organization of any ownership form, his/her deputy, head accountant of an enterprise, institution, organization, his/her deputy, or officials of the customs service, state tax inspections with special ranks and officials of the state supervision and auditing service and bodies of the state price control
- wrongful acts of directors of enterprises, institutions, organizations which caused delay in payment or payment of lower amounts of salary compared to minimal wage as stipulated by the legislation
- wrongful actions of the employee working with monetary values or merchandise if such actions lead to loss of employer's trust
- immoral actions of educational personnel inconsistent with such work
- employment under subordination to an immediate relative in violation of the requirements of the Law of Ukraine "On Basic Principles of Preventing and Fighting Corruption".

It is prohibited to dismiss certain categories of employees such as pregnant women, women with children under the age of three and single mothers with children under the age of 14 or with disabled children, except some cases regarding the companies' liquidation with the obligatory subsequent employment. An employee is entitled to receive a one-month severance payment (or more, if provided for in the collective agreement) when dismissed upon the initiative of the employer for particular reasons.

Suspension from work

In certain cases the employer is entitled to suspend the employee from work:

- if the employee appears at work under influence of alcohol, drugs or toxins;
- it the employee refuses or avoids obligatory medical examination, training, instructions and attestation in labour protection and fire safety;
- in other cases stipulated by the legislation.

Suspension means that during a certain period of time the employee is not admitted to work which he/she is obliged to perform under the labour agreement. At this, labour relations and the labour agreement shall not be terminated.

After the end of the suspension term the employee may be admitted to work, transferred to another work, brought to a disciplinary liability or dismissed. Members of the executive body of a company may be at any time suspended from performance of their duties if statutory documents of the company do not stipulate reasons for their suspension. A suspension of executive body members (including head of the executive body) is not subject to labour law but the civil (corporate) law. In this case, it means revocation of management powers which is a form of protection of corporate rights of owners and is not a suspension of an employee in the meaning of the Labour Code.

Suspension of an executive body member is possible only for a certain period of time and does not result in termination of labour relations. Dismissal of an executive body member who was suspended from performance of duties shall be carried out pursuant to the labour legislation.

Consequences of termination of a labour agreement

On the day of employee's dismissal the employer is obliged to return the duly filled out labour book and to pay the employee off. In case of employee's dismissal he/she receives monetary compensation for all not used days of the annual vacation or the additional vacation for employees with children.

In case the employee did not work on the day of dismissal, such payments shall be made not later than on the next working day after the dismissed employee claimed the payment. In case there was no payment within stated terms due to the fault of the employer and if there is no dispute as to the amount of payments, the employer is obliged to pay the employee his/her average salary for the whole period of such delay up to the day of the settlement.

Necessity to agree dismissal with a trade union

In the following cases the labour agreement with the employee may be terminated only upon prior agreement with the trade union member where the employee is a member:

- change in production and work organization, except for cases of company's liquidation;
- determined inconsistency with the position held or work performed due to insufficient qualification or health condition hindering continuance of such work;
- systematic non-performance of duties under labour agreement or internal labour order without reasonable excuse if the employee has already been brought to liability in form of disciplinary penalty or measures of public influence;
- truancy (including absence from work during more than 3 hours within working day) without a reasonable excuse;
- absence from work during more than four months on the row due to temporary disability, except for maternity leave, if the legislation does not provide a longer term for the work place (position) preservation in case of a specific disease;

- appearance at work under influence of alcohol, drugs or toxins;
- wrongful actions of employees working directly with money or merchandise, if such actions cause loss of employer's trust towards an employee;
- immoral actions committed by education personnel inconsistent with work.

The legislation may provide for other cases of labour agreement termination upon initiative of the employer without consent of the respective trade union body as well. If the primary trade union organization does not have an elective body, the termination of the labour agreement shall be agreed by a representative of the trade union authorized to represent interests of the trade union members.

The dismissal consent of the trade union is valid only if the employee is dismissed due to reasons stated in the employer's application. If the trade union consented to dismissal due to other reasons, the consent shall be invalid.

→ Corporate Law & Foreing Investment

Corporate legislation of Ukraine is a quite voluminous block of regulatory legal acts including codified ones. Corporate regulations contained therein are main tools for regulation of activity of different business entities in the sphere of corporate relations. Corporate law is also distinguished by a great number of regulations contained in companies' internal documents. The pyramid of corporate regulations as laid out by their legal effect may be described as follows:

- law;
- bylaws;
- charter or articles of association;
- shareholders' agreement;
- shareholders' (general meetings') decisions;
- decisions of executive bodies.

This classification is closely connected to the second one which enables us to reveal the idea of such subdivision.

By the method of legal regulation corporate provisions can be divided as follows:

- imperative (regulations of a strict, imperious and categorical nature disallowing any deviations in the regulated behavior); and
- dispositive (regulations of an autonomous nature enabling the parties (shareholders) to independently agree upon issues related to disposition of subjective rights and obligations or to use a reserve rule in some particular cases).

Imperative provisions establish explicit rules, and dispositive ones enable the parties (shareholders) to settle certain issues individually. By definition dispositive regulations differ through such phrases as "unless otherwise provided by the charter", "unless constituent documents provide for..." etc. The current corporate legislation of Ukraine as compared with the same in many other countries is to a greater degree imperative.

For instance, shareholders of a limited liability company (including foreign investors) are often interested in extending the list of issues which can be resolved unanimously by a qualified majority of votes. The current legislation disallows this. Neither may the foreign investors enter into a shareholders agreement regulated by foreign law or have the corporate conflicts resolved by foreign courts, as according to the recommendations of the highest courts of Ukraine the corporate governance in Ukrainian companies shall be regulated by the imperative provisions of Ukrainian laws.

In many countries lawmakers stipulate more flexible regulations for the issues of corporate governance (first of all, this refers to companies shares of which are not listed at stock exchanges – LLC, Private JSC etc.) With the development of corporate legislation it is expected that many of the regulations will be replaced by dispositive ones and many of the issues will be resolved by shareholders/stockholders independently (according to their needs and goals). Currently, this perspective is already reflected in the Law of Ukraine "On Joint Stock Companies" dated 17 September 2008 No 514-VI (hereinafter – the "JSC Law"). Respective changes are anticipated in the currently elaborated draft Law on limited liability companies as well.

Business companies types

Pursuant to Art. 4 of the Law of Ukraine "On Business Companies" dated 19 September 1991 No 1576 – XII (hereinafter – the "Business Companies' Law") the following types of business companies are envisaged in Ukraine:

- joint stock company;
- additional liability company;
- limited liability company;
- full company (full liability company);
- limited partnership.

JOINT STOCK COMPANY – type of a business company with the authorized capital divided into specified number of stock of equal nominal value and which is liable for company's obligations only with company's property. There are two types of JSCs: private JSC and public JSC.

LIMITED LIABILITY COMPANY – a company having its charter capital divided into shares the value of which is determined by constitutional documents. Shareholders of a limited liability company are liable for obligations of such company only within the value of their shares.

ADDITIONAL LIABILITY COMPANY – a company with authorized capital divided into shares the value of which is determined by constitutional documents. Its shareholders are liable for its debt in the value of their shares in the charter capital, unless it is insufficient in which case – also with their private property in the amount equal for all in proportion to their shares.

FULL LIABILITY COMPANY – type of a business company all shareholders in which carry out joint entrepreneurial activity and are jointly and severally liable for company's debts with all its property. The share of each shareholder is determined in articles of association.

LIMITED PARTNERSHIP – a form of partnership in which there is one or more limited partners (owners) in addition to general partners with full liability.

There is no categorically best or categorically worst form for a company. Depending on economic activity or tax regimes any company's form is the same (except for some specific activity types, activities such as securities trade, pawn shops, banking etc., types of organizational legal forms available for which are limited by the legislation).

The difference between companies is mostly internal: managing procedure, relations and liability of founders, company's authorized capital and its formation procedure etc. The most common company's form is a limited liability company. Private JSCs and private companies are also quite popular. In all cases liability of founders (shareholders, stockholders) is limited. All these forms will be discussed in detail in the following chapters of the book. The choice between an LLC and a private JSC should be made based on the following criteria:

- The minimum authorized capital of an LLC is currently not determined, for private JSC it amounts to 1250 minimum wages (about 138500 Euro);

- The number of shareholders in an LLC is pursuant to the newest changes in the legislation from 1 to 100, in private JSC - also from 1 to 100 (more than 100 stockholders are permitted only for a public JSC);

- Relation between corporate rights and equity capital of the company: LLC's shareholders are entitled to withdraw from the company at any time and take their shares from the charter capital (calculated as assets minus liabilities at the withdrawal date). Moreover, LLC's shareholders shall have preemptive right on purchasing shares from another shareholder, who has decided to sell its shares, on terms and conditions proposed to the third parties in the amount proportional to its part in the charter capital of the company. There is no withdrawal from JSC but stockholders are entitled to sell their stock. However, the shareholders in a private JSC also have the right of first refusal regarding the shares sold if it is provided by the charter of such private JCS.

■ Publicity: there are lesser requirements to an LLC than to a private JSC. In its turn, a private JSC is less public and requirements to information disclosure and financial statements are less strict compared to a public JSC.

Therefore, such organizational legal form as LLC is more suitable for purposes of establishing a daughter enterprise in Ukraine with no local shareholder. If a joint venture is established, it is better to choose a private JSC as legal form which does not provide for a withdrawal of stockholders (which will prevent loss of company's' liquidity in case a stockholder with 50% of stocks decides to withdraw) and gives more flexible company's management tools. Further we describe main regulatory norms regarding these two types of legal entities.

General Regulation on Limited Liability Companies

The activity of an LLC is regulated by the Civil and Business Codes of Ukraine, the Law on Business Companies, the Law on State Registration of legal entities and private entrepreneurs, and the Law on Limited Liability Companies. For sure these laws cannot cover all corporate matters taking into account the scope of corporate activity and its modernization, that is why more and more new problems arise on practice. In order to improve the legal background a number of bills on limited liability companies has been elaborated, the most innovative of which is the bill by the Commercial Law Center of Ukraine (bill No 2011-1). The bill envisages the following positive amendments:

■ reducing the quorum of the general meeting to 50+1% of shareholders' votes;
■ the possibility to establish a supervisory body (Board);
■ the possibility to dismiss management on the basis of the removal from office (which is not allowed today). Also, it is proposed to remove the limits of the material liability for the management of the company for the harmful actions which resulted in losses for the company and its shareholders (now such liability is limited to the amount of one employee's salary);
■ derivative actions – rights of the shareholders to sue the management of the limited liability company for the losses caused by its unlawful actions - which is currently not envisaged for the limited liability companies. This possibility is crucial for the minority shareholders in case illegal acts of the management are supported by the controlling shareholders.
■ the special way for the disposal of shares in family business;
■ possibility for the shareholders to enter into agreements between themselves on the matters of corporate governance;
■ approval to enter into related-party or major transactions;
■ rules for the exclusion of shareholders which actions work against the company.

The bill on Limited Liability Companies not only introduces new mechanisms but also improves the current ones. Changes will be made in future and now let us have a look at the current regulation of the LLC activity.

A Limited Liability Company (hereinafter LLC) is a type of a business company the charter capital of which is divided into shares. Value of shares is determined by the charter (a constitutional document of such company). Furthermore, pursuant to Art.50 of the Business Companies' Law the LLC shall have max. 100 members and pursuant to Art.141 of the Civil Code of Ukraine LLC is not allowed to have another Business Company with a sole shareholder a single shareholder. Neither may one shareholder own 100% participatory interests in more than one LLC in Ukraine. In order to register Business Company incorporator or an authorized person shall provide a certain package of documents to the State Registrar which includes information on the beneficial owners of the companies – founders. Notably this information is requested at the stage of incorporation only and is not required when a new participant enters into already existing company.

LLC has a two-level management system: highest body – general shareholders' meeting; executive body – collegial body (board of directors, management board) or sole body (director). Supervision bodies could be established at LLC's own discretion. The supervision body is the very body through which shareholders could exercise their rights to participate in the management of company's affairs in addition to general meetings. In practice, some difficulties airse during registration of the charter of companies that wish to establish supervision bodies as legislation prescribes only a limited number of management bodies. However, the mentioned bill on LLC envisages such possibility which will certainly improve activity of the limited liability companies in Ukraine.

The highest LLC's body – shareholders' meeting consists of shareholders or representatives appointed by them. Pursuant to Art. 60 of the Business Companies' Law an LLC's shareholders' meeting has a quorum, if shareholders (their representatives) holding together over 60% of votes are present at the meeting.

Part 2 Art. 98 of the Civil Code of Ukraine dated 16 January 2003 No 435-IV (hereinafter – the "Civil Code of Ukraine") contains a dispositive provision according to which "... decisions of a general meeting are made by simple majority of votes of present shareholders, if otherwise is not provided by constitutional documents or the law." At the same time, the Civil Code of Ukraine envisages a qualified majority of votes, if legal entities (irrespective of their organizational legal form) make decisions on concept issues (amendments to the charter, major deeds, company's liquidation). Provisions determining a quorum are imperative and cannot be changed in the charter upon agreement of the parties. The issue of voting rules in a LLC is a debating point, and it is advisable to settle it in the LLC's charter (as the court practice shows that in particular LLC's charter provisions on qualified majority of votes for decision-making are decisive for courts to declare major deeds null and void). At this, there shall be a differentiation between matters for which the law requires a qualified majority of votes and matters for which there is no such law requirement. The first ones are governed by provisions of the law and they are imperative; quorum for such matters cannot be changed. As to the second ones, there is no unambiguous position, that is why quorum change for such matters always bears risks for such

provisions to be declared null and void and that matters in questions will be made subject to legislative quorum (decision-making by a simple majority of votes).

A limited liability company has a body responsible for the management of its activity and accountable to the general shareholders' meeting. Members of the company's executive body can also be appointed other than from the shareholders' pool of the company (Art. 145 of the Civil Code of Ukraine). It means that not only company's shareholders can become members of the company's executive body. The LLC's executive body can be a collegial (management board, board of directors) or a sole body (director). Management board is headed by the General Director (Art. 62 the Business Companies' Law).

According to the general rule in Ukrainian legislation the rights of LLC's executive bodies are established based on the residual principle: the competence of a director includes all issues not falling into the competence of the general shareholders' meeting. At this, rights of executive bodies to dispose of LLC's property and conclude any other deeds are limited by the Civil Code of Ukraine and the Business Companies' Law only in part of determination of major company's activity areas and conclusion of major deeds. This creates a huge legal loophole which allows an experienced manager to strip a company of almost all liquid assets in a very short period of time. Cases are known when owners were left only with constitutional documents and empty bank accounts.

There are many schemes for asset striping: sale of assets in exchange for depreciated bonds or issuance securities, transfer of assets to charter capitals of shell-companies, obtaining loans with pledge of liquid assets with consequent non-repayment of such loans, deals with bills, asset lease with purchase rights, alienation of intellectual property rights (invention, industry samples), sale of trademarks and many others. Court practice shows that if a director did not exceed its powers by such deeds there are hardly any chances to get the stolen assets back. This leads to the only right conclusion: executive bodies shall be limited in their powers in addition to restrictions provided by the legislation. On the one hand, charter can be used for these purposes and information on set limitations can be registered with the Unified State Register, on the other hand there shall be effective control over director's activity ("better safe than sorry").

Dispositive provision of Part 3 Art. 145 of the Civil Code of Ukraine stipulates that the competence of the LLC's executive body, procedure for decision making and acting on behalf of the company are determined by the Civil Code of Ukraine, other laws and the company's charter. In addition thereto, pursuant to Part 4 of the same article the company's charter and the law include other issues to the exclusive competence of the general meeting in addition to such mentioned in this article of the Civil Code of Ukraine. Therefore, if LLC's charter includes the resolution of all serious issues into the exclusive competence of the general shareholders' meeting, the executive body will have no legal grounds for asset striping. It is important not to go too far: if the director has to obtain approval of the general shareholders' meeting on any matter, the company will just not be able to work.

Pursuant to Art. 63 of the Business Companies' Law activity of the management board (director) is supervised by an audit commission established by the general shareholders' meeting out of their members in the number provided in constitutional document but not less than 3 persons. An audit commission audits the activity of the management board (director) upon instruction of the meeting, its own initiative or upon requests of company's shareholders. In practice it is often impossible to establish the audit commission due to the restrictions mentioned above, at the same time, the responsibility for non-compliance with these rules is not established.

General Regulation on Joint Stock Companies

Definition of a joint stock company (hereinafter - JSC) is set out in several legislative acts, for instance, in Par. 1 Art. 3 of the JSC Law, Art. 152 of the Civil Code of Ukraine, Part 2 Art. 80 of the Economic Code of Ukraine dated 16 January 2003 No 436-IV.

A joint stock company is a business entity with the authorized capital divided into a specified number of stock of equal nominal value representing the corporate rights, which are certified by the stock. A joint stock company is liable for its obligations with all its property. Stockholders are not liable for company's obligations and shall incur the risks of losses associated with a joint stock company's activity only within the limit of the block of stock they own.

There are two types of joint stock companies – public and private ones. The major difference between these types lies in following: the number of stockholders in a private JSC shall not exceed 100 persons; a public JSC is entitled to public and private stock offerings and a private JSC is entitled to private stock offerings only. A minimum authorized capital of a JSC shall amount to 1250 minimum wages based on the minimum wage in effect at the date of establishment (registration) of a JSC.

The corporate governance in joint stock companies is performed by the shareholders' general meeting as the highest management body, the director (or board of directors) as the executive body, and the supervisory board and audit commission (or a single auditor), which are entitled to supervise and exercise control over director's activity. At that formation of supervisory board and appointment of members thereto in the joint stock companies with less than 10 shareholders is not mandatory.

A JSC is obliged to convene a general stockholders' meeting on an annual basis (annual general meeting). The quorum of the general meeting shall be determined by the registration committee at the time of completion of the stockholders' registration. The general meeting has a quorum, if stockholders (their representatives) who jointly hold not less than 60 per cent of the voting stock were registered to attend the meeting. One voting stock gives a stockholder one vote for making a decision on each of the issues brought to vote at the general meeting, except for cumulative voting. Stockholders – owners of privileged stock of the company are also entitled to vote (on some issues as provided by the law).

Decisions are made by a simple majority of votes of stockholders registered to attend the general meeting and holding stock with the vote right for such issues, except for some cases as provided by the legislation.

Notably, the JSC's charter may set out a higher number of votes necessary for decision-making on the issues of the agenda or provide other issues decisions on which shall be made with ¾ of votes of the stockholders' overall number, except for issues regarding early termination of powers of JSC's officials; legal actions against officials of company's governing bodies about the reimbursement of losses inflicted by the JSC; legal actions in case of violation of legislative requirements by concluding a major deal.

The general meeting is not entitled to decide on issues not included into the agenda, at this, the voting is held regarding all issues of the agenda brought to voting. Ballot papers may be used for voting on the agenda items of a general meeting. A company that made a public offering or a company with over 100 stockholders owning ordinary stock shall carry out its voting only by ballot papers. The supervisory board of a JSC is a body responsible for the protection of stockholders' rights and, within competence as determined by the charter and the legislation, for supervision and regulation of the activity of company's executive body.

Joint stock companies with 10 or more stockholders holding ordinary stock are obliged to establish the supervisory board. In joint stock companies with 9 or less stockholders holding ordinary stock, if there is no supervisory board, its powers shall be executed by the general meeting. In such a case powers of the supervisory board as to the arrangement and conduct of the general meeting as provided by the legislation shall be executed by the executive body of the company, if otherwise is not provided by the charter.

The procedure for the activity, payment of remuneration and liability of the members of the supervisory board is defined by the legislation, the company's charter, the provision on the supervisory board of the JSC and a civil or an employment agreement (contract) to be entered into with a member of the supervisory board. Such an agreement (contract) shall be signed on behalf of the JSC by the head of the executive body or any other person authorized by the general meeting on the terms approved by the general meeting. The civil agreement may be concluded on either payable or a free basis.

The competence of the supervisory board includes decisions as provided by the legislation (see below), the JSC charter and issues delegated to the competence of the supervisory board by the general meeting. Issues falling into exclusive competence of the supervisory board of a JSC cannot be resolved by any other bodies, except for the general meeting (with some exceptions).

Within its exclusive competence the Supervisory board is entitled to make a decision on ordinary or extraordinary general meetings upon request of stockholders or the executive body; to elect the head and members of the executive body or terminate its/their powers; to elect the

company's auditor and specify the terms of the contract to be entered into, establish the amount of its fee; to decide on the conclusion of major deals in cases as provided by the legislation.

The executive body is responsible for management of the day-to-day activity of a JSC. Its competence includes deciding on all issues related to the management of company's daily activity, except issues which fall into the exclusive competence of the general meeting or the supervisory board.

The executive body shall be accountable to the general meeting and the supervisory board and shall arrange the implementation of their decisions. The executive body shall act on behalf of the company within the limits established by the joint stock company's charter and the law. The executive body may be collegial (board, directorate, etc.) or sole (director, general director etc.) In order to audit the financial and economic activity of a JSC the general meeting may elect the audit commission (the auditor).

A company with up to 100 holders of ordinary stock is entitled to introduce a position of an auditor or to elect the audit commission, whereas companies with more than 100 holders of ordinary stock are entitled to elect the audit commission only.

The audit commission (auditor) shall be entitled to make propositions to the agenda of the general meeting and request convocation of an extraordinary general meeting. Members of the audit commission (auditor) shall be entitled to attend the general meeting, and participate in the discussion of the agenda with a deliberative vote. Members of the audit commission (auditor) shall be entitled to participate in the meetings of the supervisory board and the executive body, if this is provided by the company's charter or the by-laws.

General overview of foreign investments regulations

The Law "On Investment Activity" dated 18 September 1991 No 1560-XII is a frame for all forms and types of investment activity. It contains all main principles for conduction of investment activity in Ukraine. Investment activity is defined as activity on exercise of investment which can be carried out with own or borrowed funds, budget appropriations in form of monetary funds, securities, real estate and movable property, intellectual property rights, know-how etc. Therefore, almost any activity connected to investment of capital in order to gain profit is investment activity.

The Law provides some guaranties for subjects of investment activity– guarantee of preservation of initial contractual terms by change of legislation worsening situation of such subjects, protection from interference of state agencies and officials, right for compensation of losses incurred due to acts of state bodies, guaranties for investment protection, including, in case of their expropriation. A great number of norms of the Law of Ukraine "On Regime of Foreign Investment" dated 19 March 1996 No 93/96-BP double provisions of the Law of Ukraine "On

Investment Activity" changing them just a little. It provides more detailed description of procedure and terms for compensation of losses, guaranty for inalterability of the legislative regulation.

Provisions of the Law "On Regime of Foreign Investment" stipulating procedure for the registration of foreign investments have regulative character. The procedure for the registration of foreign investments was specified in the respective Regulations of the Ukrainian Cabinet of Ministers in March 2013.

According to the said procedure the registration authorities (the Council of Ministers of Crimea, regional administrations, Kyiv, and Sevastopol city administrations) shall register the investment within 7 days following application submitted by the foreign investor for foreign investment registration after the actual investment or change of the investment owner. The undoubted advantage is the legal formalization of the possibility to register a change of the investment owner (re-register the investment for the new owner following, for example, the sale of corporate rights in Ukrainian company). However, if we take the investment re-registration procedure formally, the next owners of an unregistered investment will actually not be able to register it (as the investment re-registration procedure primarily means cancelling the previous owner's investment registration and the following registration of the new owner's investment).

Foreign investments in Ukraine are subject to state registration. Although this registration is not mandatory, it is highly advisable, since according to the Law of Ukraine "On Regime of Foreign Investment in Ukraine" only registered investment is protected by Ukrainian laws.

Not registered foreign investments do not entitle to allowances and guaranties provided by this law. For instance, property imported to Ukraine as contribution of foreign investor to the charter capital of a company with foreign investment (except for goods for sale or own consumption) is free from customs duty. At this, custom authorities allow import of such property to the territory of Ukraine based on a promissory note issued by the company with delay of payment for not more than 30 calendar days as of date of the execution of the import customs declaration. The promissory note shall be paid and the import duty is not collected if within such delay of payment respective property has been booked to the balance of the company and the tax authority at the location of the company made a record about it on the promissory note.

→ Corporate Tax Law

Taxpayers

Resident companies are taxed at their worldwide income. Nonresident entities are taxed at their business or trade income derived in the territory of Ukraine via permanent establishments or other non-business (passive) Ukrainian sourced income.

Corporate income tax base

Taxable income is calculated by deduction of allowable expenses, depreciation and amortization from gross income.

Corporate income tax rate

The general corporate income tax rate is 21% for year 2012. The rate will be gradually reduced to 19% since 2013 and to 16% since 2014.

Taxation of dividends

Dividends distributed by the Ukrainian company are subject to an advanced corporate income tax (ACIT) at the rate of 21% accrued on a gross basis and paid at the distributing company's cost. The paid ACIT can be carried forward for indefinite period and ultimately be set off against future corporate income tax liabilities of the Ukrainian company.

Taxation of capital gain

Capital gains are taxed as regular income at the standard rate.

Participation exemption

Dividends received from nonresident are exempt from the Ukrainian tax in case the Ukrainian dividends recipient holds at least 20% of the company distributing dividends.

Incentives

Certain business sectors are entitled to zero corporate income tax rate for 10 years starting from January 1, 2011. Among the covered industries are:

- 3,4 and 5 star hotels;
- Renewable energy industry;
- Consumer goods industry;
- Shipbuilding and aircraft construction industries;
- Production of agricultural equipment.

Zero corporate income tax rate is also available since January 1, 2011 up to January 1, 2016 for small business meeting specific requirements as regards to the amount of annual proceeds, quantity of employed individuals, business field etc.

Special regimes

■ FIXED AGRICULTURAL TAX. Agriculture companies may qualify for a favorable tax regime in case revenue from realization of agriculture goods of own production constitute not less than 75% of total annual revenue. Fixed agricultural taxpayers are exempt from corporate income tax and some other taxes.

■ UNIFIED TAX. Unified tax is a simplified tax regime set forth for small and/or medium business depending on their annual revenue, quantity of employed individuals and type of business. Companies enjoying unified tax regime are exempt from corporate income tax and some other taxes.

Losses

The carry forward of tax losses may be done indefinitely. Loss carryback is restricted.

Anti-avoidance rules

■ TRANSFER PRICING. Transfer pricing rule applies to barter transactions, transactions with nonresidents, entities that are not corporate income tax payers at the regular rate of 21% (including nonresidents). Arm's length principle is deemed to be observed in case the contractual price varies from the market price for less than 20%. New transfer pricing rules based on OECD transfer pricing principles are expected to come into effect as of January 1, 2013.

■ DEDUCTION RESTRICTIONS. There the following deduction restrictions in Ukraine:
- Consulting, marketing and advertisement services purchased from nonresident may be deducted in amount not exceeding 4% of the prior year proceeds;
- Royalties paid to a nonresidents may be deducted in amount not exceeding 4% of the prior year proceeds; and may not be deducted if paid to an offshore company or to company that is not the beneficial owner or with respect to intellectual property rights to which primarily emerged in Ukraine;
- Engineering services purchased from a nonresident may be deducted in amount not exceeding 5% of customs value of imported equipment imported; and may not be deducted if purchased from an offshore company;
- Expenses resulted from purchases from an offshore company may be deducted in amount of 85%.

■ THIN CAPITALIZATION RULES. There are no statutory developed thin capitalization rules in Ukraine. However, there are certain restrictions on deducibility of interest paid under loan agreement with nonresident (entity related to such nonresident) that holds 50% or more in the Ukrainian borrower. In such case interest may be deducted in amount of the borrower's interest income plus 50% of non-interest income less deductible expenses.

Withholding tax

Withholding tax applies to Ukrainian source income paid to nonresident by the resident of Ukraine or permanent establishment of nonresident. The general withholding tax rate is 15% unless a lower rate is set forth by the relevant double tax treaty. Other tax rates set forth for specific types of income. Withholding tax applies to dividends, interest, royalty, capital gains, lease payments, investment income, agency and commission fees, freight, engineering and advertisement fees, insurance premiums etc.

VALUE ADDED TAX

Taxable transactions

The supply of goods and services in the customs territory of Ukraine, import and export of goods are subject to VAT. Supply of specific goods and services are exempt from VAT, including, but not limited to supply of baby food and goods, some educational services, medical and healthcare products etc. The following transactions are not subject to VAT (the list in not exhaustive):

- Issue, placement and sale (redemption) of securities;
- Insurance, coinsurance and reinsurance services;
- Reorganization of legal entities etc.

Value added tax rate

The regular VAT rate amounts to 20% and will be reduced to 17% since January 1, 2014. Export transactions are taxed at a zero rate.

Registration

Compulsory VAT registration is set forth for resident companies and individuals or nonresident permanent establishments whose volume of VATable transaction for the last 12 months exceeds UAH 300 000 (approx. Euro 30 500). In case the above criteria are not met an entity may apply for VAT registration voluntary.

Incentives

The supply of goods and services in specific industries are temporarily exempt from VAT:

- Supply of equipment and machinery related to alternative fuel - until January 1, 2019;
- Import of goods and supply of R&D results related to aircraft construction industry – until January 1, 2016;
- Publishing and paper production activity - until January 1, 2015 etc.

INDIVIDUAL TAXATION

Taxpayers

Resident individuals are taxed on their worldwide income and nonresidents on their Ukrainian source income.

Residency

Tax residency is determined applying the following tests that should be used in the order of preference:

- An individual is deemed to be a Ukrainian tax resident if he or she resides in Ukraine;
- If an individual also resides in another country, he or she is deemed to be a resident of Ukraine if a permanent place of residence is in Ukraine;
- If an individual has a permanent place of residence also in a foreign country he or she is deemed to be a resident of Ukraine in case having more close economic and personal ties in Ukraine;
- In case it is not possible to determine the residency applying the above criteria an individual is deemed to be tax resident of Ukraine if he or she stays in Ukraine more than 183 days during a calendar year.

Personal income tax rate

The personal income tax rate is slightly progressive and amounts to:

- 15% with respect to income up to 10 minimum wages applies to monthly income up to a threshold of 10 minimum monthly wages (UAH 11 470 in 2013, approx. Euro 1 0420);

- 17% with respect to excess amount of a threshold of 10 minimum monthly wages.

Other rates are applicable to specific types of income.

Unified tax

Unified tax is a simplified tax regime set forth for three groups of individual entrepreneurs depending on their annual revenue, quantity of employed individuals and type of business. Individual entrepreneurs enjoying unified tax regime are exempt from personal income tax and some other taxes.

FASKEN MARTINEAU LLP
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→ United Kingdom

FASKEN MARTINEAU LLP (FM) is a UK commercial law and litigation firm, which is part of the global partnership of Fasken Martineau DuMoulin LLP (FMD). The firm is unique in being the only commercial law firm practicing both UK and Canadian law. Globally the firm has 9 offices located in the United Kingdom, France, South Africa and Canada. FM has the critical mass necessary to act for the largest international organisations and on the largest projects and cases.

Sector specialisms

- Infrastructure
- Life Sciences
- Retailing
- Natural resources
- Publishing

Principal areas of practice

- AIM and other London securities markets
- Banking
- Commercial Litigation and ADR
- Competition Law
- Corporate Finance and Company Law
- Energy
- Insolvency and Restructuring
- Intellectual Property
- M & A
- Private Equity
- Reputation Management
- Aviation
- Commercial Law
- Commercial Property
- Construction
- Employment
- Information Technology and E-commerce
- Insurance
- International Trade and Transport
- Notary Services
- Project Finance
- Taxation

Our culture

FM has a practical, creative and results driven approach. Our clients range from entrepreneurs to public companies and we have a collaborative, team-based approach to solving their problems. Members of our different groups work together in the best interest of our clients and we believe in developing long term, broadly based client relationships.

Client support

We pride ourselves in maintaining close relationships with our clients, supporting and advising them in the following ways:

- Invitations to workshops and seminars that are of relevance to their business
- The circulation of bulletins by industry sector (e.g. Life Sciences, Natural Resources) and legal discipline (e.g. Employment law)

Professional development

We recognise that our firm is only as good as the people it employs and we take everyone's professional development extremely seriously. In addition to encouraging members and lawyers to attend the appropriate external seminars, we host internal training workshops. At these workshops, all professional staff have the opportunity of presenting to the group on their chosen subject. A firm-wide appraisal system is in place and each person has a clearly defined career structure. FM regularly has a number of Canadian lawyers on work placements from FMD and is considering an exchange program to include lawyers from the London office seconded in Canada.

→ Tax Law

Corporate Residence

A company is regarded as tax resident in the UK if it is incorporated in the UK or for non-UK incorporated companies if its central control and management is exercised in the UK. A company incorporated in the UK can also be treated as not resident in the UK under an applicable double tax treaty. It is possible for a company to be dually resident.

Rates of Corporation Tax

Corporation tax is chargeable on a company's worldwide income and chargeable gains. The rates for the financial year ended 31 March 2014 are as follows:

BAND OF TAXABLE PROFIT	%
£0-£300,000	20
£300,001-£1,500,000	23.75
over £1,500,000	23

Non-resident Companies

Transfer pricing rules apply to both international and domestic transactions. The basic rule may apply for transactions if an actual provision has been made between any two affected persons and one of them was directly or indirectly participating in the management, control or capital of the other or a third person was participating in the management, control or capital of both the affected persons. The basic rule requires the actual provision to be compared to an arm's length provision (which would have been made between independent enterprises) and, if the actual provision confers a potential UK tax advantage on one or both the affected persons, an adjustment (to bring the profits up to what they would have been if the arm's length provisions had applied) is to be made to the taxable profits of the advantaged persons.

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Controlled Foreign Companies

The UK introduced a new controlled foreign company regime that applies for accounting periods beginning on or after 1 January 2013. The continued aim of the controlled foreign company regime is to identify whether the profits of a non-UK resident company arising in an accounting period should be brought into the charge to UK tax by attributing those profits to a UK resident person or persons. For a controlled foreign company charge to arise all of the following are required:

■ A non-UK resident company that is controlled by a UK resident person or persons (that is, a controlled foreign company).

■ A chargeable company (that is, a UK resident company that has a sufficient interest in the controlled foreign company).

■ The controlled foreign company has chargeable profits (that is, profits of a specified type that are regarded as sufficiently connected to the UK).

■ The controlled foreign company is not entitled to the benefit of one or more of the entity-level exemptions.

Where a company is a CFC and does not satisfy one of a number of exemptions, then the total income profits of the CFC (computed broadly on the basis of UK corporation tax rules) and any creditable tax are apportioned among persons (whether resident in the UK or not) with an interest in the CFC. A self-assessment to tax must then be made by those persons that are UK tax resident companies with a 25% or greater interest in the CFC.

Group Taxation

In groups of companies where subsidiaries are owned as to 75% of the ordinary share capital beneficially together with 75% entitlement to income and assets it is possible to surrender current year trading losses and other amounts eligible for group relief to a profit making company within the same group. In many cases a payment for group relief is made by the claimant company to the surrendering company as consideration for the surrender. Consortium group relief is also available where a company is owned by a consortium where 75% or more of the ordinary share capital is beneficially owned between them by companies of which none owns beneficially less than 5% of that capital. UK legislation requires that both companies must be UK tax resident or non-resident companies carrying on a trade through a permanent establishment.

Tax Depreciation (Capital Allowances)

Tax allowances, called capital allowances, on certain purchases or investments can be claimed. This means a proportion of these costs can be deducted from taxable profits in order to reduce the tax charge.

Capital allowances are available on plant and machinery, industrial buildings and research and development. The amount of the allowance depends on what is being claimed for. In some cases, the rates are different in the year the purchase is made from those in subsequent years.

Inter-company Domestic Dividends

Corporation tax is not normally chargeable on dividends and other distributions received by a company resident in the UK, nor are such dividends or distributions taken into account in computing profits for corporation tax. This rule also applies to dividends received by a UK permanent establishment of a non-UK resident company.

Substantial Shareholding Exemption

Capital gains arising from disposals of trading companies in which a trading company has at least a 10% shareholding held for at least one year are in certain circumstances free of corporation tax on the chargeable gains.

Tax Incentives

Tax incentives are available for investment in unquoted trading companies providing income tax and capital gains tax relief for individuals and similar reliefs for companies.

Corporation Tax Administration

Corporation Tax is generally payable nine months after the end of the accounting period but large companies are required to pay by instalments.

Double Tax Treaties

The UK has a large number of double tax treaties a list of which is provided. Relief from double taxation can be by way of treaty, by unilateral relief or by deduction.

Stamp Taxes

There are currently three stamp tax regimes in the UK as follows. Stamp Duty Land Tax (SDLT) is a transfer tax charged on transfers of all UK land transactions of whatever nature (subject to exemptions) regardless of the residence of the parties. The tax is charged at different rates and has different thresholds for different types of property and different values of transaction.

The tax rate and payment threshold can vary according to whether the property is in residential or non-residential use, and whether it is a freehold or leasehold. SDLT relief is available for certain kinds of property or transaction.

PURCHASE PRICE/LEASE PREMIUM OR TRANSFER VALUE FOR RESIDENTIAL PROPERTIES	SDLT RATE
Up to £125,000	Zero
Over £125,000 to £250,000	1%
Over £250,000 to £500,000	3%
Over £500,000 to £1 million	4%
Over £1 million to £2 million	5%
Over £2 million from 22 March 2012	7%
Over £2 million (purchased by certain persons including corporate bodies) 15%	

Stamp duty reserve tax is a transfer tax charged on agreements to transfer UK shares and securities and on foreign shares and securities which retain a register of shareholders in the UK. The rate of charge is generally ½% of the consideration. Stamp duty is payable on the transfer of UK shares and securities at the rate of ½% and cancels any stamp duty reserve tax which may be payable. Stamp duty is not chargeable on transfers of other assets. There is no capital duty in the UK.

Value-Added Tax

VAT is a tax paid when goods or services are bought from a VAT-registered business in the EU, including within the UK. VAT is not paid on some goods and services, and sometimes it is paid at a reduced rate. In some circumstances a refund of VAT paid may be received, for example if a person lives outside the EU and visits the UK. Each EU country has its own rates of VAT. In the UK there are three rates.

- Standard rate. The standard rate of VAT on most goods and services in the UK increased to 20 per cent on 4 January 2011 but was 17.5 per cent for the period 1 January 2010 to 3 January 2011.
- Reduced rate. In some cases, for example children's car seats and gas and electricity for the home, VAT is paid at a reduced rate of 5 per cent.
- Zero rate. There are some goods on which VAT is not paid, like:
  - most food items
  - books, newspapers and magazines
  - children's clothes
  - some goods provided in special circumstances - for example, equipment for disabled people,new residential property

National Insurance Contributions

Employer's national insurance contributions are payable at the rate of 13.8% on earnings in excess of £148 per week. Employees national insurance is payable at the rate of 12% for earnings between £149 and £797 per week and at 2% thereafter. For higher paid employees therefore the rate of tax is 42% being 40% income tax and 2% employee's national insurance. For additional rate employees the rate of tax is 47% being 45% income tax and 2% employee's national insurance.

PERSONAL TAXES

Residence and Domicile

The UK has introduced a statutory residence test in the Finance Act 2013. There are three limbs to the test – the automatic UK test, the automatic overseas test and the sufficient ties test. An individual will be UK resident if they do not meet the automatic overseas test and meet either one of the automatic UK tests or the sufficient ties test. To ascertain an individual's residence status under the statutory residence test it first needs to be considered whether the individual spent 183 days in the UK in that tax year. If so the individual will be resident in the UK. If not the three automatic overseas tests need to be considered. If the individual meets one of these the individual will not be UK resident but if it is not met it needs to be considered if the second and third UK tests are met. If one of these are met the individual is UK resident but if not the sufficient ties test needs to be considered. If this test is met the individual is UK resident and if not the individual is not UK resident.

Unlike residence, it is not possible to have more than one domicile at any one time, and it is not the same as nationality. Essentially, it is the place where an individual has his permanent home, and has the strongest cultural, economic and family links, and where he ultimately intends to reside. Domicile can have a significant effect on UK tax liabilities, as it enables resident, but non-UK domiciled individuals, to legally avoid UK tax on income and capital gains arising overseas if they are not remitted to the UK. However, these rules have been amended and restricted for those who have been in the UK for at least seven out of the previous nine tax years or at least twelve of the previous fourteen tax years. Provided an individual has not been resident in the UK for seventeen out of the previous twenty tax years, such non-UK domiciled individuals are not chargeable to inheritance tax on non-UK situated assets. UK domiciled individuals are however assessable on their worldwide income.

Individual Tax Rates (for the tax year 2013/2014)

	DIVIDENDS*	SAVINGS	OTHER
£1-£34,370	10%	20%**	20%
£34,371 - £150,000	32.5%	40%	40%
Over £150,000	37.5%	45%	45%

**Dividends are increased by a non-repayable tax credit of 1/9th. This includes non UK companies of which taxpayers own less than 10% **10% up to £2,790. If an individual's taxable non-savings income is above this limit, the 10% rate does not apply.*

Dividends are treated as the top slice of total income, savings as the next slice and other income as the lowest slice

Inheritance Tax

Inheritance tax is due on death and on certain lifetime gifts. It is charged at the rate of 40% on transfers in excess of £325,000 for the tax year 2013/2014. Certain lifetime transfers are tax free if the donor lives seven years. Inter spouse transfers are free of tax provided either both are domiciled or non-domiciled in the UK for inheritance tax purposes. Where the transferee spouse is non-domiciled but the transferor spouse is domiciled the Finance Act 2013 has introduced a new rule. From 6 April 2013 UK domiciled individuals who have a non-UK domiciled spouse are provided relief from inheritance tax where the transferee spouse is non-UK domiciled but the transferor spouse is UK domiciled.

Under the old rules a transfer of assets from a UK domiciled spouse to a non-domiciled spouse was limited to an exempt amount of £55,000, this being the original exempt amount when inheritance tax was first introduced. This has now been increased to the exempt amount as reviewed from year to year and is currently £325,000. This exempt amount applies to all individuals irrespective of their domicile status. So now lifetime gifts on transfers of assets on death are for many persons exempt regardless of the domicile of the spouse.

But for the larger gifts or transfers on death in excess of the exempt amount of £325,000 the non-domiciled spouse can irrevocably elect as a lifetime election to be treated as UK domiciled for these purposes. The effect of this is to put non-UK domiciled spouses on the same footing as UK domiciled spouses. Large gifts can therefore be freely made between spouses without liability due to the spousal exemption from inheritance tax. If the non-UK domiciled person has died without an election having been made his personal representatives can make the election which must be made within two years of death and the person's UK domiciled spouse must also have died.

Capital Gains Tax

Individuals are subject to capital gains tax on their chargeable gains. Capital gains tax also applies to other entities that are not companies such as trustees and personal representatives. Gains are taxed for the tax year concerned. Under the capital gains tax regime, an individual is taxed on gains arising in the tax year concerned during any part of which the individual satisfies the residence conditions. The rate of capital gains tax is 28% (where the total income and taxable gains after all allowable deductions (including the personal allowance) is above £32,010).

DOUBLE TAX TREATIES

Treaty and Non Treaty Withholding Taxes

The following chart contains the withholding tax rates that are applicable to interest and royalty payments by UK companies to non-residents under the tax treaties currently in force. Where, in a particular case, a treaty rate is higher than the domestic rate, the latter is applicable. There is no withholding tax on dividends. Relief at source may be granted on application.

UK – Treaty Withholding Rates Table*

	DIVIDENDS			
	INDIVIDUALS, COMPANIES	QUALIFYING COMPANIES	INTEREST [1]	ROYALTIES
Domestic Rates				
Companies:	0	0	0	0
Individuals:	0	n/a	20	20
Treaty Rates				
Treaty With:				
Antigua and Barbuda	n/a	n/a	– [2]	0
Argentina	n/a	n/a	12	3/5/10/15 [3]
Armenia [4]	n/a	n/a	5	5
Australia	n/a	n/a	0/10 [5] 5	
Austria	n/a	n/a	0	0/10 [6]
Azerbaijan	n/a	n/a	10	5/10 [7]
Bangladesh	n/a	n/a	7.5/10[5]	10
Barbados	n/a	n/a	15	0/15 [8]
Belarus [9]	n/a	n/a	0	0
Belgium	n/a	n/a	15	0
Belize	n/a	n/a	– [2]	0

Bolivia	n/a	n/a	15	15
Bosnia and Herzegovina [10]	n/a	n/a	10	10
Botswana	n/a	n/a	10	10
British Virgin Islands	n/a	n/a	– [2]	– [2]
Brunei	n/a	n/a	– [2]	0
Bulgaria	n/a	n/a	0	0
Canada	n/a	n/a	10	0/10[11]
Chile	n/a	n/a	5/15 [12]	5/10[13]
China (People's Rep.)	n/a	n/a	10	7/10[13]
Croatia[10]	n/a	n/a	10	10
Cyprus	n/a	n/a	10	0/15[8]
Czech Republic	n/a	n/a	0	0
Denmark	n/a	n/a	0	0
Egypt	n/a	n/a	15	15
Estonia	n/a	n/a	10	5/10[13]
Falkland Islands	n/a	n/a	0	0
Faroe Islands	0	0	0	0
Fiji	n/a	n/a	10	0/15[14]
Finland	n/a	n/a	0	0
France	n/a	n/a	0	0
Gambia	n/a	n/a	15	12.5
Georgia	n/a	n/a	0	0
Germany	n/a	n/a	0	0
Ghana	n/a	n/a	12.5	12.5
Greece	n/a	n/a	0	0
Grenada	n/a	n/a	– [2]	0
Guernsey	n/a	n/a	–[2]	–[2]
Guyana	n/a	n/a	15	10
Hong Kong	n/a	n/a	0	3
Hungary [15]	n/a	n/a	0	0
Iceland	n/a	n/a	0	0
India	n/a	n/a	10/15[5]	10/15[13]
Indonesia	n/a	n/a	10	10/15[13]
Ireland	n/a	n/a	0	0
Isle of Man	n/a	n/a	–[2]	–[2]
Israel	n/a	n/a	15	0/15[8]
Italy	n/a	n/a	10	8
Ivory Coast	n/a	n/a	15	10
Jamaica	n/a	n/a	12.5	10
Japan	n/a	n/a	0/10[5]	0
Jersey	n/a	n/a	–[2]	–[2]
Jordan	n/a	n/a	10	10

Kazakhstan	n/a	n/a	10	10
Kenya	n/a	n/a	15	15
Kiribati	n/a	n/a	0	0
Korea (Rep.)	n/a	n/a	10	10
Kuwait	n/a	n/a	0	10
Latvia	n/a	n/a	10	
5/10[13]				
Lesotho	n/a	n/a	10	10
Libya	n/a	n/a	0	0
Lithuania	n/a	n/a	5/10 [16]	
5/10[13]				
Luxembourg	n/a	n/a	0	5
Macedonia (FYR)	n/a	n/a	0/10 [17]	0
Malawi	n/a	n/a	0/– [18]	0/–[18]
Malaysia	n/a	n/a	10	8
Malta	n/a	n/a	10	10
Mauritius	n/a	n/a	0/– [19]	15
Mexico	n/a	n/a	0/5/10/15 [20]	10
Moldova	n/a	n/a	0/5 [21]	5
Mongolia	n/a	n/a	7/10[5]	5
Montenegro[10]	n/a	n/a	10	10
Montserrat	n/a	n/a	–[2]	0
Morocco	n/a	n/a	10	10
Myanmar	n/a	n/a	–[2]	0
Namibia	n/a	n/a	–[2]	0 / 5
[14]				
Netherlands	n/a	n/a	0	0
New Zealand	n/a	n/a	10	10
Nigeria	n/a	n/a	12.5	12.5
Norway	n/a	n/a	0	0
Oman	n/a	n/a	0	0
Pakistan	n/a	n/a	15	12.5
Papua New Guinea	n/a	n/a	10	10
Philippines	n/a	n/a	10/15 [22]	15/25
[23]				
Poland	n/a	n/a	0/5[5]	5
Portugal	n/a	n/a	10	5
Qatar	n/a	n/a	0/– [24]	5
Romania	n/a	n/a	10	
10/15[7]				
Russia	n/a	n/a	0	0
Saudi Arabia	n/a	n/a	0	5/8[13]

St. Kitts and Nevis	n/a	n/a	– [2]	0
Serbia[10]	n/a	n/a	10	10
Sierra Leone	n/a	n/a	–[2]	0
Singapore	n/a	n/a	10	0/10[7]
Slovak Republic	n/a	n/a	0	0
Slovenia	n/a	n/a	0/5 [25]	5
Solomon Islands	n/a	n/a	–[2]	0
South Africa	n/a	n/a	0	0
Spain	n/a	n/a	12	10
Sri Lanka	n/a	n/a	0/10[5]	0/10[7]
Sudan	n/a	n/a	15	10
Swaziland	n/a	n/a	–[2]	0
Sweden	n/a	n/a	0	0
Switzerland	n/a	n/a	0	0
Taiwan	n/a	n/a	10	10
Tajikistan[9]	n/a	n/a	0	0
Thailand	n/a	n/a	0/25[5]	5/15[7]
Trinidad and Tobago	n/a	n/a	10	
0/10[14]				
Tunisia	n/a	n/a	10/12[5]	15
Turkey	n/a	n/a	15	10
Turkmenistan[9]	n/a	n/a	0	0
Tuvalu	n/a	n/a	–[2]	0
Uganda	n/a	n/a	15	15
Ukraine	n/a	n/a	0	0
United States	n/a	n/a	0	0
Uzbekistan	n/a	n/a	5	5
Venezuela	n/a	n/a	0/5[5]	5/7 [26]
Vietnam	n/a	n/a	10	10
Zambia	n/a	n/a	10	10
Zimbabwe	n/a	n/a	10	10

1. Many treaties provide for an exemption for certain types of interest, e.g. interest paid to the state, local authorities, the central bank, export credit institutions, or in relation to sales on credit. Such exemptions are not considered in this column.

2. The domestic rate applies; there is no reduction under the treaty.

3. The 3% rate applies to royalties paid for news; the 5% rate applies to copyright royalties (other than films, etc.); the 10% rate applies to industrial royalties.

4. Effective from 1 January 2013 (for withholding taxes), 1 April 2012 (for corporation tax) and 6 April 2012 (for income and capital gains taxes).

5. The lower rate applies to interest paid to financial institutions (as defined).

6. The higher rate applies if the Austrian company controls more than 50% of the voting stock in the UK company.
7. The lower rate applies to copyright royalties.
8. The higher rate applies to films, etc.
9. The treaty concluded between the United Kingdom and the former USSR.
10. The treaty concluded between the United Kingdom and the former Yugoslavia.
11. The lower rate applies to copyright royalties (excluding films), computer software, patents and know-how.
12. The lower rate applies to interest on (i) loans granted by banks and insurance companies, (ii) bonds or securities that are regularly and substantially traded on a recognized securities market and (iii) a sale on credit of machinery and equipment.
13. The lower rate applies to equipment rentals.
14. The lower rate applies to copyright royalties (excluding films, etc.).
15. Effective from 1 April 2012 (for corporation tax) and 6 April 2012 (for income and capital gains taxes).
16. The lower rate applies to interest paid by a public body.
17. The lower rate applies to interest paid on a loan by one enterprise to another.
18. The domestic rate applies if the Malawi company controls more than 50% of the voting power in the UK company.
19. The zero rate applies to interest paid to banks; the domestic rate applies in other cases (no reduction under the treaty).
20. The zero rate applies to interest paid by a public body; the 5% rate applies to interest paid to banks and insurance companies and to interest on bonds and securities regularly and substantially traded on a recognized securities market; the 10% rate applies to interest paid by a bank or by a purchaser of machinery and equipment in connection with a sale on credit.
21. The lower rate applies to interest paid by a public body and to interest paid to a financial institution.
22. The lower rate applies to interest paid by a company in respect of the public issue of bonds, etc.
23. The lower rate applies to films, etc.
24. The zero rate applies, inter alia, to interest (i) paid to an individual, a pension scheme, a financial institution and a company in whose principal class of shares there is substantial and regular trading on a stock exchange, provided that such interest is not paid as part of an arrangement involving back-to-back loans; and (ii) interest paid by the state or a bank, or interest on a quoted Eurobond. The domestic rate applies in other cases (no reduction under the treaty).
25. The lower rate applies to interest paid by public bodies. It also applies where the payer and the recipient are both companies and either company owns directly at least 20% of the capital of the other company, or a third company, being a resident of a contracting state, holds directly at least 20% of the capital of both the paying company and the recipient company.
26. The lower rate applies to royalties for patents and know-how.

**accurate to April 2012*

→ Corporate Law

UK corporate law is based on both common law and statute. The legislative framework of UK company law has experienced a comprehensive overhaul in recent years with the implementation of the Companies Act 2006 (the "2006 Act") which is intended to simplify and modernise company law in the UK. The 2006 Act received Royal Assent on 8 November 2006 and has come into force by way of phased implementation since 1 January 2007 with the final provisions coming into force on 1 October 2009.

The 2006 Act exists alongside the Companies Act 1985 and Companies Act 1989 (together with the 2006 Act, the "Companies Acts"). There are a number of other statutes to be considered depending on the activity a company wishes to follow. Although the provisions are similar in the constituent parts of the UK (England and Wales, Scotland and Northern Ireland), there are some differences and what follows applies specifically to England and Wales.

Types of Business Structure

The first question to be considered by anyone wishing to establish a business operation in the UK is the type of structure to be used. Although the corporate structure is the one which is most widely used in the UK, there are a variety of other structures available to overseas entities seeking to establish a presence in the UK including setting up a branch or place of business of an overseas company, a partnership or joint venture or a limited liability partnership.

Overseas companies can register as a branch or as a place of business in the UK. A branch is part of an overseas limited company organised to conduct business through local representatives in the UK. A place of business is for companies who cannot register as a branch because they are from within the UK, they are not limited companies or their activities in the UK are not sufficient to define it as a branch (for example if the activity is simply a representative office).

Types of Companies

There are different types of corporate structure, which can be used under UK law. The most common structure used is a private company limited by shares. Companies can be either public, which means that they can offer their shares or other securities for public subscription, or private, which means that they are not allowed to offer their shares or other securities to the

public. A private company bears the suffix "Limited" or "Ltd" and a public company bears the suffix "PLC". Other types of corporate structure can be established such as companies limited by guarantee or unlimited companies, but these are not common for trading entities.

Public companies are generally subject to stricter regulations under the Companies Acts and, if they are quoted, they will also be subject to the regulations and codes of practice applicable to the relevant trading market.

The formation of a company in the UK is easy and a corporate vehicle structured to the relevant needs can be obtained very quickly with a "same day" service being generally available. There are no requirements for local shareholders or directors and no minimum capital rules apply (only applicable to a private company). Certain documents, for example the company's constitutional documents, must be filed with the Registrar of Companies to form a company. A company is required to file its memorandum of association with the Registrar of Companies on applying for registration. The memorandum of association need only state that the initial subscribers wish to form a company under the 2006 Act and they agree to become members of the company and to take at least one share each.

The articles of association contain the regulations relating to the internal management of the company covering matters such as the holding of meetings of directors and shareholders, transfer of shares and changes to share capital, appointment and removal of directors and the powers of directors. There is a standard or model form of articles of association, known as the Model Articles, which many UK private companies follow to some extent. The Model Articles will automatically apply to any company limited by shares that does not adopt its own articles of association on incorporation.

No government or other permission is required to establish a company, although there is some regulation of the use of business and trading names. Once registered, the name of a company can be changed by special resolution (75% majority) of the shareholders but care must be taken to check that the desired name is available for use by the company.

Under the 2006 Act, any person can object to a company's registered name on the grounds that it is the same as, or similar to, a name in which the objector has goodwill. Objections to the registration of company names must be lodged with the Companies Names Adjudicator.

Liability of Shareholders

Every company having a share capital, whether public or private, must have at least one shareholder. There are no rules relating to the residency of shareholders. In the case of both private and public companies, the liability of the shareholders or members is limited to the amount unpaid on the shares held by them. The company and its shareholders are regarded for company law purposes as separate legal persons.

Share Capital. Authorised Share Capital

A company's authorised share capital is the total number of issued and unissued shares in the capital of the company. An increase in a company's authorised share capital requires shareholder approval by ordinary resolution (a simple majority).

There is no longer a requirement for a company to have an authorised share capital. If a company wishes to restrict the number of shares it can allot or remove its existing authorised share capital, it will need to amend its articles of association by special resolution (75% majority) to include or remove suitable provisions restricting the share capital of the company.

Issued Share Capital

The shares which are allotted and issued to shareholders will determine the company's issued share capital. In order to allot and issue shares, the company's directors must be authorised, by the articles of association or by shareholder resolution, to issue the relevant shares and also specifically authorised to issue shares where the directors wish to issue shares for cash otherwise than in proportion to existing shareholdings. Directors of private companies incorporated under the 2006 Act with only one class of share will automatically be free to allot shares without the prior authorisation from the members, subject to any express restriction on this power contained in the company's articles. A company incorporated under the Companies Act 1985 will first need to pass an ordinary resolution in order to give the directors the power to allot shares as set out above. These allotments are still subject to any rights of pre-emption in favour of existing shareholders although as before these may be disapplied by the company's articles or by special resolution (75% majority).

Shares must be issued for not less than their nominal value, although shares can be issued as partly paid and the directors can call up the unpaid amount at any time.

Minimum Shareholdings. Private Companies

There are no minimum requirements for the authorised and issued share capital for private limited companies and the most typical formation is for a company to have an authorised share capital of at least £100 divided into shares of £1. However, it is possible to establish companies with shares of different denominations and in currencies other than sterling.

Public Companies

Before a public company can carry on business, it must have a minimum share capital of £50,000 of which 25% of the shares must be paid up.

Share Capital Rights

The rights and restrictions attaching to the shares are set out in the company's articles of association. Most companies issue only one class of shares, known as ordinary shares. The rights and restrictions can be changed only by shareholder resolution (75% majority) and, where appropriate, a resolution of the holders of any affected class of shares. Preferred or preference shares would be expected to carry rights (eg to receive dividends, return on capital, etc) ahead of the ordinary shareholders and deferred shares would be expected to carry rights behind those of the ordinary shareholders. In the case of a quoted public company, it would be usual for the shares to be freely transferable and this would be expected to be a requirement of the UK markets. However, this is without prejudice to agreements restricting transfer, eg by way of a lock-up or to comply with the requirements of overseas securities laws.

Shares in UK companies are generally held in certificated form, although there is an electronic system known as CREST through which shares in quoted companies can generally be traded in uncertificated (non-paper) form. When shares are issued or transferred, details of the shareholder are registered in the company's statutory books and a share certificate issued or a CREST account is credited, as applicable.

Shareholder Meetings

Most powers needed to run the company are vested in the directors by the articles of association, although it is possible to include specific provisions in the articles of association or in a shareholders' agreement requiring shareholder approval in relation to certain specified matters.

The Companies Acts set out those matters which require shareholder approval. In the case of a private company with few shareholders or which is a wholly-owned subsidiary, shareholder approval can be obtained by written resolution of the shareholders, or otherwise by the shareholders in a general meeting. The written resolution procedure is not available to public companies.

Shareholder meetings require a prior period of notice to shareholders of not less than 14 days save in respect of a private company's annual general meeting where 21 days notice is required. Where not less than 90% of the shareholders of a private company agree, however, these notice requirements can be dispensed with and the meeting (including the annual general meeting) may be held on short notice.

A public company can only dispense with the requirement for a notice period in respect of a general meeting if 95% of the shareholders agree and for an annual general meeting, if all the shareholders agree. A general meeting on short notice is not permitted for a public limited company that is trading on a regulated market.

Matters reserved to the shareholders by the Companies Acts include authorisations in relation to share capital issues, certain categories of related party transactions, amendments to the company's constitutional documents and the decision to liquidate the company. A private company seeking to reduce its share capital will generally be able to do so using one of two procedures available to it designed to protect the creditors of the company. The first, and perhaps the simplest, procedure is a reduction of capital by means of a special resolution (75% majority) of the shareholders supported by a solvency statement. The second and more onerous procedure in terms of time and cost requires shareholder approval as well as the sanction of the court. Public companies seeking to reduce their share capital are restricted to using the court approved procedure.

A public company must hold a general meeting of its shareholders, known as the annual general meeting, each year at which it is usual to present the accounts, appoint auditors, deal with dividends and elect any directors who have been appointed since the last annual general meeting. Private companies are not required to hold an annual general meeting subject to any express provision to the contrary set out in the articles.

Directors and Officers. Appointment and Removal

A company may, if its articles of association permit, have only one director who must be a natural person, and be at least 16 years old.The rights to appoint directors will be contained in the company's articles of association. Any person proposing to act must indicate his or her consent to act and provide specified information to the Registrar of Companies. It is usual for the shareholders to have the right to appoint directors and for the directors to be able to fill any vacancy on the board subject to the right of the shareholders to confirm the appointment at the next annual general meeting. Similarly, the articles of association would set out the circumstances in which a director can be removed from office and there is also a statutory right, subject to compliance with certain procedures, for shareholders, by simple majority, to remove any director from office regardless of any agreement to the contrary in place with the director.

It should be noted that the office of director is quite separate as a matter of English law from the director's position, (in the case of executive directors), as an employee and accordingly, the removal from office of a director is without prejudice to the director's rights under his or her contract of employment.

Directors' Duties

Part 10 of the 2006 Act sets out the general duties of directors which are owed to the company. There are seven statutory duties which are based on and replace the previous common law and equitable principles relating to directors' duties. The various statutory requirements and restrictions placed on the powers of directors must be considered in the light of any proposed activity of the company. The effect of these duties is that the directors can be held personally liable if they are deemed to have failed in promoting the success of the company.

It should also be noted that in certain circumstances, directors may become liable to creditors in an insolvent liquidation and that directors will be personally liable for the information about the company contained in any prospectus issued for the purposes of a fund-raising.

Subject to the rules relating to conflicts of interest, as further described below, there is no general legal requirement for a company to have a proportion of independent directors on its board nor is there a requirement for companies to have a supervisory board. However, quoted companies will be expected to comply with best practice in relation to corporate governance, which includes the requirement for independent directors.

Similarly, there are no specific rules on the level of directors' remuneration in private companies and this will usually be a matter for negotiation. In some circumstances, such as payments proposed to be made to a director for loss of office, shareholder approval will be required. In the case of fully listed (quoted) companies, shareholders must approve on an advisory basis, a remuneration report, which sets out, amongst other things, all payments and other benefits made to directors.

Conflicts of Interest

Directors have a statutory duty to avoid situations in which their interests can or do conflict, or may possibly conflict, with those of the company. Matters that give rise to an actual or potential conflict may be authorised by the board subject to the board having all necessary powers to authorise such conflicts. For private companies incorporated on or after 1 October 2008, the power to authorise is subject to anything in the company's articles of association invalidating such authorisation. Private companies incorporated prior to 1 October 2008, must pass an ordinary resolution (simple majority) expressly providing the board with the power to authorise conflicts. For a public company, the directors may only authorise a conflict of interest if permitted to do so by the company's articles of association.

Secretary

A public company must appoint a company secretary. The company secretary does not need to be a natural person. The company secretary is principally an administrative function and the appointed secretary should be familiar with the filing and other requirements of the Registrar of Companies. Accordingly, it would be usual for the secretary to be based in the UK.

There is no requirement for a private company to have a company secretary. If a private company chooses not to have a secretary, anything which is required or authorised to be done by the secretary can be validly done by a director or any person authorised by a director.

Annual Return

Companies must complete an annual return each year, which gives details of its share capital, shareholders, location of the statutory books, registered office, directors and secretary.

Registered Office

A company needs to file details of its registered office in England and Wales with the Registrar of Companies and any official notifications will be sent to that address. Subject to certain exceptions, the full name of the company must appear at its registered office and business premises. Any change to the registered office can be made by simple board resolution and must be notified to the Registrar of Companies.

Company's Notepaper

All business stationery must show the company's full name and number and registered office. The names of the directors need not be included, but if the name of any director appears then so must the names of all the other directors.

Accounts and Auditors

Subject to exemptions for small companies, every company must appoint a firm of auditors to audit and report on its accounts for each financial period. Companies are also required to file accounts and a directors' report with the Registrar of Companies, and these documents must comply with the requirements of the 2006 Act and show a true and fair view of the financial position of the company. The 2006 Act lays down detailed rules as to the form and content of accounts and time limits for their delivery to the Registrar of Companies.

Other Filings

Companies must also notify the Registrar of Companies whenever there is a change of share capital, directors and officers and whenever the company creates a charge over any part of its assets. In the case of a charge, the required information must be filed within 21 days of its creation to ensure its security in the event of liquidation. The 2006 Act creates an offence where a person knowingly or recklessly causes to be delivered to the Registrar of Companies a document that is false or misleading, and is liable for up to two years imprisonment or a fine.

Statutory Books

Every UK company must maintain a statutory register giving details of its shareholders, directors, secretary, any issues and transfers of shares as well as charge-holders. There should also be a minute book containing minutes of all meetings of directors and shareholders.

A company can now keep its statutory books at an address other than its registered office. This is known as a single alternative inspection location (SAIL), the location must be in the same part of the UK as the company's registered office and notification of the SAIL must be given to the Registrar of Companies.

Methods of Raising Finance

The appropriate method of raising finance will depend on the nature, size and stature of the company. Funds can be raised by way of private equity, a stock exchange listing or loan finance, and within these broad categories there are a number of variations.

→ Labour Law

Employment law in the UK is based on both common law and statute. Although the employment law regime is not as onerous for employers as in many other European countries, in recent years there has been a significant increase in employment regulation, much of it to implement EU Directives.

Employment Contracts

An employer is required to provide an employee with a written statement of specified employment particulars within two months of the start of their employment. This includes certain details of the disciplinary and grievance procedures that apply to his employment. Any changes to the statement must be notified within one month of the date of the change.

Cost of Dismissal and Wrongful Dismissal

There are two issues to consider when dismissing an employee: contractual rights and statutory rights.

■ CONTRACTUAL RIGHTS. If an employee's contract of employment is terminated in breach of that contract, the employee may be entitled to claim damages for wrongful dismissal or breach of contract. The amount of damages claimed will be the sum that would put the employee in the position he would have been in had the contract been terminated correctly. Usually, this is the amount of salary and benefits to which the employee would have been entitled during the notice period or until the end of any fixed term contract. This entitlement to damages is subject to the employee's duty to mitigate the losses he suffers by finding alternative employment.

■ STATUTORY RIGHTS. Statute provides for minimum periods of notice, which are: one weeks' notice for employees with between one month and two years' continuous service, and an additional week's notice for each complete year of service thereafter, up to a maximum of 12 weeks for 12 complete years' service.. However, usually the contract provides for a period of notice which can be more generous (but not less generous) than the statutory minimum.

Claims for breach of contract may be brought either in the High Court or the County Court, or for claims limited to £25,000 in an Employment Tribunal.

It is significant to note that for claims in the Employment Tribunal, each party bears their own costs, so costs are not awarded against the unsuccessful party save in exceptional circumstances. This is different from the position in the civil court where costs will usually be awarded against the unsuccessful party.

Unfair Dismissal

For employees who have two years' continuous employment with the employer (or one year if they commenced employment prior to 6 April 2012), it is open for such employees to bring a claim for unfair dismissal in the Employment Tribunal. It should be noted that certain unfair dismissal claims (for example, dismissal by reason of pregnancy, for whistleblowing, for exercising a statutory right or for trade union membership) do not require a qualifying period of employment to be able to bring a claim.

In order to avoid claims for unfair dismissal, an employer should ensure that employees are only dismissed for a "fair" reason, following a "fair" procedure. The five potentially "fair" reasons for dismissing an employee are conduct, capability (ie competence or on health grounds), redundancy, statutory bar or "some other substantial reason" justifying the dismissal of an employee holding the position held by that employee. The procedures to be followed in relation to each category of potentially fair reason for dismissal are slightly different but they all involve consultation with the employee before the dismissal. The Tribunal will also consider whether the employer has acted reasonably in all the circumstances in treating the reason for the dismissal as a sufficient reason for dismissing the employee.

Employers will need to follow certain minimum disciplinary and grievance procedures or risk both unfair dismissal and an uplift to compensation, at the discretion of the Employment Tribunal. In determining whether such an uplift should be applied, the Tribunal shall take into consideration the extent to which the employer has complied with the ACAS Code of Practice on Disciplinary and Grievance Procedures.

If an employee is successful in bringing an unfair dismissal claim, an Employment Tribunal can order reinstatement, re-engagement or compensation. Compensation is the most common award and comprises the following elements:

- a basic award which is calculated in the same way as a statutory redundancy payment depending on the age and length of service of the employee and a week's pay, which is currently capped at a maximum of £430 per week;
- a compensatory award which will be assessed on the basis of the losses suffered by the employee. The maximum award is currently £72,300 (this figure is reviewed annually on 1 February).

Employment Contracts for Directors

The employment contracts for directors are commonly referred to as service agreements and should be approved by the board of directors of the company before they are entered into. They usually contain more onerous provisions specifying the director's duties to the company as well as protection for the company's confidential information, "garden leave" provisions, intellectual property rights, restrictions on activities during employment and possibly post termination restrictive covenants. It is also common for directors to have longer notice periods than other employees. A service agreement usually provides for the director to resign his office on termination of the employment. There is no special regime for the employment of directors. However, there are requirements in the Companies Act 2006 which limit the period of a director's service contract to no more than two years without the prior written consent of the shareholders of the company. There are also special provisions regarding notice and remuneration which apply to directors of UK quoted companies.

Employees' Representatives and Union Representation. Collective Consultation with Employee Representatives

In a situation where 20 or more employees are being dismissed by reason of redundancy within a 90-day period, or where a transfer of a business (or part thereof) is proposed, employers have a statutory duty to carry out collective consultation and to inform (with specified information) and consult with the affected employees either through a trade union (if that is appropriate) or through their own elected representatives. The penalty for non-compliance with this obligation to inform or consult over collective redundancy is up to 90 days' actual pay for each affected employee if an affected employee or his representative brings a successful claim for a protective award in an employment tribunal. The penalty for failure to comply with the obligation to inform or consult over a TUPE transfer is 13 weeks' actual pay for each affected employee.

European Works Councils

The purpose of a European Works Council (EWC) is for employers to inform and consult their workforce on an ongoing basis about measures which are proposed which may affect employment prospects and decisions which are likely to lead to substantial changes in the organisation such as redundancies or transfers of the business. The Transnational Information and Consultation Regulations 1999 (TICE Regulations) apply if central management of a

"community scale" undertaking or group of undertakings is in the UK. There must be at least 1,000 employees within the EEA and at least 150 employees in each of two member states.

Information and Consultation obligations are not automatic; if there is no EWC (either because central management has not initiated one or the employees have not requested one) there is no obligation to inform or consult. However, if a written request has been made by employees (or their representatives) covering 100 or more employees in at least two member states, central management must set up a special negotiating body to negotiate an EWC or a procedure for Information and Consultation. If they fail to do so within three years of an EWC request, the default model EWC provisions apply and Information and Consultation obligations arise under the TICE Regulation where workers' interests are affected in at least two undertakings in at least two member states represented on an EWC.

Union Representation

Just over a quarter of workers in the UK belong to a trade union. A trade union is an organisation which consists wholly or mainly of workers of one or more description. A trade union's main aim is to reach agreements with employers over the contractual terms under which workers will work.

An employee who is a member of a trade union has rights which include the following in relation to his employer: to be accompanied to a grievance/disciplinary hearing by a trade union official; not to be refused employment, dismissed or subjected to any detriment by reason of his trade union membership or activities and the right to paid time off work to take part in trade union activities. Where a trade union is recognised for collective bargaining purposes, the employer has a duty to consult on training for workers within the bargaining unit.

Collective Bargaining Agreements

A collective agreement is an agreement or arrangement made by or on behalf of a union and an employer which relates to matters such as terms and conditions of work, termination/suspension of employment, disciplinary matters or allocation of work. In large sectors of industry in the UK, levels of pay and other principal terms are agreed in a collective agreement.

Where a union has been formally recognised by an employer for collective bargaining, it can negotiate pay and other terms on behalf of a group (or groups) of workers. This will result in a collective agreement being formed.

The provisions of a collective agreement will be legally enforceable provided the agreement is in writing, and expressly states that the parties intend the agreement to constitute a legally binding agreement between the employer and the union. To be enforceable between the worker

and the employer, the collective agreement must be incorporated into the worker's individual terms and conditions of employment. Such provisions will be enforceable between the employer and the worker even if the collective agreement is not legally binding as between the employer and the union.

There are statutory rights in the UK for trade unions to be recognised by employers for collective bargaining purposes, provided various conditions are satisfied. The regime seeks to promote voluntary recognition wherever possible. The recognition procedures are complex and were introduced in the Employment Relations Act 1999. The recognition machinery is contained in The Trade Union and Labour Relations Consolidation Act 1992.

Wages And Other Types Of Compensation

The National Minimum Wage Act 1998 specifies a minimum wage for employees over school leaving age. Currently, the rates are as follows: for employees over school age but under 18 the minimum wage is £3.72 per hour, for employees aged 18-20 it is £5.03 per hour and for employees aged 21 and over it is £6.31 per hour. These rates are reviewed annually on 1 October. The requirement to work overtime and additional payment (if any) for overtime worked is something which is usually dealt with by the employee's contract of employment.

Pensions Auto Enrolment

Starting from 1 October 2012, and depending on PAYE scheme size, employers will have to automatically enroll eligible staff members into a qualifying workplace pension scheme and make mandatory employer contributions towards it. Auto-enrolment is being staged over a period of six years (starting with the largest employers in 2012) and every employer will have a date from when the automatic enrolment duties come into force for their business. Employees who don't want to be in the pension scheme must actively "opt out".

The previous statutory duty on employers with five or more employees to designate a stakeholder pension scheme and offer their employees the opportunity to contribute to such a scheme was repealed with effect from 1 October 2012.

Insurance Benefits

It is common in the UK for employers to provide their employees with insurance benefits. Probably the most common is private medical insurance. Other benefits which are often provided are life insurance, travel insurance, permanent health insurance and critical illness insurance. Whether or not an employer provides these to employees is a matter for the contract. Where such benefits are provided, the contract should be carefully drafted to ensure that the employer reserves all necessary rights and does not put himself in a position where he is contractually obliged to provide a benefit for which he is not insured.

Employment Regulations

The following is a brief summary of some of the main statutory provisions which employers must be aware of when employing employees in the UK:

■ WORKING TIME. The Working Time Regulations 1998 impose a limit on employee's working time of an average of 48 hours a week averaged over a 17 week reference period. Individual employees can choose to work longer than this by signing an 'opt out' agreement with their employer. There are also requirements for minimum rest breaks and daily and weekly rest periods. There are special provisions for night work.

■ HOLIDAY. Employees are entitled to 28 days' paid holiday each year (including bank and public holidays) under the Working Time Regulations 1998. There are eight recognised public holidays per year which are included in this minimum entitlement. Employers are free to agree a more generous contractual entitlement and in the UK it is common for employers to allow paid holiday entitlement of between 20 and 30 days and for bank and public holidays to be given in addition to this entitlement.

■ SICK PAY. There is a statutory entitlement to sick pay for up to 28 weeks in any period of incapacity for work (PIW), or series of linked PIWs, under the Social Security Contributions and Benefits Act 1992. The current statutory sick pay rate is £86.70 per week. The first three days of any sickness are "waiting days" when no sick pay will be payable. It is open to employers in the UK to agree a more generous contractual sick pay arrangement and it is common practice to do so.

■ REDUNDANCY. If an employee with two or more years' continuous employment is dismissed by reason of redundancy, he is entitled to receive a statutory redundancy payment from his employer. The amount of the redundancy payment is calculated by reference to the employee's age, length of service and weekly pay (subject to maximum of £450 per week). The maximum statutory redundancy payment (or basic award) is currently £13,500.

■ DISCRIMINATION. Currently under English law, discrimination on the grounds of sex, race, disability, sexual orientation, age, religion or belief, gender reassignment, marriage and civil partnership, pregnancy and maternity is unlawful. Compensation for workers who successfully bring discrimination claims against their employers is potentially unlimited and can include a claim for injury to feelings.

■ PROTECTION FOR PART-TIME AND FIXED TERM EMPLOYEES. It is unlawful for an employer to subject to a detriment or treat part-time or fixed term workers less favourably than full time staff unless such treatment can be objectively justified. A worker whose fixed term contract is successively renewed will be considered a permanent employee after four years of continuous employment.

■ DATA PROTECTION. Employers have a duty to notify their staff as to the personal and sensitive personal data they hold, tell them how it will be processed and obtain their consent to process the data. Such data must be kept securely. Data must be processed in accordance with the provisions of the Data Protection Act 1998 and the various Data Protection Codes issued by the Information Commissioner's Office. Failure to comply carries civil penalties. Workers have the right to request copies of personal data held in relation to them by the employer.

■ MATERNITY RIGHTS. All pregnant women have the right to paid time off for antenatal care in preparation for the birth of their baby. Pregnant employees are entitled to six months ordinary maternity leave from work and then an additional maternity leave period of six months, regardless of their length of service with their employer.

Employees on maternity leave who meet the eligibility requirements are entitled to statutory maternity pay, which is pay of 90% of the employee's normal weekly earnings for the first six weeks of maternity leave and either £136.78 per week or 90% of normal weekly earnings, whichever is lower, for the next 33 weeks. A high percentage of this payment is recoverable by the employer out of its National Insurance contributions.

■ PATERNITY RIGHTS. Employees with at least 26 weeks' employment who meet the eligibility requirements may take up to two weeks ordinary paternity leave and 26 weeks additional paternity leave (if the mother returns to work before taking her full maternity leave entitlement). Employees who take this leave are entitled to statutory paternity pay which is currently £136.78 per week or 90% of normal weekly earnings if lower.

■ ADOPTION RIGHTS. The adoption regime provides similar leave and pay rights and has similar qualification provisions to the maternity provisions. In a situation where there is a joint adoption, one partner is entitled to statutory adoption pay whilst the other has paternity leave entitlements.

■ PARENTAL LEAVE. Employees with one year's employment can take up to 18 weeks' unpaid leave for each child up to the child's fifth birthday. This right transfers with the employee when he/she changes employer. Statute provides a scheme which allows parental leave to be taken in blocks of one week or more although no more than four weeks in any year. However, employers can agree arrangements that are more generous and in particular which permit leave to be taken in blocks of less than one week.

■ THE RIGHT TO REQUEST FLEXIBLE WORKING. Employees with children aged up to 17 (or aged 18 if they are disabled) have the right to request flexible working arrangements from their employer. The requirements which must be fulfilled before such a request can be made are that the employee must have 26 weeks continuous employment and the employee must not have made another application to work flexibly under the right to request legislation during the preceding twelve months. The employer has an obligation to consider the request and give a

reason for any refusal (a request may only be refused on eligibility or procedural grounds or on one or more prescribed statutory reasons). A refusal to consider a request for flexible working arrangements from a female worker with childcare responsibilities may amount to indirect sex discrimination if it cannot be justified on objective grounds.

■ TIME OFF TO CARE FOR DEPENDANTS. Employees may take a reasonable amount of unpaid time off to deal with family emergencies.

Health And Safety

An employer is under a common law duty to have regard to the safety of its employees. The employer must provide a safe place of work and safe access thereto, it should take reasonable care that employees are not subjected to unnecessary risks of injury, provide safe systems of work, safe equipment and materials and competent fellow employees. An employer can also be liable at common law for accidents caused by acts of its employees where the employees were acting in the course of their employment. In addition to these common law duties, statutory obligations have been imposed under the Health and Safety at Work Act 1974. The Occupiers' Liability Act 1984 imposes duties on an employer for both his employees and visitors to the premises. Breach of such obligations can result in criminal as well as civil liability.

Contracting and Outsourcing of Work or Services

The Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"), which implements the EU Acquired Rights Directive, protects employees' rights in the event of a transfer of a business or part of a business in which they are working or in the event of a 'service provision change' (for example an outsourcing arrangement). The TUPE regulations generally do not apply to situations where the shares of a company are sold.

TUPE imposes a duty on the employer to inform and consult with employee representatives before the transfer takes place. There are potentially significant penalties for failure to adhere to these obligations.

The main effect of the TUPE regulations is that in the event of a transfer of a business or service provision change, the employment rights and obligations of the employees of the business (or the part of the business) being transferred or function being outsourced will be automatically transferred to the new owner of the business or new contractor who will automatically assume those rights and obligations.

Any pre or post transfer dismissal in connection with the transfer will be automatically unfair unless it is for an economic, technical or organisational reason which entails changes in the workforce. TUPE also makes it very difficult to change the existing terms and conditions of employment of transferring employees.

Unfortunately, it is not open to contracting parties to agree that the TUPE regulations will not apply. As the obligations which result from a TUPE transfer can be significant, particularly for the purchaser, it is common for business and asset sale agreements in the UK to contain indemnities and other provisions whereby the parties agree the way in which costs and liabilities will be borne.

Social Security

The UK operates a pay as you earn ("PAYE") tax deduction system which must be operated by all employers. There are currently four rates of tax: starting (10%), basic (20%), higher (40%) and additional (50%). These percentages are applied to a portion of an employee's taxable income subdivided into bands. The PAYE system requires the maintenance of pay and tax records for virtually all employees. Tax deducted by the employer under PAYE must be paid to HM Revenue and Customs within specified time limits. Employers are required to use certain forms to record pay and tax information and these must be retained for three complete tax years.

In addition employers must deduct National Insurance contributions. Generally employers must deduct National Insurance contributions on the earnings of the employee – known as employees' National Insurance contributions. In addition, employers must pay National Insurance contributions at 13.8% of the employee's earnings as employer's National Insurance contributions. Again employers have duties to keep records and account to HM Revenue and Customs within specified time limits.

Benefits provided to employees are also taxable and subject to the deduction of National Insurance contributions. Special rules apply for company cars.

→ Real Estate Law

Types of Ownership

For the purposes of this section, the UK means England, Wales and Northern Ireland but excludes Scotland. Scotland has a different system of land ownership. A few words about terminology may help. Both the words "land" and "property" mean real estate. The word "premises" may also be used. This has the same meaning as "land" and "property" but is most correctly used to describe land or property included in a lease.

There are three types of ownership in the UK. They are called freehold, leasehold and commonhold. Land can only be registered as commonhold land if it is registered land with absolute title. It is a type of freehold and the essence of its creation is a further registration at the Land Registry.

Freehold is an estate in land which provides the holder of the estate with rights of ownership. The most common types of freehold estate are:

- fee simple, which is effectively absolute ownership of the land; and
- life estate, which means ownership for the duration of the holder's life.

The owner of a freehold has no landlord and can do whatever he likes with his property subject to the general law of the land and subject to any restrictions placed on the property by the owner or any former owner.

Freehold ownership is most common for residential houses, large estates and investment property. Leasehold ownership is where land is held by one person (called the tenant) from another person (called the landlord) for a limited period of time on the terms of an agreement (called a lease). Most business premises in the UK are occupied under leases. Residential flats (apartments) are also mostly occupied under leases. In most circumstances a tenant under a lease will pay a rent to the landlord. The lease will last for a limited amount of time. The lease document itself will contain rights and obligations both for the landlord and the tenant and numerous restrictions on what the tenant can and cannot do with the property. Modern commercial leases are long, complex documents which require legal advice.

The third form of ownership is commonhold which has been introduced recently. This new system of ownership was designed primarily for blocks of residential flats and other developments which are split into a number of units and where there is a significant amount of "common parts". Although this new form of ownership has now been available for a number of years commonhold schemes are still very rare.

Land Registry

There is a computerised register of land in the UK maintained by a government agency called the Land Registry. The register is computerised and accessible online. The register is maintained by a number of district land registries located throughout the country. At the moment, not all land in the country is registered but the government is committed to making it so. The government is also committed to extending the facilities available via the Land Registry portal including in due course a system enabling the transfer of land to be effected electronically.

All registered land has its own "title number" and plan which identifies the land in question. The entries which appear on the register against a particular title number are guaranteed by the state as accurate. There are certain rights and obligations (called overriding interests) which are not noted on the register of title. In theory, such rights and obligations should be apparent by a proper inspection of the land in question or making enquiries of the current owner/occupier. Land which is not registered at the Land Registry is increasingly rare particularly in urban areas.

Transfer

Generally, land can only be transferred by deed. A deed is a document usually prepared by a lawyer which is signed and witnessed and brought into effect in a particular way. This process does not require a notary. In order for a transfer of registered land to be effective, it must be completed by registration at the Land Registry. This cannot be done unless the relevant tax has been paid in respect of the transaction. The relevant tax is Stamp Duty Land Tax which is explained below.

Mortgages And Charges

If money is borrowed to assist with the purchase of land in the UK, the lender will invariably take a mortgage or a charge over the land in question. In this context the expressions "mortgage" and "charge" effectively mean the same thing. A commercial mortgage will normally involve two key documents. The first is a loan agreement which can be in the form of a formal agreement or a letter (sometimes called an offer letter or a facility letter). The second document is the mortgage itself which creates the security over the land and is registered at the Land Registry. The mortgage usually incorporates the loan agreement. The lender who takes a mortgage is called a mortgagee or chargee. The mortgagee's main rights are as follows:

- to be repaid the loan plus interest and costs.
- if the borrower defaults, to take possession of the mortgaged property and to sell it to repay his loan. It is not always necessary for a mortgagee to obtain a court order before taking possession or selling the mortgaged property.
- to appoint a receiver to manage and if necessary sell the property.
- to prevent a sale of the property if he is not repaid.

In practice, the mortgage or charge is now the only recognised formal, fixed security taken over land in the UK. Businesses may also be asked to provide floating charges in favour of institutional lenders. These charge all the assets of the business but only restrict dealings with those assets if the borrower is in default.

Restrictions on Acquisition

There are no restrictions on foreign ownership of UK property. It should be noted however that there have been recent moves by the government to deter the holding of high value residential property (over £2million) by "non natural persons" and this has had a "knock on" effect in respect of holding such property in off shore entities. In practice, it should also be noted that it should not be possible to acquire property in the UK or to borrow money on the security of property in the UK without complying with the identification requirements of the money laundering regulations.

Legal Protection for Buyers and Sellers

In general, the law gives no special protection to buyers or sellers of UK property. Those involved in property transactions will invariably use a solicitor to represent their interests. It is the job of the buyer's solicitor to ensure that the property being bought is free from undisclosed restrictions or obligations and that it is validly transferred at the correct price.

Restrictions on Development

UK law prohibits the development of land without planning permission. Development includes changing the use of land or carrying out building, mining or engineering operations on land. A planning permission is a permission given by the planning department of the relevant local authority. The local authority is allowed eight weeks in which to reach a decision on any planning application. For major developments, decisions can take up to 13 weeks.

Some types of minor development are permitted without planning permission. For example, minor works and changes of use where the new use is similar to the old use. For minor works a licence to alter may be required. However, this area is very tightly controlled and professional advice is advisable.

The law also requires that anybody carrying out building works must comply with building regulations and generally obtain a building regulation consent, this is a formal consent from the District Surveyor (a local government officer) who will consider the plans and specifications of any building works before giving consent and inspect the progress of the works at key moments.

All local authorities prepare plans for how they want different parts of their areas to be used and developed and these plans are available to the public. They will set out areas or zones where the local authority wishes to encourage particular uses (eg shopping, residential or industrial) and discourage other uses. The local government will consider any application for planning permission in the light of these plans so that, for example, applications for industrial development in residential areas will not succeed.

Leases

A lease is the most common way of holding commercial property in the UK. The length of leases will vary depending upon the circumstances and requirements of the parties. There is however a standard which is called an institutional lease. Such a lease would be granted by a major financial institution such as an insurance company, pension fund, investment trust or property company. Institutions tend to look for longer leases, eg 15 years or more (though terms of 10 years and even five years are available). The rent will be subject to review most commonly at five yearly intervals. Rent reviews in the UK are almost invariably on an upwards only basis.

This means that the terms of the lease guarantee to the landlord that either the rent will go up in line with market rents or it will remain the same even if the market rent has fallen below the existing rent level.

Institutional landlords own property for investment and/or business purposes and require that property to provide a secure and predictable income. The institutional landlord wants the rent it receives to be pure profit, this is referred to as "clear rent". This means that the rent the landlord receives will be clear of any deductions to cover the cost of, for example, repairs and maintenance of the building, the supply of services to the building and the cost of insuring the building. All these expenses will be payable by the tenant or (in a building containing a number of tenants), by all the tenants together. These extra payments on top of rent are generally called a "service charge".

In addition to rent and service charge, there are local taxes to help pay for local services to be paid to the local authority which are called business rates. They are charged on most non-domestic properties (including commercial), for example, shops, offices, pubs, warehouses, factories and can be as much as the rent again.

The lease will impose obligations and restrictions on the tenant. The obligation which is most significant from a financial point of view is the obligation to repair, decorate and if necessary re-build or pay towards the cost of rebuilding. In an office block for example the tenant will be responsible for maintaining, repairing and decorating his own property. He will also be responsible through the service charge to contribute towards the cost of repairing and maintaining the building of which his offices form part including all services to the building (eg lifts, air-conditioning and heating plant and systems). It is often the case that these expenses are not capped and if the building and its services are old, the tenant can face very significant extra costs through the service charge. Some of the other important provisions in a typical commercial lease are as follows:

- restrictions on use
- restrictions on alterations to the property
- restrictions on disposing of the property
- VAT is often payable on the rent of commercial property

Any lease granted for more than 7 years must be registered at the Land Registry. Tenants of property used for business purposes will normally have statutory rights to remain in the property when the lease comes to an end. They will have to negotiate a new lease and pay a commercial rent but the landlord cannot insist that they vacate unless special circumstances apply. It is also quite common for the statutory rights referred to above to be excluded by agreement between the parties.

Stamp Duty Land Tax

Stamp Duty Land Tax ("SDLT") is a tax payable to the government on land transactions. Any sale of freehold or leasehold land or the grant of a lease at a rent gives rise to SDLT. The tax is payable by the buyer or the tenant. Tax is payable on a sliding scale up to a maximum of 4% for commercial transactions (7% for residential property) of the capital sum paid by the buyer. In the case of leasehold commercial premises SDLT is payable on the capitalised value of the rent at the rate of 1% of the value that exceeds £150,000.

It should be noted that a penal rate of SDLT (15%) is payable in respect of residential property acquisitions by "non natural persons" if the purchase price is over £2million.

VAT

Value added tax is generally not payable on residential land. In some circumstances it is payable on the purchase price of commercial land and it is also often payable on rent and charged to tenants.

Setting Up in Business in the UK

Some choices for a business setting up in the UK can include obtaining:

■ A SERVICED OFFICE. These are usually small offices where office services are supplied as part of the package. The extent of services varies between providers but normally they will include furniture, use of equipment (such as photocopiers and fax machines), telephones and telephone answering, conference facilities and secretarial services. The commitment is short term and the cost is relatively high.

■ A SHORT TERM LICENCE. This is similar to a lease but for a very short term (i.e. 6 months to a year) and is designed to regulate a "temporary" arrangement. It would generally give the new business the space only. The tenant would have to supply furniture, equipment and personnel. There would be no security when the licence comes to an end.

■ A LEASE. The minimum commitment would be three to five years. Shorter periods are sometimes available from tenants who themselves have surplus space (ie by taking an underlease). Landlords will wish to be satisfied above all that the incoming tenant is able to pay the rent and fulfil the tenant's obligations in the lease. They will want to see accounts and references that demonstrate this. They m

■ A FREEHOLD. Purchasing a freehold involves a major capital commitment which is likely to be inappropriate for smaller businesses.