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LexisNexis® Company Law Guide 2017-2018

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Jurisdiction: Bangladesh
Firm: The Legal Circle
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1. What is the general situation for foreign companies in your jurisdiction?

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) their activities are strictly restricted. Specifically, if a foreign company registers itself with BIDA as a Liaison Office, it may engage only in marketing and other non-revenue generating activities, which are to be funded only by inward remittances sent in by the foreign office (i.e. a Liaison Office is a cost centre prohibited from engaging in any commercial or other revenue generating activities). If registered as a Branch Office, a foreign company may engage solely in the activities necessary to execute its work under a project agreement or other contract as specified in the application with BIDA. If so specified in its application to BIDA, a foreign company may fund its Branch Office from local revenues earned from its specified contract and, with prior approval of BIDA and BB, repatriate Branch Office profits to the foreign office.

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

Regarding inward remittances of foreign exchange by foreign investors, under section 13(1)(s) of FERA and Chapter 9, paragraph 1 of the FX Guidelines, foreign investors are free to invest in a foreign-owned company in Bangladesh, provided that such investments are brought in and recorded in an Authorised Dealer ('AD') bank. No permission of BB is needed to set up such companies if the foreign investors use their own funds (if funding of such foreign-owned companies is by foreign loans, as per Chapter 15 of the FX Guidelines, such foreign loans must be: (a) registered with, and the interest payments thereunder approved by BIDA; and (b) funded from institutional lenders, except for loans with a term of 12 months or less, which may be provided by the foreign investor/shareholder). Except where a foreign-owned company needs to register with BIDA for work permits for foreign employees (in which event, the minimum foreign investment into the share capital of such company is required to be at least US$50,000), foreign investment into such companies is not subject to a minimum amount.

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

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

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

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

Regarding the registration requirements under CA 1994, a foreign-owned company is registered with the RJSC in substantially the same manner as a wholly Bangladeshi-owned company. The incorporation procedure commences by obtaining 'Name Clearance' from the RJSC for the name of the proposed company. The procedure is complete upon the issuance of a Certificate of Incorporation by the RJSC. The incorporation procedure for foreign-owned companies does not involve anything significantly different from that of locally owned companies, except for the requirement under Chapter 9, paragraph 2(b) of the FX Guidelines that foreign exchange brought into an AD bank must be first encashed in a proposed company account prior to the issuance of shares. Accordingly, unlike a wholly Bangladeshi owned company, a foreign-owned company must open a proposed company bank account in Bangladesh under the proposed company's name by submitting the Name Clearance Certificate obtained from the RJSC to the bank. Prior to filing incorporation documents with the RJSC, the foreign investor/shareholder must: (a) remit in foreign exchange the applicable share capital amount into such account; and (b) thereafter obtain from the AD bank an encashment certificate evidencing the conversion of such share capital funds in foreign exchange into Bangladesh Taka. At incorporation, the encashment certificate must be filed with the RJSC along with the new company's memorandum and articles of association and other prescribed RJSC forms.

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

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

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

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

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

The Bangladesh Securities and Exchange Commission ('BSEC'), which regulates capital markets in Bangladesh, also issues various rules, orders, notifications and directives from time to time which have the effect of law and regulate the activities of companies.

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

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

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

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

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

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

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

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

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

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

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

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

(a) registration fee: Taka 76,250;

(b) registration filing fee: Taka 2,400;

(c) stamp fee for the memorandum and articles of association: Taka 9,150;

(d) fee for certified copies of the memorandum of association, Form XII and Digital Certificate of Incorporation: Taka 2,220.

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

Other important registrations for a company include:

(a) value added tax ('VAT') registration under the VAT Act, 1991;

(b) depending on the location of the office or place of business, a trade licence from the local government authority (union parishad/pourashava/city corporation office) for the company's specific type of trade or business;

(c) depending on the nature and size of the business and its premises, building fire licences, specific clearances from relevant ministries of the government and/or licences which involve the handling of particular substances and commodities etc.

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

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

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

(a) Form VII (Statutory Report): within a period of not less than one month and not more than six months from the date at which the company is entitled to commence business, every company limited by shares and every company limited by guarantee and having a share capital must hold a general meeting of the members of the company, which is defined as a statutory meeting under the CA 1994. The board of directors is required to prepare a report which is referred to as a statutory report and must forward the report to every member of the company at least 21 days before the day on which the statutory meeting is to be held;

(b) Form VIII (Special Resolution/Extraordinary Resolution): a copy of every special and extraordinary resolution must be printed or typewritten and duly certified under the signature of an officer of the company and filed with the RJSC within 15 days from its passing;

(c) Schedule X (Annual Summary of Share Capital and List of Shareholders, Annual Summary of Directors): under section 36(1) of CA 1994, a company must file with the RJSC an annual summary of share capital and list of shareholders within 18 months of its incorporation and annually thereafter. A private company must submit with the annual return a certificate signed by a director or other officer of the company that the company has not issued any invitation to the public to subscribe for any shares or debentures of the company;

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

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

The above is not an exhaustive list. Other reporting requirements are triggered in different situations such as a transfer of shares, return of allotment, changes to the board of directors.

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

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

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

Furthermore, the National Council for Industrial Development ('NCID') lists a total of 17 of industries designated as 'controlled industries': (a) fishing in the deep sea; (b) banks/ financial institutions in the private sector; (c) insurance companies in the private sector; (d) generation, supply and distribution of power in the private sector; (e) exploration, extraction and supply of natural gas/oil; (f) exploration, extraction and supply of coal; (g) exploration, extraction and supply of other mineral resources; (h) large-scale infrastructure projects (e.g. flyovers, elevated expressways, monorails, economic zones, inland container depots/container freight stations); (i) crude oil refineries (recycling/refining of lube oil used as fuel); (j) medium and large industries using natural gas/condescend and other minerals as raw materials; (k) telecommunications services (mobile/cellular phone services and landlines); (l) satellite channels; (m) cargo/passenger aviation; (n) sea-bound ship transport; (o) seaports/deep sea-ports; (p) VoIP/IP telephone; and (q) industries using heavy minerals accumulated from the beach.

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

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

The government of Bangladesh has also listed certain sectors as 'reserved sectors' where foreign investment is restricted for the purpose of national security or other reasons: (a) arms and ammunition and other military equipment and machinery; (b) nuclear power; (c) security printing and minting; and (d) forestation and mechanised extraction within the boundary of a reserved forest.

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

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

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

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

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

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

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

Private Limited Companies

Shares may be offered at three different stages:

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

(b) transfer of existing shares: shares may be offered to new shareholders by transferring one or more of the shares held by the existing shareholders in the manner provided in the company's articles of association. Per Regulation 18, Schedule 1, CA 1994, an instrument of transfer of shares (namely, Form 117) must be executed by both the transferor and the transferee. The transferor remains the holder of the share until the name of the transferee is entered in the register of members. Furthermore, an affidavit must also be executed by the transferor confirming the said transfer and duly notarised before a recognised Notary Public of Bangladesh;

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

Public Limited Companies

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

(a) a prospectus registered with the RJSC under section 138 of the CA 1994; or

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

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

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

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

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

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

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

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

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

The corporate legal framework in Bangladesh consists of various statutes, namely, CA 1994, Securities and Exchange Commission Ordinance, 1969, SECA 1993, Bangladesh Bank Order, 1972, Bank Companies Act, 1991, Financial Institutions Act, 1993, Bankruptcy Act, 1997, and the Foreign Exchange Regulation Act, 1947. Corporate governance in Bangladesh is mainly regulated by RJSC, BSEC and BB. The existing system does not provide sufficient legal and economic motivation for companies to inspire and implement corporate governance practices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) advise the proposed registered address of the company.

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

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

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

There are important post-incorporation requirements for Cyprus companies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) the law on the termination of employment, which regulates issues of termination notice and compensation as well as issues of redundancies;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For every infringement of sections 3 and/or 6 of the Competition Law and of articles 101 and/or 102 of the TFEU, the CPC has the power to impose an administrative fine, according to the gravity and duration of the infringement, not exceeding 10% of the combined annual revenue of the undertaking or not exceeding 10% of the revenue of every undertaking member of the association of undertakings, in the year within which the infringement took place or in the year which immediately preceded the infringement. In addition, it has several other ancillary powers, such as to require that the undertakings or association of undertakings to bring the infringement to an end within a set time period and avoid repetition in the future.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Please refer to the previous responses.

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ECONOMIC LAWS PRACTICE
ADVOCATES & SOLICITORS

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

The foreign direct investment regime in India is being significantly liberalized, and the government is making an effort to increase transparency, access and make it convenient for foreign companies to conduct their business in India. For instance, important registrations can now be applied for online through the EBiz Portal (https://www.ebiz.gov.in/services), and certain commonly used applications forms have been consolidated. With its present investment climate, India is being described by the Government as a natural destination for investments and business opportunities.

Foreign companies can undertake activities in India through the following corporate vehicles:

(a) branch office: a branch office should be engaged in the same activity as its parent company, and is permitted to carry out specified activities including exporting/importing goods, providing services and carrying out research;

(b) liaison office: a liaison office cannot undertake any commercial activity directly or indirectly, and its activities are restricted to representing its parent company, promotion of exports/imports and technical and/or financial collaboration, and communicating between the parent company and Indian companies;

(c) project office: a temporary project office and/or site can be set up by foreign companies that plan to execute specific projects in India. This office can be used only for activities relating to that project;

(d) 100% wholly owned subsidiary company;

(e) joint venture company.

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

The following are certain key Indian statutes which, along with the rules and regulations issued thereunder, regulate companies and their activities:

(a) Companies Act, 2013, which sets out the law relating to incorporation and administration of companies in general;

(b) Securities and Exchange Board of India Act, 1992, applicable to listed companies, which deals with the development and regulation of the securities market, and protecting the interests of investors in securities;

(c) Competition Act, 2002, which regulates anti-competitive agreements, abuse by any person of a dominant market position and mergers, amalgamations and acquisitions which may have an adverse effect on competition in a market;

(d) Foreign Exchange Management Act, 1999, which lays down the law relating to foreign exchange, for facilitating external trade and payments and promoting the development and maintenance of the foreign exchange market in India;

(e) Insolvency and Bankruptcy Code, 2016, which deals with insolvency of corporate entities.

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

The most common types of companies in India are:

(a) public company limited by shares: a public company is defined under the Companies Act, 2013, as a company other than a private company with a paid-up share capital of at least Rs. 500,000 (Rupees Five Hundred Thousand);

(b) private company limited by shares: a private company is defined under the Companies Act, 2013, as a company having a minimum paid-up share capital of Rs. 100,000 (Rupees One Hundred Thousand), and which by its articles:

  (i) restricts the right to transfer its shares;

  (ii) except in the case of an one person company, limits the number of its members to 200; and

  (iii) prohibits any invitation to the public to subscribe to its securities.

With regard to the above, please note that a company limited by shares means that the liability of the members is limited to the amount of uncalled share capital.

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

The standard incorporation process (including obtaining approval for the name of the company) can span across a period of 3–4 weeks. If the persons proposed to be appointed as directors of the new company do not have a Director Identification Number ('DIN') or a Digital Signature Certificate ('DSC'), they would have to apply for and obtain a DIN and DSC prior to commencing the incorporation process, a process which may take up to 3–4 weeks.

While the normal incorporation process involves several filings, companies may use the fast-track incorporation process introduced by the Ministry of Corporate Affairs ('MCA') through the consolidated e-form INC-32. Under this process, name approval as well as incorporation can be completed in as little as two days after filing the form.

As per the MCA website, the fast-track process shall eventually replace the normal incorporation process.

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

All Indian companies must be incorporated in accordance with the process set out in the Companies Act, 2013. Although the fees required to be paid vary on a case-to-case basis, the cost of registration generally includes the following:

(a) filing fees which are computed on the basis of the authorised share capital of the company;

(b) stamp duty to be paid on the memorandum and articles of association of the company, which varies from state to state.

Companies engaged in certain businesses are required to register with the relevant sectoral regulator, e.g. non-banking financial companies ('NBFC') would generally have to apply to the Reserve Bank of India for registration as an NBFC and stock brokers would need to be registered with the Securities and Exchange Board of India.

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

An overview of the reporting and filing obligations of companies under certain statutes is set out below:

(a) Companies Act, 2013:

  (i) under the Companies Act, 2013, companies are required to make statutory filings with the Registrar of Companies in respect of certain matters (e.g. the appointment or removal of directors, the passing of a special resolution by the members, any amendment in the constitutional documents of the company);

(ii) a company is required to file its financial statements including a balance sheet, profit and loss account, auditor's report, and its annual return every financial year with the Registrar of Companies;

Companies should retain the services of a company secretary to ensure that all statutory filings are made under the Companies Act, 2013.

(b) Foreign Exchange Management Act, 1999:

(i) companies must report certain foreign exchange transactions to the Reserve Bank of India, such as:

- a sale of Indian securities by or to a person resident outside India;
- an investment in Indian securities by a person resident outside India;
- an investment by an Indian company in foreign securities;

(ii) an annual return on foreign liabilities and assets is required to be submitted by all Indian companies which have received foreign direct investment or made investments outside India;

(c) periodical filing of returns under various labour laws (see question 11 for an overview of the applicable labour laws);

(d) filing of tax returns and tax audit reports;

(e) compliance requirements of listed companies under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

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

While not exhaustive, some of the restrictions generally applicable to foreign companies are listed below:

(a) branch offices, liaison offices and project offices set up by foreign companies have certain inherent limitations as detailed in question 1;

(b) with respect to investment by foreign companies into India, there are two entry routes:

(i) automatic route: under this route, the foreign investor does not require any approval from the Reserve Bank of India or Government of India for the investment;

(ii) approval route: under this route, the foreign investor should obtain prior approval of the designated authority prior to investment;

(c) foreign investments in certain sectors are subject to conditionalities as prescribed from time to time (e.g. minimum capitalisation requirements, timelines for completion of projects or domestic sourcing requirements). Further, in certain sectors, the shareholding of foreign investors cannot exceed prescribed sectoral caps;

(d) foreign investment is prohibited in certain sectors (e.g. chit funds, real estate business, manufacturing of cigarettes and atomic energy);

(e) sale and purchase of Indian securities involving a foreign company and a resident are subject to pricing guidelines prescribed by the Reserve Bank of India.

ECONOMIC LAWS PRACTICE
ADVOCATES & SOLICITORS

Suhail Nathani

Managing Partner, Economic Laws Practice

Suhail Nathani is the Managing Partner of ELP and heads the Capital Markets & Securities Laws, as well as the International Trade & Customs practices. He additionally co-heads heads Competition Law & Policy, Corporate & Commercial and Private Equity & Venture Capital practices of the firm. He is an alumnus of Cambridge University, England and has also received an LL.M. from Duke University, U.S. Apart from India; he is also admitted to the State Bar of New York.

Prior to co-founding ELP, he was the General Counsel ("GC") in a start-up Federal Communications Commission (FCC) licensed telecommunications carrier in Washington DC that went public.

With over 24 years of experience, Suhail has advised clients on clients on transactional and advisory aspects of private equity Investments, mergers & acquisitions, joint ventures, strategic alliances and corporate restructuring across multiple sectors. He regularly advises Indian and multi-national companies on cross-border transactions, foreign direct investments, and commercial contracts. He has advised listed as well as unlisted companies and intermediaries on various aspects relating to Indian securities laws.

Some of Suhail's recent transactions include advising Johnson Controls with respect to its global air conditioning business joint venture with Hitachi Appliances, Inc (Japan) and Hitachi Limited (Japan). The joint venture is said to be world's largest commercial air conditioning provider. This deal has been recognised one of the Deals of the Year by Inhouse Community's Asian Mena Counsel in its Deals of the Year 2015 award.

This deal has also been recognised as Deals of the Year 2016 by India Business Law Journals ("IBLJ"). Suhail has been involved in advising New Vernon Private Equity Limited and Hilson Estates Limited in the sale of their entire shareholding in both Carwel Estates Limited and Faery Estates Limited respectively to Canada Pension Plan Investment Board ("CPPIB") and Shapoorji Pallonji Group's joint venture company SPREP Pte. Ltd. with the acquisition of SP Infocity IT Park in Chennai, India. This deal has also been recognised as the Real Estate Deal of the Year by IBLJ in the Deal of the Year Awards 2015.

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

In most Indian companies, the directors are not independent professionals. They either have a vested interest in the company (e.g. as a shareholder) or are employees of the company.

The Companies Act, 2013, prescribes that one-third of the board of a listed public company should be independent directors. Certain public companies are also required to appoint a woman director and/or a minimum number of independent directors based on their paid-up share capital, turnover or outstanding indebtedness.

Every company is required to have at least one director who has stayed in India for a total period of not fewer than 182 days in the previous calendar year.

Directors are agents of the company as well as trustees having a fiduciary relation with the company and its shareholders. They are required to perform their duties with skill, care and diligence. Further, directors may in some cases be an 'officer' of the company, in terms of the Companies Act, 2013, and are liable in the event of any contravention by the company of the Companies Act, 2013, and certain other statutes as well. Therefore, the liabilities of a director in relation to a company may arise pursuant to any of the aforementioned connections between them.

Section 245 of the Companies Act, 2013, provides for class action suits whereby a group of shareholders (constituting a minimum of 100 shareholders or such minimum percentage of total shareholders as may be prescribed) can bring an action on behalf of all affected parties, against the company and/or its directors, for any fraudulent or wrongful act or omission of conduct on its/their part. If the court decides that the offence is committed by negligence and/or conspiracy of the directors and officers, it is at the discretion of the court to lift the corporate veil and hold them liable.

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

The minimum number of directors and shareholders for Indian companies is as follows:

Type of company	Minimum number of directors	Minimum number of shareholders
Public company	3	7
Private company	2	2
One person company	1	1

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

The following are the common methods adopted for issuance of securities by companies in India:

(a) rights issue: issuance of securities for consideration by a company to its existing shareholders in the ratio of the securities held by them as on a specified date. A rights issue can be authorised by the board of directors of the issuer and does not require shareholder approval under law. Shareholders must pay the entire subscription amount for the rights shares taken up by them, choose not to participate in the issue, or renounce their entitlement in favour of other persons;

(b) bonus issue: issuance of securities without consideration by a company to its existing shareholders in the ratio of the securities held by them as on a specified date. The shares are issued out of the company's free reserve, securities premium account or the capital redemption reserve account. A bonus issue must be authorised by the board of directors of the company and be permitted under its articles of association. Companies are not permitted to carry out a bonus issue under certain circumstances, such as when they have defaulted in repayment of any deposits or debt securities, or in respect of statutory dues of their employees;

(c) employee stock option plans: issuance of securities to employees pursuant to an employee stock option scheme under the applicable regulations, which must be authorised by a special resolution;

(d) private placement: an offer of securities by a company to an identified group of persons, which may include existing shareholders, at a price determined as per the valuation report issued by a registered valuer. A private placement must be approved by way of a special resolution of the shareholders of the company, and there are several procedural and compliance requirements for conducting a private placement (e.g. deposit of subscription money in a separate bank account so that it cannot be used until allotment, and minimum investment requirements which are required to be met by each subscriber);

(e) public issue: an offer of securities to the public as an initial public offer or follow-on public offer in accordance with regulations issued under the Securities and Exchange Board of India Act, 1992.

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

Labour and employment matters are heavily regulated in India; however, most labour legislation does not deal with managerial or executive level employees. The key labour legislation can be categorised as follows:

Industrial relations

(a) Trade Unions Act, 1926: provides for the registration and regulation of trade unions;

(b) Industrial Disputes Act, 1947: deals with the investigation and settlement of industrial disputes and other related purposes.

Payment of wages

(a) Payment of Wages Act, 1936: regulates the payment of wages to certain classes of employed persons;

(b) Minimum Wages Act, 1948: fixes minimum rates of wages for employed persons;

(c) Payment of Bonus Act, 1965: regulates the payment of bonus to employed persons.

Child and woman welfare

(a) Maternity Benefit Act, 1961: regulates the employment of women for certain periods before and after childbirth and provides for maternity benefits;

(b) Child Labour (Prohibition and Regulation) Act 1986: prohibits the engagement of children in certain employment and regulates the conditions of work of children elsewhere;

(c) Equal Remuneration Act, 1976: provides for the payment of equal remuneration to male and female workers to prevent discrimination on the grounds of sex;

(d) Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013: deals with the sexual harassment of women at the workplace and the prevention and redressal of complaints of sexual harassment.

Conditions of work

(a) Factories Act, 1948: regulates the use of labour in factories;

(b) Contract Labour (Regulation and Abolition) Act, 1970: regulates the employment of contract labour in certain establishments and abolishes it in certain circumstances.

Social security

(a) Payment of Gratuity Act, 1972: provides for a scheme for the payment of gratuity to employees engaged in certain establishments;

(b) Workman Compensation Act, 1923: deals with the compensation to be paid to employees in case of any accident;

(c) Employees' State Insurance Act, 1948: provides for employees to be insured so that they receive certain benefits in case of sickness, maternity and employment-related injuries;

(d) Employees' Provident Fund and Miscellaneous Provisions Act, 1952: regulates the provident funds, pension funds and deposit-linked insurance funds for employees in factories and certain other establishments.

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

The framework of corporate governance for companies in India consists of the following:

(a) The Companies Act, 2013, inter alia contains provisions relating to the management and administration of companies. Registrars of Companies are appointed under the Companies Act in various states and union territories to regulate companies and ensure that they comply with their statutory obligations. The Central Government exercises administrative control over these offices through the respective Regional Directors;

(b) Securities and Exchange Board of India (SEBI) Guidelines regulate listed companies and the securities market with the aim of protecting investors in securities.

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

A foreign company is not required in each case to partner with locals in order to carry on their business. Under the foreign direct investment policy, the foreign company/investor planning to set up business operations in India has two entry options i.e. automatic route and approval route (see question 7). For companies in certain sectors, there are limitations on the stake which can be held by a person resident outside India. Therefore, foreign investors looking to operate in these sectors must enter into a partnership with local companies/individuals.

Companies with a majority foreign ownership which are engaged in single brand retail trade are required to domestically source 30% of the value of the goods purchased by them, preferably from micro, small and medium enterprises, village and cottage industries, or artisans and craftsmen.

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

An Indian company's worldwide income is subject to tax in India.

When an Indian company carries out its work in a jurisdiction and earns income from that work, then the company becomes liable to be taxed under the Indian tax laws.

ECONOMIC LAWS PRACTICE
ADVOCATES & SOLICITORS

Darshan Upadhyay

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Darshan Upadhyay is a Partner in the Corporate & Commercial and Private Equity & Venture Capital practices at ELP. He is a qualified Company Secretary and a law graduate from the University of Mumbai.

With over 14 years in Private Equity and M&A transactions, Darshan has advised Fortune 500 companies, funds and MNC's on entry, acquisitions, joint ventures and other commercial transactions for their India-related forays. His expertise in exchange control regulations, SEBI and general corporate law is an added advantage on M&A transactions. Several private equity funds and hedge funds consult him on various matters of importance.

He has been involved in some of the most complex M&A transactions including takeover matters involving structuring, regulatory approvals, open offer compliances and other transactional support.

Some of Darshan's recent transactions include advising Johnson Controls – This joint venture is said to be world's largest commercial air conditioning provider. This deal has been recognised one of the Deals of the Year by Inhouse Community's Asian Mena Counsel in its Deals of the Year 2015 award.

He was involved in advising New Vernon Private Equity Limited and Hilson Estates Limited in the sale of their entire shareholding held in Carwel Estates Limited and Faery Estates Limited respectively to Canada Pension Plan Investment Board (CPPIB) and Shapoorji Pallonji Group's joint venture company SPREP Pte. Ltd. for the acquisition of SP Infocity IT Park in Chennai. This deal has been recognised as the Real Estate Deal of the Year by India Business Law Journal in the Deal of the Year Awards 2015.

He also advised Jet Airways as co-counsel on the acquisition of twenty four percent (24%) stake by Etihad Airways in Jet Airways India Limited. This deal was awarded the M&A and Joint Venture Deal of the Year Award by India Business Law Journal in its Deal of the Year Awards 2013. It has also been awarded as the Deal of the Year in Inhouse Community's ASIAN- MENA COUNSEL Deal of the Year 2013 Awards.

A person resident outside India is subject to tax on income generated from its activities in India or from sale of its Indian assets.

Important direct taxes are as follows:

(a) income tax: tax imposed on financial income generated by all entities;

(b) capital gains tax: tax levied on profits an investor realises when the investor sells a capital asset at a price higher than the purchase price.

Important indirect taxes are as follows:

(a) sales tax: tax imposed on the sale of goods;

(b) service tax: tax levied on service providers in respect of certain services, which is collected by them from the service recipients;

(c) value added tax: a multi-stage tax which is imposed whenever value is added at a stage of production and at final sale;

(d) customs duty: tax imposed on imports and exports of goods;

(e) excise duty: tax on the sale, or production for sale, of certain goods.

Please note that the Goods and Services Tax ('GST'), which is a comprehensive indirect tax on the manufacture, sale and consumption of goods and services throughout India, will soon subsume all of the above indirect taxes.

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

Under the Competition Act, 2002, the Competition Commission of India was established to regulate anti-competitive conduct by companies including the following activities:

(a) entering into anti-competitive agreements such as agreements for fixing prices, restricting production or sharing of markets or sources of production;

(b) abuse by a company of its dominant position in a market;

(c) combinations (i.e. mergers, amalgamations or acquisitions) by companies which may have an adverse impact on the competition in a market.

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

Under India's intellectual property law regime, companies can protect the following kinds of intellectual property rights:

(a) trademarks: marks which can be graphically represented, for the purpose of identifying goods and services;

(b) patents: patents are granted for new products or processes which can be industrially applied, allowing the holder to exclude others from making, using or selling the invention;

(c) copyrights: rights given to creators of literary, dramatic, musical and artistic works and the producers of cinematograph films and sound recordings, including in relation to reproduction, adaptation and dissemination of such works;

(d) designs: rights in respect of a design, i.e. a shape, configuration or composition of pattern or color or a combination of both containing aesthetic value;

(e) domain names: rights to use a unique address by which one can access a website or other resource on the Internet;

(f) confidential information and trade secrets: technical and scientific information, such as formulae, manufacturing methods and specifications, designs, computer codes;

(g) plant varieties: includes varieties that conform to the criteria of novelty, distinctiveness, uniformity and stability as provided under the Protection of Plant Varieties and Farmers' Rights Act, 2001;

(h) geographical indicators: signs used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin;

(i) semi-conductor integrated circuit layouts: layout designs of transistors and other circuitry elements in a semi-conductor integrated circuit;

(j) biological diversity: access to biological resources and associated traditional knowledge, ensuring fair and equitable sharing of benefits derived from them.

Further, India is a signatory to various international conventions on intellectual property (e.g. the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property and the Universal Copyright Convention), pursuant to which persons from other convention countries can avail of certain benefits including:

(a) if such person has already filed for registration of a patent, design or trademark in a convention country, a subsequent application can be filed in India for the same invention, design or trademark with the effective date as the date of the first application;

(b) copyrights of works created in convention countries are protected in India, as if such works were Indian works.

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

There are two pieces of key Indian legislation which deal with data privacy:

(a) under the Information Technology Act, 2000, and the rules issued thereunder, damages can be imposed on companies possessing or dealing with sensitive personal data, if they are negligent in implementing and maintaining reasonable security practices and procedures, thereby causing wrongful loss or wrongful gain to any person;

(b) The Credit Information Companies (Regulation) Act, 2005, which regulates credit information companies and prescribes certain privacy principles for a wide range of activities relating to the use of credit information.

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

Central government incentives

(a) incentives available to an unit's set-up in Special Economic Zones, National Investment and Manufacturing Zones etc and to Export Oriented Units;

(b) exports incentives such as duty drawback, duty exemption/remission schemes, focus products and market schemes;

(c) areas-based incentives such as an unit's set-up in north east region, Jammu and Kashmir, Himachal Pradesh and Uttarakhand;

(d) sector-specific incentives such as Modified Special Incentive Package Scheme in electronics.

State government incentives

Each state government has its own incentive policy, which offers various types of incentives based on the amount of investments, project location, employment generation, etc. The incentives differ from state to state and are generally laid down in each state's industrial policy.

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

The recently enacted Insolvency and Bankruptcy Code, 2016, is the framework that governs corporate insolvency in India. It establishes the Insolvency and Bankruptcy Board of India to oversee insolvency proceedings in India.

The code includes insolvency resolution processes for individuals as well as entities, and prescribes a maximum time limit for completion of the insolvency resolution process. The resolution processes are conducted by licensed insolvency professionals. The code provides that the National Company Law Tribunal ('NCLT') will adjudicate insolvency resolution for companies and the Debt Recovery Tribunal will adjudicate insolvency resolution for individuals.

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

The Insolvency and Bankruptcy Code, 2016 has overhauled the law relating to corporate insolvency (see question 19 in this regard).

The Reserve Bank of India ('RBI') has recently released the draft Foreign Exchange Management (Cross Border Merger) Regulations, 2017 for public comments. These regulations are meant to address the issues that may arise when an Indian company and a foreign company enter into scheme of merger, demerger, amalgamation, or rearrangement.

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

Important features introduced by the new Companies Act, 2013, are highlighted below:

(a) introduction of a GST bill to abolish the prevalent complex indirect tax regime, thereby establishing a favourable business environment through a single tax mechanism;

(b) ongoing liberalisation of the foreign direct investment regime;

(c) establishment of fast-track courts and tribunals for speedy procedures and trials thereof;

(d) a shift to the new insolvency regime under the Insolvency and Bankruptcy Code, 2016, for an organised and time-bound insolvency process;

(e) establishment of the International Financial Services Centre in Gujarat;

(f) introduction of the concept of one person companies;

(g) establishment of a new adjudicating body i.e. NCLT and National Company Law Appellate Tribunal.

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HHR LAWYERS

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

The most common way of setting up a foreign company which intends to invest and engage in business in Indonesia is by establishing a new limited liability company, commonly known as a foreign investment company ('PMA Company'). Most foreign direct investment must come through a limited liability company. To set up a PMA Company, foreign companies must check the Indonesian negative list as stipulated in the Presidential Regulation Number 44 of 2016 on List of Closed Business Activities and Business Activities Open with Restriction (the 'Negative List') to identify the restrictions on the ownership of foreign shares in their intended business activities in Indonesia. It should be noted that the Negative List provides a list of businesses which are prohibited (to all investment) or restricted for foreign companies/investors in conducting investment in Indonesia.

Other than the establishment of a PMA Company subject to the Negative List, foreign companies can also conduct business in Indonesia by:

(a) establishing a foreign representative office;

(b) acquiring shares in an existing company;

(c) acquiring shares in a publicly listed company; and

(d) in certain business activities, making other particular arrangements that may be taken by foreign companies, e.g. entering into a Production Sharing Contract with the Indonesian government for the business of upstream oil and gas.

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

The Law of the Republic of Indonesia No. 40 of 2007 on Limited Liability Company (the 'Company Law') and its implementing regulations are the key regulations that provide guidelines for companies in Indonesia, which revoked the previous company law, the Law of the Republic of Indonesia No. 1 of 1995. However, for a PMA Company, the Law of the Republic of Indonesia No. 25 of 2007 on Investment and its implementing regulations are also relevant. Unless stated otherwise, the answers in this chapter are based on the Company Law.

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

Indonesian law recognises two general types of business entities:

(a) national business entities which are established under Indonesian law; and

(b) foreign business entities which are established under the laws of foreign countries.

Foreign business entities are not explicitly regulated in Indonesian law, but are referenced in various laws or regulations. Their presence is generally significant for taxation purposes. They may become shareholders in Indonesian companies.

National business entities are divided into:

(a) state owned enterprises whose shares are wholly or partly owned by the State; and

(b) private enterprises, whose shares are owned or controlled by private natural or legal persons.

Private enterprises further can be understood to include:

(a) legal business entities, such as limited liability companies and cooperatives; and

(b) non-legal business entities, such as partnerships (*maatschap*, *vennootschap* and *Commanditaire Vennootschap*). Sole proprietorships are owned by a natural person (and may or may not be established by notarial deed); and partnerships are established by two or more natural persons. In sole proprietorships, the rights and obligations of the entity cannot be separated from the rights and obligations of the owner. However, the most common type of business entity for foreign companies in Indonesia is a limited liability company, as explained in question 1. Foreign investors cannot participate in a partnership or be sole proprietors. Unless stated otherwise, companies in this chapter shall refer to limited liability companies.

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

The estimated time to set up a company will greatly depend on the choice of structure and business activities to be carried out by the investors. In line with our reply to question 3, we will provide the estimated time for the establishment of a limited liability company until it has obtained approval from the Ministry of Law and Human Rights ('MOLHR'). Note that the issuance of such approval is evidence of a limited liability company having obtained legal entity status. For a wholly local company, the establishment may be completed within five working days: this includes the execution of a deed of establishment before a notary and the processing of such deed for approval by the MOLHR. It should be noted that this estimated time excludes the time for negotiation between the founders prior to the establishment. The estimated time for the establishment of a PMA will take longer than a wholly local company. This is because a PMA Company must first obtain approval from the Investment Coordinating Board (*Badan Koordinasi Penanaman Modal*; 'BKPM') prior to the execution of a deed of establishment. Subject to the completeness of the required documents, the BKPM normally will issue its approval within five working days as of the issuance of its acceptance of the submitted application and documents.

Considering that the process for obtaining approvals from the MOLHR and the BKPM is conducted online, progress can be monitored easily.

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

Registration with the MOLHR at the company's establishment stage is the first registration to be completed in order to obtain approval as a legal entity. Such registration will also be required later for any amendments to the company's articles of association. Particularly for a PMA Company, approvals from the BKPM must also be obtained at the establishment stage, the implementation stage, and the amendment stage. Other than that, a company is also required to obtain basic licences to carry out its business, i.e. a certificate of domicile, a tax ID (*Nomor Pokok Wajib Pajak*) and a certificate of company registration (*Tanda Daftar Perusahaan*). Technical operating licences will greatly depend on the business activities carried on by a company.

Considering that most Indonesian government institutions have adopted online-based administration, mostly no official fees are required for processing the registration/licences of a company.

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

Particularly for a PMA Company, the BKPM requires regular submission of an investment activities report (*laporan kegiatan penanaman modal*), either on a quarterly basis (if a company has not obtained a business licence) or every six months (if a company has obtained a business licence). In addition, the obligation of post-registration reporting will also greatly depend on the type and the issuer of any licences obtained by a company. This is because each licence contains certain specific terms and requirements (including post-registration reporting) to be fulfilled by a company at the post-registration stage. Upon reaching a significant level of turnover, companies are required to submit audited financial statements annually.

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

As explained in question 1, there are certain prohibited and restricted business activities for investment by foreign companies in Indonesia. Based on the Negative List, the controlling factors for the restricted business activities are:

(a) business activities which are intended for micro, small, and medium businesses, and cooperatives;

(b) limitation on shares ownership by foreign investors;

(c) certain locations;

(d) specific licences;

(e) ownership of wholly local shares; and/or

(f) limitation on shares ownership in the framework of cooperation with ASEAN-based companies.

Further, in the event of foreign companies establishing a PMA Company, the BKPM, as the main regulatory body for foreign investment in Indonesia, requires certain minimum capitalisation as well as minimum investment value, which are higher than the required minimum capital and investment value for a wholly local company.

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

Directors under the Company Law are known as the board of directors ('BOD'). The Company Law provides that the BOD consist of one or more members, each of whom must be a natural person/individual who is qualified to take legal actions, unless within a period of five years prior to the appointment the person has:

(a) been declared bankrupt;

(b) assumed position as a member of the BOD or the Board of Commissioners ('BOC') and been declared responsible for the bankruptcy of a company; or

(c) been found guilty of criminal acts that caused losses to state finances and/or that were related to the financial sector.

The Company Law does not make any special provision relating to the family management structure. As such, it can be concluded that the requirements under the Company Law must be complied with by any person to be appointed as a member of the BOD despite the family relationship status.

For liability issues, the Company Law governs that the BOD will be personally responsible for any losses suffered by a company only if the BOD has not carried out its duty in good faith and in a prudent and responsible manner. So the BOD, or any member of the BOD, can avoid liability if they can prove that:

(a) the losses are not caused by their mistakes or negligence;

(b) the BOD has performed management duties in good faith and a prudent manner in the best interests of a company and in accordance with the purposes and objectives of a company;

(c) the BOD has no personal interest either directly or indirectly in the management actions that caused the losses; and

(d) the BOD has taken steps to prevent the occurrence or continuation of such losses.

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

As explained in question 8, the minimum number of directors in a company as required by the Company Law is one and the director must be a natural person.

At the establishment stage, a company must have two shareholders: two natural persons, or two legal entities or one of each. This required minimum number of shareholders is in accordance with the principle that a company is established based on an agreement between the founders. However, the Company Law provides for the possibility for a company which has obtained status as a legal entity to have a sole shareholder, provided that it will be only for a maximum period of six months. When the six-month period has lapsed, the sole shareholder must transfer a portion of its shares to another party or the company shall issue new shares to another party.

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

The requirements are as may be specifically set out in a company's articles of association. Based on the Company Law, a share offering either to the shareholders of a certain class of shares or to other shareholders could be determined as an additional requirement in regards to the transfer of shares, which requirement must be expressly stipulated in the company's articles of association. If this is the case, the share offering could only be conducted once with validity for a period of 30 days as of the date of offer.

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

The key laws for employment issues in Indonesia are the Law of the Republic of Indonesia No. 13 of 2003 on Manpower (the 'Manpower Law') and its implementing regulations, all expressly aimed to enhance the welfare of employees. Due to the aim of the Manpower Law, the aspects of manpower which are heavily regulated in Indonesia are (among others):

(a) social security whereby every employer must provide its employees health security and employment security;

(b) employment agreements, either for permanent or limited time employment;

(c) employment termination, with generous and strict requirements to be adhered by the employer; and

(d) the hiring of expatriates as a vehicle of transfer of knowledge from expatriates to local employees while not minimising job opportunities for local employees.

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

Under the Company Law, the basic principles of the corporate governance regime in Indonesia are:

(a) transparency: any decision and action taken by the management of company shall be clear and open;

(b) accountability: the structure and system of a company's management must be clear in order to have effective management;

(c) responsibility: a company must comply with good corporate governance as well as the prevailing laws and regulations;

(d) independence: a company must be professionally managed without any conflict of interest and/or pressure from the management which could violate the prevailing laws and regulations; and

(e) fairness: the rights of stakeholders in a company must be fulfilled on an equal basis in accordance with the prevailing laws and regulations.

The government bodies which are responsible for corporate governance in Indonesia vary depending on the business sector engaged in by a company. For example, Bank of Indonesia is the government body that regulates the corporate governance for the banking sector.

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

Insofar as the sponsorship for expatriates to work and reside in Indonesia is concerned, there are restrictions on the type of employer which can grant such residency rights:

(a) government institutions;

(b) international agencies;

(c) representatives of foreign states;

(d) international organisations;

(e) representatives of foreign trading offices, foreign offices and news agencies;

(f) foreign private companies and foreign entities registered in the competent agencies;

(g) Indonesian legal entities in the form of a limited liability company or foundation;

(h) social, religious, education and cultural institutions; and

(i) impresario service business.

Once a foreign company has established a PMA Company in Indonesia, such PMA Company could then sponsor any expatriate who will work at the PMA Company and reside in Indonesia, subject to holding appropriate qualifications. Bilateral investment treaties and investment law grant rights to foreign investors to manage their investments, which implies residency. The extent to which such residency rights can be granted is fluid. However, it should be noted that certain positions are closed to expatriates, which depends on the business engaged by a PMA Company. In addition, expatriates who work and reside in Indonesia must obtain a stay permit from Immigration.

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

Based on the prevailing tax-related regulations in Indonesia, a company shall be subject to tax as of its establishment. It should be noted that the establishment date of a company refers to the signing date of the company's deed of establishment before a notary. This is in line with the requirement of Indonesian tax office for any company to obtain a tax ID (*Nomor Pokok Wajib Pajak*) as one of the basic licences of a company.

The main taxes to which a company is liable are income tax (with a top rate of 25%) as of its establishment, and VAT (generally 10%) if its revenue reaches a certain level.

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

The Law of the Republic of Indonesia No. 5 of 1999 on Prohibition of Monopolistic Practices and Unfair Business Competition (the 'Competition Law') and its implementing regulations are the key competition legislations in Indonesia. Similar to other countries, the Competition Law in principle determines the types and criteria of certain prohibitions which may cause a business undertaking or business participant to be subject to administrative and/or criminal sanctions:

(a) prohibited agreements: agreements resulting in monopolistic practices and/or unfair business competition, i.e. oligopoly, price determination, territorial division, cartel, etc.;
(b) monopolistic practices: activities resulting in unfair business competition, i.e. monopoly, monopsony, market domination, etc.; and
(c) unfair business practices: acts or behaviour involving the abuse of market dominant positions and include interlocking directorates, cross-shares holding, merger, acquisition and consolidation.

The enforcement of the Competition Law in Indonesia is delegated to the Commission for the Supervision of Business Competition (*Komisi Pengawas Persaingan Usaha*; 'KPPU'), which is empowered to, among others, investigate allegations relating to the violation of the Competition Law, determine and stipulate the existence or lack of losses relating to such violation, and impose administrative sanctions for such violation. KPPU may order the business undertaking to:

(a) annul an agreement;
(b) terminate a vertical integration;
(c) terminate activities that have been proven to have resulted in the occurrence of monopolistic practices and/or unfair business competition;
(d) terminate the abuse of dominant position;
(e) annul a merger, acquisition or consolidation;
(f) pay compensatory damages; and
(g) pay a fine.

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

As a result of Indonesia having been one of the signatories of the World Trade Organization since 1994 as well as the ratification of the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights), intellectual property rights have become an important issue in the conduct of business in Indonesia. Such importance is demonstrated in the enactment of seven separate laws in this matter:

(a) Law of Copyrights;
(b) Law of Patent;
(c) Law of Industrial Design;
(d) Law of Trademark;
(e) Law of Trade Secret;
(f) Law of Plant Variety Protection; and
(g) Law of Layout Design of Integrated Circuit.

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

Regulations which are relevant to data privacy are:

(a) the Law of the Republic of Indonesia No. 11 of 2008 on Information and Electronic Transaction as amended by the Law of the Republic of Indonesia No. 19 of 2016 (the 'IT Laws'); and
(b) the Law of the Republic of Indonesia No. 30 of 2002 on Trade Secrets (the 'Trade Secret Law').

It should be noted that the IT Laws regulate the protection of electronic information/data while the Trade Secret Law regulates production methods, processing methods, sale methods, and other information relating to technology or business.

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

With the aim of stimulating investment in Indonesia, several incentives, among others, are offered to attract foreign companies:

(a) import duty relief;

(b) tax facilities;

(c) incentives for export manufacturing in the form of (among others) exemptions from VAT and sales tax; and

(d) incentives for industrial companies located in bonded zones in the form of (among others) exemptions from import duty.

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

The Law of the Republic of Indonesia No. 37 of 2004 on Bankruptcy and Suspension of Obligation For Payment of Debts and its implementing regulations are the main governing laws for corporate insolvency in Indonesia.

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

There are no known upcoming changes or reforms in legislation that will affect the Company Law.

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

The Company Law recognises a two-tier management structure in a company whereby other than a BOD which handles the day-to-day operations, there is also a BOC which is responsible for supervising the management actions conducted by the BOD. If there is more than one commissioner, they must act in a collegial fashion, not individually.

In addition, there is no concept of 'officers' on a par with directors, as there is in common law jurisdictions. Despite their different roles in the company, both the BOD and the BOC are on the same level since they can only be appointed or dismissed by the shareholders of the company.

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

Jersey has been at the forefront of the global finance industry for over 50 years and is acknowledged as one of the world's leading international finance centres for banking, investment funds, capital markets and private wealth. The Island enjoys economic stability, political independence, tax neutrality and a sophisticated legal, regulatory and technological infrastructure. It has a global reputation founded on a robust legal framework and sound corporate governance practices.

Jersey is a Crown dependency of the UK, but is not part of the UK or within the European Union. Jersey has its own government, which is responsible for domestic matters including taxation, and its own court system and judiciary. Jersey is in the same time zone as London.

It is straightforward for a foreign company to establish a presence in Jersey. There is no requirement for a Jersey business to be operated using a Jersey company, nor are there any branch registration requirements for foreign entities.

Depending on the nature of the business to be undertaken, it may be necessary to obtain licences, consents or permits from a local authority. Such requirements apply equally to foreign and local entities. The types of activities that may require local approval include:

(a) operating a business with a physical presence in Jersey;

(b) operating a financial or corporate services business;

(c) operating a business involving gambling/gaming; and

(d) operating certain other businesses that are not regulated businesses in Jersey but are required to comply with local 'know your client', anti-money laundering and anti-terrorist financing laws and regulations ('Jersey KYC Obligations').

It may also be necessary for a foreign entity operating a business in Jersey to register with the local tax office (for income and goods and services tax) and social security department (for collection and payment of social security contributions).

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

The principal Jersey companies legislation is the Companies (Jersey) Law 1991 ('Jersey Companies Law').

Other relevant legislation includes:

(a) the Companies (General Provisions) (Jersey) Order 2002 ('CGPO'), which supplements the provisions of the Jersey Companies Law in relation to company establishments, prospectuses, annual returns and certain provisions relating to winding up a Jersey company; and

(b) the Control of Borrowing (Jersey) Order 1958 ('COBO'), which makes provision for certain consent requirements on the establishment of a Jersey company (being, in short, a consent to enable it to raise capital by the issue of shares) and on certain subsequent corporate actions, including the issue of non-equity securities in certain circumstances.

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

Most companies incorporated in Jersey are private limited liability companies with par value shares (i.e. each share has a nominal or 'par' value). This type of company is similar to an English private limited company.

The Jersey Companies Law also permits a private limited liability company to be established with no par value shares. Capital paid up on each class of no par value shares is credited to a 'stated capital account' for that class. Stated capital accounts are treated as share premium under the Jersey Companies Law, and both share premium and stated capital are *prima facie* distributable (subject, in most cases, to the directors who authorise a distribution making a statutory solvency statement). Nominal capital is not distributable under the Jersey Companies Law and must therefore be dealt with by an alternative mechanism such as a reduction of capital, repurchase or redemption. These and certain other advantages in terms of capital and capital maintenance give no par value companies greater flexibility than par value companies, and so they are also popular.

There are also a significant number of public limited liability companies incorporated in Jersey (with both par value and no par value shares), including many that are listed on the UK, US and other markets. At the time of writing, 92 Jersey companies are listed on global stock exchanges, and Jersey has the greatest number of FTSE 100 companies registered outside of the UK.

It is also possible to incorporate unlimited companies, companies limited by guarantee and cell companies in Jersey, although these types of companies are generally used for specific purposes and are therefore not as popular as limited liability companies.

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

It is possible to incorporate a Jersey company on a same-day basis.

However, both the incorporation of, and the provision of ongoing corporate services to, a Jersey company are regulated activities in Jersey, and as such are subject to Jersey KYC Obligations. This means that the incorporation cannot be completed until the person who undertakes the incorporation and/or is to provide ongoing corporate services works through the Jersey KYC Obligations and requests and obtains the necessary information and documentation from the client. The time taken to complete this process depends on the complexity of the proposed ownership structure, and where a client is of a higher risk or has a complex ownership structure, this process can take more time.

There are certain activities that have been identified by the Jersey Financial Services Commission ('JFSC') as representing a higher risk to the island's reputation that require additional work to be undertaken (and may require the prior approval of the JFSC) before the relevant company can be incorporated. This can also extend the practical timeframe for completing the incorporation of a Jersey company. Examples of such activities include most types of financial services business, certain types of 'higher risk' commercial businesses (for example time share activities) where not subject to consumer protection, and businesses involving military or defence equipment or personnel, unlicensed pharmaceuticals, the conduct of scientific research or natural resources.

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

To incorporate a Jersey company, it is necessary to file the following documents with the Jersey Companies Registrar:

(a) a COBO consent application form (including, where the company is not to be incorporated by a law firm or corporate services provider, certain 'know-your-client'-type documents and information);

(b) a 'statement of particulars' setting out certain basic company information; and

(c) a copy of the memorandum and articles of association of the company (in the case of the articles, if the standard table prescribed by statute is not used), executed by the initial subscriber(s).

It is also necessary to reserve a name for the company. In general terms, any name can be used, but there are certain limitations on names which are broadly similar to those in England and other English-derived companies law jurisdictions.

A registration fee is payable to the Jersey Companies Registrar, the amount of which being dependent on the registry turn-around time for the incorporation. At the time of writing, this ranges from £150 for incorporation within five business days to £550 for incorporation within two hours, and an 'out of hours' service is also available by agreement with a minimum fee of £1,000.

If a law firm or corporate services provider is to be used to incorporate and/or provide ongoing corporate services to the company, they will also charge a fee for the incorporation and the provision of those services.

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

Jersey companies must file an annual return with the Jersey Companies Registrar. For a private company, this must include details of the legal shareholders, but not those of the beneficial shareholders or directors, and share capital. For a public company, it must additionally include director details. The annual return is a public document. At the time of writing, there is an annual fee of £200 (online filing) or £210 (paper filing) for filing an annual return, payable to the Jersey Companies Registrar. Annual returns must be filed by 28 February each year and be made up as at 1 January in that year.

A Jersey private company is not required to file accounts on the public register. A Jersey public company must file accounts with the Jersey Companies Registrar, which then become a public document (it is possible to file consolidated rather than stand-alone accounts in certain circumstances). At the time of writing, there is a fee of £100 for filing public company accounts, payable to the Jersey Companies Registrar. Public company accounts must be filed within a period of seven months after the end of the financial period to which they relate.

Jersey companies must file certain documents (including special resolutions) that affect share rights and/or its constitutional documents with the Jersey Companies Registrar within a period of 21 days from their being passed/taking effect. At the time of writing, there is no fee in relation to the making of such filings, and such documents when filed become public documents.

There are also certain filings required in connection with other specific company actions, such as the issuing of a prospectus and on a reduction of capital, winding-up, change of name or change of status, certain of which at the time of writing require fees to be paid to the Jersey Companies Registrar. Again, when filed, those documents become public documents.

Subject to the precise requirements of their consent(s) issued under COBO, Jersey companies must notify material changes in beneficial ownership or control to the JFSC, or seek the consent of the JFSC to such changes. At the time of writing, beneficial ownership and control information is not available on any public register (and there is no present intention to make it available on a public register), but it may be shared by the JFSC with (for example) local and foreign tax authorities or police forces as required by applicable laws, regulations and international agreements and commitments to which Jersey and/or the JFSC is party. In general, the requirement for consent from the JFSC to such changes applies only where the company is not provided with corporate services by a locally-regulated corporate services provider.

Jersey companies must have a registered office in Jersey. The company's register of members must be kept in Jersey at the registered office or some other place in Jersey, and its registers of directors and secretary and minutes of general meetings and class meetings must be kept at the registered office.

A Jersey company must have a company secretary, who need not be locally resident and, for a private company, need not have any particular qualifications.

Given the above, it is common for the owners of a Jersey company to appoint a corporate services provider to provide a registered office, act as company secretary and attend to ongoing Jersey filings.

Please note that the foregoing requirements are without prejudice to any specific filings or notification requirements that apply due to the regulatory or other status of a particular entity in Jersey.

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

There are no controlling factors or restrictions on foreign companies in Jersey.

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

Jersey companies are managed by their directors, who may delegate the exercise of their powers to specific directors, committees or other persons in accordance with the relevant company's constitutional documents.

Directors of a Jersey company are subject to fiduciary duties owed to the company. Those duties are prescribed by the Jersey Companies Law as being to:

(a) act honestly and in good faith with a view to the best interests of the company; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

The Jersey courts have regard to English and other Commonwealth jurisprudence in interpreting the nature and scope of those duties, and so the overall position on directors' duties in Jersey is very similar to that in other English-derived companies law jurisdictions (although there are some specific points of difference).

The Jersey Companies Law includes an unfair prejudice regime, which has been applied by the Jersey courts in a manner broadly consistent with the equivalent regime under English law, and the Jersey courts also broadly follow the established English law principles around when it is permissible for shareholders to bring claims on behalf of a company against its directors. The Jersey Companies Law also includes various offences which may be committed by directors of a Jersey company in connection with certain specified actions, such as improperly making a solvency statement, and various creditor protections (which are discussed further in question), and imposes additional obligations on directors where a company issues a prospectus.

Directors and certain other officers of a body corporate (including a Jersey company) may be liable under Jersey law for statutory offences committed by that body corporate.

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

A Jersey private company must have at least one director and one subscriber (shareholder) on incorporation. A Jersey public company must have at least two directors and two subscribers on incorporation.

A director of a Jersey company need not be a natural person, but any body corporate that is a director of a Jersey company must:

(a) be permitted to act as a director by registration under the Financial Services (Jersey) Law 1998; and

(b) itself have no director that is a body corporate.

Further, incorporated limited partnerships, separate limited partnerships and limited liability partnerships established under Jersey law are prohibited from acting as a director of a Jersey company.

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

The Jersey Companies Law does not include any statutory pre-emption rights on the issue of shares. Consequentially *prima facie* the issue of shares by a Jersey company falls within the power of its directors, although it is common for public listed companies and companies held by multiple shareholders that the company's articles of association include pre-emption rights or some other restrictions on such power.

An invitation to the public to become a member of a Jersey company or to acquire or apply for any of its securities is treated for the purposes of the Jersey Companies Law as a prospectus, and (subject to certain limited exceptions, including an exception for employee share schemes) must be approved in advance by the Jersey Companies Registrar and filed on the public register. The CGPO prescribes the content of any such prospectus, and the Jersey Companies Registrar has the power to give derogations from such content requirements.

An invitation will be an 'offer to the public' unless it is addressed exclusively to a restricted circle of persons, and an invitation is treated as being addressed to a restricted circle of persons only where:

(a) it is addressed to an identifiable category of persons to whom it is directly communicated by the inviter or the inviter's agent;

(b) the members of that category are the only persons who may accept the offer and they are in possession of sufficient information to be able to make a reasonable evaluation of the invitation; and

(c) the aggregate number of persons anywhere in the world to whom the invitation is communicated does not exceed 50.

The Jersey Companies Law also includes anti-avoidance provisions to deal with a situation where shares are allotted or issued to fewer than 50 persons for onward sale to the 'public'.

Offers to the public in Jersey of shares, units and certain other securities of a non-Jersey body corporate may also require a prospectus to have been approved prior to its circulation in Jersey pursuant to COBO. COBO does not prescribe the content of any such prospectus, and the approval is given by the JFSC rather than the Jersey Companies Registrar.

At the time of writing, no fee is chargeable in connection with obtaining such consents.

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

The main factor relevant to operating a business in Jersey that differs from many other jurisdictions is the requirement (subject to a number of exceptions) for an 'undertaking', which for this purpose would include a business, to obtain and hold an appropriate licence under the Control of Housing and Work (Jersey) Law 2012 ('CHW Law'). As explained further below, the content of that licence is relevant to who can be employed by the business in Jersey. This requirement applies equally to Jersey and non-Jersey businesses, and licences are granted by the Jersey Population Office.

The CHW Law governs both the residential and employment status of employees and business licencing, and these two factors are closely linked. A licence granted to an 'undertaking' will specify:

(a) its permitted licensed activity; and

(b) any applicable limit(s) on the number of employees it may engage within various residential and employment categories under the CHW Law:

  (i) 'licensed' employees: essential employees with less than 10 years' Jersey residence requiring immediate housing rights; certain exceptions to the maximum permitted number apply;

  (ii) 'registered' employees: non-essential employees with 5–10 years' Jersey residence; certain exceptions to the maximum permitted number apply;

  (iii) 'entitled' employees: employees with 10 or more years' Jersey residence; typically no limits imposed on the maximum permitted number who may be employed; and

  (iv) 'entitled for work only' employees: non-essential employees with 5–10 years' Jersey residence; typically no limits imposed on the maximum permitted number who may be employed.

Jersey residential property falls into one of two categories:

(a) 'qualified': in which only those who are 'entitled' or 'licensed' and their dependents may live; and

(b) 'registered': in which anyone may live.

'Registered' housing is relatively more expensive and is scarcer than 'qualified' housing, and therefore the number of 'licensed' persons a business is entitled to employ (the business grants 'licensed' status to the applicable employees during their term of employment) is often an important factor when considering recruitment (in particular from outside the island).

The Jersey Population Office is willing to discuss licensing requirements with businesses during the application process. Locate Jersey, a government entity established to encourage high-value, low footprint businesses and high net worth individuals to relocate to the island, may also be able to assist.

In terms of employment law more generally, the duties of Jersey employers and employees derive from a number of sources which include:

(a) statute (principally, the Employment (Jersey) Law 2003);

(b) customary law (i.e. local judicial decisions); and

(c) employment contracts and other documentation.

There is less employment legislation in Jersey than in the UK, although the amount of legislation in this area is increasing. There is a Jersey Employment Tribunal, which hears employment-related claims (although contractual claims of over £10,000 are dealt with by the Royal Court of Jersey).

The Jersey law of contract is somewhat different from the English law. However, in relation to employment contracts, the Jersey courts and tribunals have generally (although not exclusively) had regard to English law and principles, particularly when it comes to implied contractual duties. In general, employment law in Jersey is heavily influenced by English case law and so it is often the case that English cases relating to employment law will be cited before the Jersey Employment Tribunal or Jersey courts. However, while English law heavily influences the development of employment law in Jersey, there are some important differences between the two jurisdictions and therefore local advice should be sought.

Finally, work permits may be required for certain employees. In order to obtain a work permit, employers will need to be able to show that there are no suitable local candidates available. Work permits are currently not required for a broad range of employees, including:

(a) British citizens and British subjects with the right of abode;

(b) nationals of member states of the European Union/European Economic Area (subject to limited exemptions);

(c) certain Commonwealth citizens; and

(d) non-EU/EEA passport holders who have no restrictions attached to their stay.

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

Jersey does not have a general corporate governance regime (although specific corporate governance requirements apply to locally regulated businesses). Rather, Jersey companies that operate outside of Jersey, and in particular Jersey companies that are listed on markets outside of Jersey, will be subject to the corporate governance requirements of those jurisdictions or markets, to the extent they extend to Jersey companies.

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

Establishing a company in Jersey does not grant residency rights to any individual. However, as part of the licensing requirements for a business that is to operate in Jersey, the business may be permitted to grant individuals 'licensed' status, which in turn allows them to occupy 'qualified' accommodation (see question for further details). Further, Locate Jersey is able to assist with relocating businesses to the island, which may involve granting individuals residency rights.

There is no requirement to 'partner' with a locally resident person to operate in Jersey.

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

A Jersey company is regarded as resident for tax in Jersey unless:

(a) its business is centrally managed and controlled outside Jersey in a country or territory where the highest rate at which any body corporate may be charged to tax on any part of its income is 10% or higher; and

(b) the company is resident for tax purposes in that country or territory.

A body corporate incorporated outside Jersey is regarded as resident for tax in Jersey if its business is managed and controlled in Jersey. Jersey permits dual tax residency for bodies corporate.

Income tax in Jersey is charged on bodies corporate at 0%, with the exception of:

(a) locally regulated financial services businesses, which are subject to income tax at 10%;

(b) local utilities businesses, which are subject to income tax at 20%; and

(c) income specifically derived from Jersey property rentals or Jersey property development, which is subject to income tax at 20%.

Jersey does not impose capital gains tax or equivalent.

A Jersey business may be required to account for goods and services tax in Jersey (currently 5%). A business that has Jersey employees is required to make social security contributions, and to make withholdings from salaries for employees' social security contributions and income tax payments. At the time of writing, an employer's social security contributions are 6.5% of an employee's income up to £4,094 per calendar month and 2% of any income between £4,094 per calendar month and £13,542 per calendar month.

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

Jersey has a developed competition law regime, which covers:

(a) abuse of dominant position;

(b) anti-competitive behaviour; and

(c) mergers and acquisitions.

Jersey competition law applies to all persons who operate in or from within Jersey, whether Jersey companies, foreign bodies corporate or other business structures (including individuals).

The principal legislation relating to competition matters in Jersey is the Competition (Jersey) Law 2005 ('Jersey Competition Law'), and the applicable regulator is the Jersey Competition Regulatory Authority ('JCRA'). The JCRA has produced various guidance on the application of the Jersey Competition Law, and the Jersey Competition Law requires the JCRA and the Jersey courts to ensure so far as possible that questions arising in relation to competition are dealt with in a manner that is consistent with the treatment of equivalent questions under European Union law.

Where a merger or acquisition falls within the scope of the Jersey Competition Law, it will require the prior approval of the JCRA if it meets or exceeds certain thresholds specified in the Competition (Mergers and Acquisitions) (Jersey) Order 2010. In summary, those thresholds are:

(i) the creation or enhancement of a local 25% or greater share of supply or purchasing power (a 'horizontal' merger);

(ii) the creation of a vertical relationship anywhere in the world relative to a business in which a party has a local 25% or greater share of supply or purchasing power (a 'vertical' merger); and

(iii) where one or more party has a local 40% or greater share of supply or purchasing power (a 'conglomerate' merger), subject to certain exceptions.

The Jersey mergers and acquisitions regime is mandatory, in that if consent is required but is not obtained, in addition to the possibility of fines, title to Jersey situs property does not pass.

The JCRA is granted various investigatory powers under the Jersey Competition Law.

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

Jersey law recognises and provides for broadly the same types of intellectual property rights as would be common to most modern convention-compliant jurisdictions, including copyright, other unregistered intellectual property rights, trade marks, patents and registered design rights.

The Jersey patents, trade marks and designs registries are 'dependent' registries to the UK, meaning that it is possible to register relevant intellectual property on those registers only if it has first been registered in the UK. As part of the process for the registration of a trade mark, registered deign or patent in Jersey, it is necessary to provide a certified copy of the UK registration.

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

The Data Protection (Jersey) Law 2005 ('Jersey Data Protection Law') imposes a similar framework as the UK legislation in relation to data protection and data privacy in Jersey. In particular, the Jersey Data Protection Law defines and imposes conditions and requirements for the processing, disclosure and transfer of 'personal data' and 'sensitive personal data', and requires persons who process such data to register with the Jersey Information Commissioner. There is no current requirement to appoint a data protection officer in Jersey.

Jersey has announced its intention to update its data protection laws to maintain a regime which is equivalent to that under the EU General Data Protection Regulation ('GDPR'). The new Jersey law is expected to come into force at around the same time as the GDPR, being 25 May 2018.

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

There are no incentives to attract foreign companies to Jersey as such, but Jersey's corporate and personal income tax regime, flexible companies laws, and position as a leading international finance centre make it an attractive jurisdiction in which to do business.

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

A corporate insolvency in Jersey would generally take one of the following forms:

(a) a creditors' winding-up under the Jersey Companies Law; or

(b) a declaration of the company's property as being *en désastre* under the Bankruptcy (Désastre) (Jersey) Law 1990 ('Jersey Bankruptcy Law').

To commence a creditors' winding–up, it is necessary under Jersey law for the shareholders to pass a special resolution to commence a winding-up. The difference between a creditors' winding-up and a solvent winding-up is that, in the former, the directors have not made the necessary solvency statements required to wind up the company on a solvent basis (or the company has become insolvent during a solvent winding-up process). When a creditors' winding-up has been commenced, a liquidator must be appointed, who will realise assets and deal with liabilities and claims before the company is wound up.

The *désastre* regime under the Jersey Bankruptcy law is the process that is more similar to a voluntary or involuntary bankruptcy process in other jurisdictions. A creditor with a qualifying claim (and in certain circumstances the debtor) can apply to the court to have the assets of the company declared *en désastre*, at which point those assets vest in the Viscount (a Jersey court officer), who will realise the assets and deal with liabilities and claims before the company is dissolved.

There are instances where the Jersey courts have used a just and equitable winding-up process under the Jersey Companies Law to implement a form of corporate rescue procedure similar to an administration in the UK, but the circumstances in which such a remedy may be available are limited, and this is an evolving area of law.

Jersey also has two customary law insolvency procedures:

(a) *dégrèvement*: where encumbrances are removed from real property owned by the debtor at the request of a petitioning or enforcing creditor; and

(b) *réalisation* (which applies to movable property): pursuant to which a debtor's assets are realised for the benefit of its creditors.

These processes are less often seen in an international context.

Finally, the Jersey Bankruptcy Law makes provision for cooperation by the Jersey courts with courts in certain foreign jurisdictions in an insolvency context (and the Jersey courts may cooperate with other foreign courts on a case-by-case basis, having regard to the principles of legal comity). It is also possible for a UK administrator to be appointed in relation to a Jersey company, which is achieved by the Jersey court (on an application having been made to it) requesting that a UK court makes such appointment.

The directors of a Jersey company in financial difficulty are subject to additional duties and potential liabilities and may be required to take steps to safeguard the interests of the company's creditors. When exercising fiduciary duties (as referred to in question 8. What is the typical structure of directors (or family management structure) and liability issues for companies in your jurisdiction?), the directors of a company that is, or is nearly, insolvent should have regard to the interests of creditors.

In addition, provisions of the Jersey Companies Law and the Jersey Bankruptcy Law are intended to provide protection to creditors, by possible liability of directors, where the company has entered into a creditors' winding-up or where its property has been declared en désastre. For example, the Jersey Companies Law and Jersey Bankruptcy Law each include provisions relating to the responsibility of directors for wrongful trading (i.e. in summary, continuing to trade when there was no reasonable prospect of the company avoiding a creditor's winding-up or declaration of désastre) and fraudulent trading (i.e. in summary, carrying on business with the intent to defraud creditors). There are also provisions around, for example, the setting aside of transactions at an undervalue and transactions which constitute unlawful preferences given to a creditor, as well as certain potential offences which may be committed by directors in relation to a creditors' winding-up and/or a désastre.

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

The Jersey government is receptive to suggestions from industry around improvements to the Jersey Companies Law, and there are a number of possible amendments to the Jersey Companies Law in discussion. None of the current proposals are anticipated to impact materially on companies laws in Jersey, but will instead streamline certain provisions of existing laws. Both government and industry in Jersey are also considering whether the availability of any additional or alternative corporate structures for Jersey entities may be beneficial.

The Jersey competition regime as it applies to mergers and acquisitions is currently under review, and as noted in question 17, Jersey's data protection legislation is likely to be amended to deal with upcoming European Union changes.

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

Jersey companies laws are more flexible than the companies laws in many other jurisdictions (in particular, other jurisdictions whose companies laws are based on English companies law). For example:

(a) Jersey's requirements on the maintenance of capital mean it is less likely that there would be a 'dividend block' than in many other jurisdictions;

(b) it is possible to convert non-redeemable shares to redeemable shares;

(c) it is possible to make what civil law practitioners would recognise as a 'capital contribution' to a Jersey company; and

(d) given the additional flexibility around share capital (including the absence of statutory pre-emption rights), it is possible to create a Jersey company with a 'look and feel' that is very close to corporate entities in many other jurisdictions, including jurisdictions such as Delaware.

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

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

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

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

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

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

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

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

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

(c) it maintains a bank account;

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

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

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

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

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

(i) it invests its funds or holds property.

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

Alternatively, a foreign company may set up a wholly owned subsidiary in Mauritius. There are no restrictions on foreign ownership of companies in Mauritius, except for those companies that own immovable properties in Mauritius.

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

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

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

The most common types of companies are:

(a) private or public companies (limited by shares or guarantee or both);

(b) limited life companies;

(c) foreign companies;

(d) protected cell companies.

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

The time taken to incorporate a company in Mauritius will vary depending on the type of company.

From personal experience, the average time for incorporation or registration, as the case may be, is as follows:

(a) domestic companies: 3–4 days

(b) foreign companies: 1–2 weeks

(c) Global Business Licence Company 1 ('GBC1'): 3–4 weeks

(d) Global Business Licence Company 2 ('GBC2'): 2–5 days

There are no fast-track mechanisms.

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

Domestic companies

Applicants must submit details and consents of proposed shareholder(s), director(s) and company secretary. The Registrar of Companies issues prescribed forms to this effect. If it is proposed that the company will have a constitution (i.e. a charter document), then a copy of such constitution together with a certificate from a local law practitioner, legal consultant or law firm confirming that the constitution complies with the local laws must be submitted as well.

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

Fees are applicable for the first-time incorporation; then an annual fee or registration fee becomes payable at every end of year.

Foreign companies – registration

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

(a) a duly authenticated copy of the certificate of its incorporation or registration in its

Type of company	Applicable fees (US$)	
	Incorporation (US$)	Annual registration (US$)
Private company	Approximately 85	260
Public company	Approximately 387	387
Foreign company	Approximately 387	387

place of incorporation or origin or a document of similar effect;

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

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

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

Global Business Licence Companies (GBC1/GBC2)

The setting up of GBCs are governed by the Financial Services Act 2007 which provides that a resident corporation which proposes to conduct business outside Mauritius may apply to the Financial Services Commission ('FSC') for a Category 1 Global Business Licence or a Category 2 Global Business Licence. Incorporation of the GBC1 or GBC2 will be processed after obtaining the relevant licence.

Licensing requirements for GBCs are as follows:

(a) An application for a GBC1 or GBC2 shall be made through a management company to the FSC. The application will be of no effect unless certified by a law practitioner, legal consultant or law firm that it complies with the laws of Mauritius.

(b) The application should be made by submitting the application form accompanied by:

    (i) a business plan of the proposed activities to be carried out by the applicant;

    (ii) the applicable processing fee;

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

    (iv) supporting certified copies of Customer Due Diligence documentation;

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

Particulars for GBC1	Applicable fees (US$)
Annual fees to FSC	1,750
Application processing fee to FSC	500
Annual fees to Registrar of Companies	Approximately 300

Particulars for GBC2	Applicable fees (US$)
Annual fees to FSC	235
Application processing fee to FSC	100
Annual fees to Registrar of Companies	65
Processing fee to Registrar of Companies	65

(c) For a company seeking a GBC2, the same procedure will apply. However, the applicant will only need to submit a business outline of its proposed activities rather than a business plan.

The Company will be deemed to be incorporated in Mauritius upon receiving the certificate of incorporation from the Registrar of Companies.

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

A domestic company (i.e. a company not being a GBC) that has a turnover above MUR 20 million must:

(a) file a copy of its audited financial statements with the Registrar of Companies within 28 days of the date on which the same are signed;

(b) file an annual return (which is a prescribed form containing certain corporate information of the company such as names of directors and shareholders) with the Registrar of Companies within 28 days of the date of its annual meeting of shareholders. The annual meeting of shareholders of a company must be held not later than six months after the balance sheet date of the company; and

(c) forthwith following a transfer of shares of the company, file a certified copy of the instrument with the Registrar of Companies.

A small private company which is a private company the turnover of which for the last accounting period does not exceed MUR 20 million, and which is not a GBC, may file a financial summary with the Registrar of Companies (instead of filing audited financial statements).

Foreign Companies

A foreign company registered in Mauritius must:

(a) within three months of its annual meeting of shareholders, file with the Registrar of Companies a copy of its balance sheet, containing such particulars as it is required to annex under the law for the time being applicable to the company in its place of incorporation, or where it is not required to prepare a balance sheet under such law, a balance sheet as required under Mauritius law; and

(b) file financial statements, complying with International Accounting Standards, which fairly show the assets employed in, and liabilities arising out of, and its profit or loss arising out of, its operations conducted in or from Mauritius.Also, a foreign company registered in Mauritius must, within one month of the following changes occurring, file with the Registrar of Companies the particulars of the change of:

- the constitution, charter, statutes, memorandum or articles or other instrument filed;
- the directors of the company;
- the authorized agents or the address of an authorized agent;
- the situation of the registered office in Mauritius or of the days or hours during which it is open and accessible to the public;
- the address of the registered office in its place of incorporation or origin;
- the name of the company;
- the powers of any directors resident in Mauritius who are members of the local Board of directors;
- the increase the foreign company's authorized share capital (a notice of the amount from which and of the amount to which it has been so increased must be filed); and
- where a foreign company not having a share capital increases the number of its members beyond the registered

number it shall file a notice of the increase.

GBCs

Just like domestic companies, a GBC1 must file its audited financial statements with the Registrar of Companies. In addition, a GBC1 must its audited financial statements and auditors' report with the FSC within six months of the close of its financial year.

A GBC2 must file its annual financial summary with the FSC within six months of its balance sheet date.

Secretary

Every company, other than a small private company or a GBC2, must have at least one secretary. The secretary must be a natural person of full age and capacity and must be ordinarily resident in Mauritius and must have certain minimum qualifications, e.g. be a law practitioner or a member of The Institute of Chartered Secretaries and Administrators (ICSA) or the Chartered Institute of Management Accountants (CIMA).

Moreover, a corporation may act as a secretary with the approval of the Registrar of Companies subject to certain specified conditions. The office of the secretary must not be vacant for more than three months.

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

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

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

The business and affairs of a company are managed by, or under the direction or supervision of, the board of directors. A director would include a 'shadow' or *de facto* director.

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

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

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

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

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

Every company incorporated in Mauritius must have at least one director who should be a natural person and ordinarily resident in Mauritius, and at least one shareholder should be appointed.

Only a GBC2 may have a corporate director. In addition, for fiscal residency issues, GBC1s tend to have at least two resident directors.

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

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

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

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

Where a company issues shares which rank equally with, or in priority to existing shares as to voting or distribution rights, those shares must first be offered to the holders of existing shares in a manner which would, if the offer were accepted, maintain the relative voting and distribution rights of those shareholders. It is subject to the company's constitution.

Offers to the public

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

(a) the issuer is in existence at the time of the offer;

(b) the offer is made in a prospectus which complies with the Securities laws; and

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

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

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

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

Also the legislation tends to afford more protection to workers having a monthly salary not exceeding MUR 30,000.

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

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

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

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

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

The National Code of Corporate Governance 2016 was launched in February 2017. It applies to entities referred to as 'Public Interest Entities' which include listed companies and companies or groups of companies having, during two consecutive preceding years, at least two of the following:

(a) an annual revenue exceeding MUR 200 million;

(b) total assets value exceeding MUR 500 million; or

(c) at least 50 employees.

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

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

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

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

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

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

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

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

Value Added Tax Act 1988

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

Other taxes

In certain transactions, Land Transfer Tax, Registration Duty or Stamp Duty may be applicable depending on the nature of the transaction.

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

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

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

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

The Competition Act also regulates monopolies, especially in relation to the supply of goods or services of any description where:

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

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

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

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

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

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

Yes, the Data Protection Act 2004 ('DPA') was enacted to provide for the protection of the privacy rights of individuals in view of the developments in the techniques used to capture, transmit, and manipulate, record or store data relating to individuals.

The DPA places emphasis on processing of data, obligations of data controllers, and rights of data subjects.

The DPA also provides that, subject to exempt bodies listed in Part VIII, DPA is applicable to a data controller:

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

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

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

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

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

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

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

The IA was prepared with the assistance of New Zealand insolvency law experts and followed broadly the regime applicable there.

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

There are currently no proposed reforms to the Companies Act 2001.

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

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

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

New Zealand generally has an open policy towards foreign investment, and the requirements for overseas companies to comply with New Zealand company laws are not onerous. New Zealand was ranked first in the World Bank 2017 economy rankings for ease of starting and operating a business in its local regulatory environment.

Foreign investment only requires consent from the Overseas Investment Office ('OIO') or relevant ministers of the New Zealand government if it will result in an overseas person (or its associate) acquiring a direct interest in, or 25% or more ownership and/or control of interests in, sensitive land and/or significant business assets.

'Significant business assets' are high-value businesses with more than NZ$100 million of assets. 'Sensitive land' includes the foreshore or seabed, reserves and non-urban land.

All applications for consent are tested against prescribed investment criteria. Applicants must:

(a) be of good character;

(b) have relevant business experience or acumen;

(c) be able to demonstrate a financial commitment to the investment; and

(d) be eligible for visa or entry permission under New Zealand's immigration laws.

Applicants for sensitive land consent must also demonstrate that their investment will (or is likely to) benefit New Zealand and, in certain cases, that the benefit is substantial and identifiable.

In addition to the OIO's regulations, certain industries require sector-specific approval to make an investment. These approval requirements or ownership restrictions typically treat potential foreign investors the same as domestic investors.

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

The Companies Act 1993 ('Companies Act') is the primary statute that governs company law in New Zealand. The Companies Act prescribes key matters relating to the rights and obligations of companies and its key stakeholders including directors, shareholders and creditors.

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

A limited liability company, whether overseas or domestic, is the most commonly used structure for companies in New Zealand.

Common structures for offshore entities investing in New Zealand include incorporating or acquiring a local subsidiary company or registering a branch of an existing overseas company.

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

Companies are quick and easy to register and become operational almost immediately once the relevant information has been provided (see question 5).

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

For a company to be incorporated, the company's name must first be approved by the Registrar of Companies. Basic details of the company must be provided in an online form, including:

(a) information about the directors;

(b) details of shareholders and the number of shares;

(c) the company address;

(d) director and shareholder consent certificates; and

(e) company constitution. A constitution is not mandatory but is useful to permit certain corporate actions.

This process can be completed on the same day for minimal fees.

An overseas company carrying on business in New Zealand must be registered as an overseas company on New Zealand's overseas company register, and provide the following information:

(a) where and when the company is incorporated;

(b) information about the directors;

(c) its place of business or, if more than one, its principal place of business in New Zealand; and

(d) where and on whom documents can be served in New Zealand.

Registration of an overseas company is a simple process completed online for a minimal fee.

More information can be found on the New Zealand Companies Office's website at www.companiesoffice.govt.nz/companies.

Companies must update the Registrar of Companies to reflect any changes to directors' details, the company's address, the company's constitution and shareholdings.

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

Annual return

Companies must file an annual return confirming details (including the company's address, the number of shares, who the shareholders are and who the directors are) each year in their allocated filing month for a small fee. If the annual return is not filed by the due date, the company risks being removed from the companies register.

Financial statements

Certain companies must prepare audited financial statements annually and must file the audited financial statements with the Registrar of Companies, including:

(a) large overseas companies (New Zealand incorporated companies which are subsidiaries of overseas companies or overseas companies registered in New Zealand, whose assets or revenue exceed a certain threshold);

(b) large companies (companies incorporated in New Zealand, whose assets or revenue exceed a certain threshold); and

(c) companies with 10 or more shareholders. Such companies can opt out of the requirement to prepare audited financial statements provided they are not large domestic companies or large overseas companies, and 95% of the shareholders support a motion opting out of the requirement.

From 31 May 2017, large companies and large overseas companies are no longer required to prepare audited financial statements where the large company or large overseas company is covered under group financial statements prepared by an overseas parent.

Annual reports

Large companies and large overseas companies must also prepare annual reports containing information specified by the Companies Act.

From 31 May 2017, such companies are no longer required to prepare an annual report, where this is supported by 95% or more of the shareholders.

Tax returns

Companies subject to New Zealand tax must file relevant tax returns to Inland Revenue (New Zealand's tax authority). When such tax returns must be filed will depend on a number of factors, including the type of tax. The main types of taxes applicable to companies in New Zealand are income tax and goods and services tax ('GST'):

(a) Income tax applies on a company's net income after allowable deductions at 28%. Income tax applies on the worldwide income of New Zealand residents and New Zealand sourced income of non-residents, subject to double tax agreements. The due date for filing annual income tax returns depends on the balance date of the company. An extension to file tax returns is generally available for taxpayers that are registered with a tax agent.

(b) GST is imposed on the supply of certain goods and services in New Zealand and on certain goods and services imported into New Zealand, at a rate of 15%. GST returns can be filed monthly, every two months or six months (depending on the annual turnover of the relevant business).

Company secretary

A company secretary is not required in New Zealand.

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

An overseas company that carries on business in New Zealand must register with the New Zealand Companies Office. To register, the overseas company must provide details of its directors, evidence of its incorporation overseas and have at least one person resident or incorporated in New Zealand who is authorised to accept service of documents on behalf of the overseas company.

A registered overseas company must use its full name and place of incorporation in any written communications and documents, notify the Registrar of Companies within 20 days of any change in the company's constitution, directors, place of business or address, and file annual returns.

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

The structure of the board of directors of a company typically differs depending on the shareholding structure of the company. For example, where the company is a wholly owned subsidiary, the directors may be appointed by its holding company; where the company has multiple shareholders, directors can be appointed by each shareholder (with some companies choosing to also appoint independent director(s)). The company's constitution must provide for the method in which directors are to be appointed if it is to appoint directors other than through ordinary resolution (i.e. a simple majority of shareholders).

Directors owe the following fiduciary duties to the company under the Companies Act:

(a) to act in good faith and in the best interests of the company;

(b) to exercise powers for a proper purpose;

(c) not to trade recklessly;

(d) to exercise the care, diligence and skill that a reasonable director would exercise in the same circumstances; and

(e) obligations in relation to the use of company information.

In addition, the following duties are owed to the company and directly to the shareholders:

(a) to supervise the share register;

(b) to disclose interests; and

(c) to disclose share dealings.

Shareholders can take derivative action for a breach of any duties that are not owed directly to them. Remedies for breach of any of the above duties can include injunctions, compliance orders and damages.

Directors can be liable for breach of administrative duties under the Companies Act or the constitution of the relevant company, and for directly or indirectly knowingly breaching the Fair Trading Act 1986 or the Commerce Act 1986 ('Commerce Act').

9. What is the minimum number of directors and shareholders required to set up a company in your jurisdiction?

Are there any requirements that a director must be a natural person?

A company must have at least one director:

(a) who lives in New Zealand, or

(b) who lives in Australia and is a director of a company incorporated in Australia.

Directors must be natural persons.

A company must have at least one share and one shareholder.

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

Shares may be issued by the board of directors at any time, to any person, and in any number it thinks fit, subject to a company's constitution.

Mayne Wetherell

Matthew Olsen

Partner, Mayne Wetherell

Matthew is a corporate partner at Mayne Wetherell. Matthew has considerable experience on a wide range of corporate activity including domestic and foreign M&A, joint ventures and equity capital markets, with a particular focus on foreign direct investment.

Recent transactions:

- Acted for Universal Robina Corporation on its NZ$700 million acquisition of Griffin's Foods from Pacific Equity Partners and its A$600 million acquisition of Snack Brands Australia.
- Represented a consortium comprising KKR, Varde Partners and Deutsche Bank on its acquisition of GE Capital's A$8 billion consumer finance business, and Bain Capital and Deutsche Bank on the acquisition of GE Capital's commercial finance portfolio.
- Advised Intermediate Capital Group in relation to the IPO of Tegel Foods.
- Advised TPG in relation to the acquisition and then ASX IPO of Inghams.
- Acted for Lempriere Australia in relation to the merger and partial divestment of its wool scour assets with Cavalier.

If the shares being issued rank equally as to voting or distribution rights with shares already issued, a pre-emptive rights regime will apply as provided for in the Companies Act, unless the constitution provides otherwise. The board of directors must decide on the consideration for and the terms on which the shares will be issued and resolve that these are fair and reasonable to the company and existing shareholders.

Offers of shares may be regulated by the Financial Markets Conduct Act 2013 ('FMCA'). The FMCA sets out specific disclosure requirements for regulated offers, including an obligation to file a product disclosure statement. Certain offers will be exempt from the disclosure requirements, including where the investor is a wholesale investor.

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

The Employment Relations Act 2000 is the main legislation that governs the relationships between employees and employers in New Zealand. It aims to:

(a) promote collective bargaining;

(b) regulate the operation of unions;

(c) address the inherent inequality of power in employment relationships;

(d) provide a framework for personal grievances and disputes; and

(e) prescribe basic protections for individual employees.

Every employee must have a written employment agreement under the Employment Relations Act 2000. Individual employment agreements must contain certain information at a minimum, including:

(a) the names of the employer and the employee;

(b) a description of the work;

(c) the location of the workplace;

(d) the agreed hours;

(e) the salary and how it will be paid;

(f) a plain explanation of how to resolve employment relationship problems; and

(g) an employee protection provision explaining the process to be undertaken if the business is sold or transferred.

Certain terms are implied by law and do not need to be included in employment agreements (unless they seek to provide more than the minimum standards), including entitlement to breaks and leave.

Collective employment agreements apply to employees who are members of a union that is party to the collective agreement with the employer. It is possible for an employee who is bound by a collective agreement to agree to additional terms and conditions of employment with the employer.

The following legislation also applies to New Zealand employment arrangements:

(a) Human Rights Act 1993;

(b) Parental Leave and Employment Protection Act 1987;

(c) Holidays Act 2003; and

(d) Health and Safety at Work Act 2015.

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

The Companies Office, as part of the Ministry of Business Innovation and Employment, and the Financial Markets Authority ('FMA') are the government agencies responsible for regulating corporate governance of companies in New Zealand. The FMA promotes and facilitates the development of fair, efficient and transparent financial markets in New Zealand.

Where a company is publicly listed, NZX Limited is also responsible for regulating corporate governance under the NZX Listing Rules. The NZX Listing Rules require an issuer to disclose in its annual report the extent to which its corporate governance principles materially differ from the principles set out in the NZX Corporate Governance Best Practice Code.

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

Establishing a company in New Zealand does not in and of itself create any residency rights. However, New Zealand's visa framework provides a number of options to overseas persons who run their own business or make investments in New Zealand.

Entrepreneur Work Visa

People who wish to run their own business in New Zealand can apply for an Entrepreneur Work Visa. Holders of an Entrepreneur Work Visa are able to operate their business in New Zealand initially for 12 months, and for a further 24 months once the individual has taken steps to set up the business.

To qualify, the applicant must:

(a) provide a detailed business plan;

(b) be able to claim at least 120 on Immigration New Zealand's eligibility points scale; and

(c) have at least NZ$100,000 to invest in their business (this capital investment requirement may be waived for businesses in the science or ICT sectors).

Entrepreneur Residence Visa

People who are granted an Entrepreneur Work Visa will also be able to apply for an Entrepreneur Residence Visa once they have run their businesses for two years (or six months if they meet extra conditions, including having invested NZ$500,000 and created at least three new jobs in New Zealand), allowing them and their family to live, work and study indefinitely in New Zealand.

Investor/Investor Plus Visa

People who wish to invest funds in a business and live in New Zealand can apply for residence under Investor/Investor Plus categories.

To qualify for the Investor Visa, the applicant must:

(a) invest at least NZ$3 million over a four-year period in acceptable investments in New Zealand, including equity in a public or private business, bonds or a new residential property development for commercial purposes ('Acceptable Investments');

(b) reside in New Zealand for at least 146 days in each of the last three years of the four-year investment period or 438 days over the entire investment period;

(c) have a minimum of three years' business experience;

(d) satisfy English-language requirements; and

(e) be 65 years old or under.

To qualify for the Investor Plus Visa, the applicant must:

(a) invest at least NZ$10 million over a three-year period in Acceptable Investments in New Zealand; and

(b) reside in New Zealand for at least 44 days in each of the last two years of the three-year investment period or 88 days over the entire investment period.

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

The main types of taxes applicable to companies in New Zealand are income tax and GST:

(a) Income tax applies on a company's net income after allowable deductions at 28%. Income tax applies on the worldwide income of New Zealand residents and New Zealand sourced income of non-residents, subject to double tax agreements. The due date for filing annual income tax returns depends on the balance date of the company. An extension to file tax returns is generally available for taxpayers that are registered with a tax agent.

(b) GST is imposed on the supply of certain goods and services in New Zealand and on certain goods and services imported into New Zealand, at a rate of 15%. GST returns can be filed monthly, every two months or six months (depending on the annual turnover of the relevant business).

There are no comprehensive capital gains tax, gift, stamp, or estate duties in New Zealand.

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

The Commerce Commission ('ComCom') is New Zealand's competition regulator that enforces the Commerce Act.

The Commerce Act applies to both foreign and domestic entities doing business in New Zealand. Penalties for contravening the Commerce Act typically include damages and injunctions.

The ComCom provides guidance on the relevant areas of regulation on its website at www.comcom.govt.nz.

Restrictive agreements and practices

The Commerce Act aims to promote competition in markets within New Zealand. It prohibits certain types of agreements or collective practices, including agreements that:

(a) substantially lessen competition in the market;

(b) exclude or limit dealings with a rival, unless it can be shown that the agreement does not substantially lessen competition; or

(c) fix, maintain or control prices.

Unilateral conduct

Illegal actions by individual businesses under the Commerce Act include a person or business:

(a) taking advantage of a substantial degree of market power for an anti-competitive purpose; or

(b) specifying a minimum price at which goods or services can be sold by someone else (resale price maintenance).

Mergers and acquisitions

The Commerce Act prohibits business acquisitions and other conduct that substantially lessen competition in a market. The Commerce Act applies regardless of whether a foreign entity is involved and does not provide for exemptions for foreign entities. Merging firms can apply to the Commerce Commission for:

(a) clearance of a proposed merger, which will be granted if it is not likely to substantially lessen competition in the market; and/or

(b) authorisation for a merger, where the resulting public benefits outweigh the detriment.

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

New Zealand has a central intellectual property register operated by the Intellectual Property Office of New Zealand, and recognises certain unregistered rights such as copyright, trade secrets and unregistered trade marks.

New Zealand is a signatory to, among others, the Paris Convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the Madrid Protocol (a treaty administered by the International Bureau of the World Intellectual Property Organization).

Patents

The main type of patent is a patent of invention. A patent of addition can be granted for improvements or modifications to an invention that is already patented.

An invention is patentable if it:

(a) is a manner of manufacture;

(b) involves a novel and inventive step;

(c) is useful; and

(d) is not excluded under the Patents Act 2013 (e.g. for being contrary to public policy or morality).

Registration protects a patent for 20 years, provided that all fees are paid and there has not been a successful application to revoke its registration.

Trade marks

A trade mark is defined in the Trade Marks Act 2002 as a sign that is capable of being represented graphically and capable of distinguishing one person's goods or services from another's. In addition, a trade mark must not be prevented from registration on any absolute or relative ground, such as being confusingly similar to another mark.

A trade mark term is 10 years. Registration can be indefinitely renewed for further periods of 10 years.

Registered designs

A design is registrable under the Designs Act 1956 if it is novel in New Zealand and can be applied to an article of manufacture, unless the features of design for which protection is sought are dictated solely by the function of the article.

The term of a design registration is 15 years. After the term has expired, the design may be used by any other party.

Unregistered designs

Unregistered designs can be protected by copyright laws.

Copyright

The property right of copyright automatically vests in certain categories of original work. There is no registration system. Generally, copyright in a literary, dramatic, musical or artistic work expires 50 years from the end of the calendar year in which the author dies.

Others

The other main intellectual property rights in New Zealand include:

(a) plant variety rights: these are protected under the Plant Variety Rights Act 1987. Any kind of plant can be registered (excluding algae and bacteria). The register is administered by the Plant Variety Rights Office (which is part of the Intellectual Property Office of New Zealand).

(b) domain names: these can be registered as a trade mark or, as with an unregistered trade mark, gain protection from the tort of passing off and the Fair Trading Act 1986.

(c) confidential information and trade secrets: these are protected by the tort of breach of confidence, the law of contract and employment law.

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

The collection, use and disclosure of personal information is regulated by the Privacy Act 1993 ('Privacy Act') and codes issued by the Privacy Commissioner.

An aggrieved individual who wishes to lodge a complaint must do so with the Privacy Commissioner in the first instance. The Privacy Act sets out information privacy principles that the Privacy Commissioner must take into account in exercising his or her powers, including that personal information must be:

(a) collected for a lawful and necessary purpose;

(b) collected directly from the relevant individual (subject to certain exceptions); and

(c) protected by security safeguards that are reasonable in the circumstances.

The Privacy Commissioner does not have powers to fine or prosecute, and if settlement is not reached between the parties, the Privacy Commissioner can refer the complaint to the Director of Human Rights Proceedings. If the director considers that proceedings can be brought, it will act on behalf of the claimant to initiate proceedings with the Human Rights Review Tribunal. The tribunal can award damages of up to NZ$200,000, and its decision can be appealed to the High Court.

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

Incentives for foreign investors are generally not available in New Zealand. However, ad hoc incentives are available for specific sectors. For example, the Employment Relations (Film Production Work) Amendment Act 2010 secured concessions for a foreign investor by amending employment rules for the film industry.

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

Liquidation

A liquidator may be appointed to a company by:

(a) special resolution (75% or more, or a higher threshold prescribed by the constitution) of the company's shareholders;

(b) the board of directors of the company on the occurrence of an event specified in the company's constitution; or

(c) the court, on the application of certain persons (including a creditor of the company), who may appoint a liquidator if (among other reasons) it is satisfied that the company is unable to pay its debts.

Upon the appointment of a liquidator, the liquidator will have custody and control of the company's assets. The liquidator will realise and distribute the assets or the proceeds from the realisation of the assets in accordance with the order and procedure prescribed by the Companies Act. Subject to certain exceptions, creditors are ranked in the following hierarchy:

(a) secured creditors;

(b) preferential unsecured creditors;

(c) unsecured creditors (distributions to unsecured creditors are to be based on the proportion of debt owed);

(d) shareholders.

Receiver

The appointment of receivers is governed by the Receiverships Act 1993. A receiver is a person who is appointed either under a deed or agreement, or by the court, for the purpose of realising assets or managing the business of a company for the benefit of secured creditors.

A company does not have to be placed into receivership before it can be placed into liquidation. A receiver can also be appointed before or after liquidation proceedings have commenced.

Voluntary administration

A company can enter into voluntary administration, whereby an administrator is appointed by the company, a liquidator, the court or a secured creditor who holds a charge over the whole (or substantially the whole) of that company's property.

The administrator's role is to investigate the company's affairs and form an opinion as to whether it would be in the creditor's interests:

(a) for the company to execute a deed of company arrangement providing for payment towards the creditors' debts;

(b) for the company to be liquidated; or

(c) for the administration of the company to end.

Statutory management

A company may also be placed under statutory management on the recommendation of the FMA. This will occur where the company is considered to be operating fraudulently or recklessly, including by incurring debts which it is unlikely to be able to pay. The effect of statutory management is to freeze the position of a company so as to preserve the interests of shareholders, creditors and the public, and to have a statutory manager appointed by the New Zealand government to deal with the affairs of the company in a more orderly or expeditious manner.

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

There have not been any recent proposals for reforms or regulatory changes to New Zealand company law which are material. Minor amendments to the Companies Act have come into force from time to time. For example, from 31 May 2017, the Registrar of Companies is conferred the power to remove an overseas company registered in New Zealand from the register of overseas companies in New Zealand, if:

(a) the Registrar is satisfied that the overseas company has ceased to carry on business in New Zealand; and

(b) 20 working days' notice has been given to the public and to the overseas company to object to the removal if the company is still carrying on business in New Zealand.

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

New Zealand has a small but active capital market. NZX Limited operates New Zealand's registered securities exchange with:

(a) a main equities market (New Zealand Stock Market);

(b) an equities market for growth companies (NXT Market); and

(c) a debt market (New Zealand Debt Market, for bonds and fixed-income securities).

An offer of financial products (including shares and debt securities) must comply with the FMCA (New Zealand's key financial markets regulation), including:

(a) Information about 'regulated offers' must be disclosed in a product disclosure statement and the Disclose Register. Together, this information must include all material information about the offer of a financial product and be up-to-date, accurate and understandable.

(b) Exclusions to this requirement include offers made to close business associates, wholesale investors, employee incentive schemes and small offers (NZ$2 million from 20 investors in any 12-month period).

The FMCA also provides for crowd-funding providers and peer-to-peer lending providers to apply for licences from the FMA. Licensed crowd-funders and peer-to-peer lenders are able to offer shares or debt securities respectively, without the standard disclosure requirements under the FMCA.

Persons seeking to raise amounts from equity crowd-funding or peer-to-peer lending are subject to a limit of NZ$2 million in a 12-month period, without a product disclosure statement having to be issued.

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

Foreign companies in Vietnam in general enjoy similar treatment as their domestic counterparts in terms of commercial presence, incorporation procedures, tax treatment and others. Under the commitments of Vietnam to the WTO and other bilateral treaties, Vietnam undertakes to apply full 'national treatment' principle to foreign investors to operate in certain service sectors. Specifically, the government provides foreign investors with guarantees in respect of the following:

(a) asset ownership;

(b) business and investment activities;

(c) remittance of assets of foreign investors to overseas;

(d) the government's guarantees for a number of important projects; and

(e) investment guarantees in the event of changes in laws.

However, Vietnam still maintains certain restrictions which are unfavourable to foreign companies in a number of industries. For example:

(a) Foreign-controlled companies must, regardless of which business sectors they operate in, follow the investment procedure applicable to foreign investors when:

  (i) it sets up a new company;

  (ii) it acquires shares in existing domestic companies; and

  (iii) it enters into Business Cooperation Contracts.[1]

(b) Foreign investors are subject to certain limitations with regard to foreign ownership, e.g. the form of investment, scope of business and qualifications of specialists (see question 7).

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

The main laws and regulations that govern company law in Vietnam are as follows:

(a) The Law on Investment of the National Assembly dated 26 November 2014 (the 'LOI');

(b) The Law on Enterprises of the National Assembly dated 26 November 2014 (the 'LOE');

(c) Decree 78/2015 of the Government dated 14 September 2015 on enterprise registration;

(d) Decree 96/2015 of the Government dated 19 October 2015 implementing the LOE ('Decree 96/2015'); and

(e) Decree 118/2015 of the Government dated 12 November 2015 guiding a number of articles of the LOI ('Decree 118/2015').

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

Under the LOE, the following are the four main corporate structures:

(a) limited liability companies ('LLCs');

[1] Article 23.1 of the Law on Investment of the National Assembly dated 26 November 2014

(b) joint stock companies ('JSCs');

(c) incorporated partnerships; and

(d) private enterprises (i.e. sole proprietorships).

LLCs and JSCs appear to be the most popular structures for foreign investors who wish to set up a joint venture company with a local partner or a wholly foreign-owned company. The table below compares an LLC with two or more members/investors being the equity holders (the 'Multi-Member LLC') and a JSC:

	Multi-Member LLC	JSC
Members/ Shareholders	• At least two members. • No more than 50 members.	• At least three shareholders. • No restriction on the maximum number of shareholders.
Capital	• The equity capital is not divided into shares or stocks. • An LLC is not entitled to issue shares.	• The share capital is divided into shares of equal value. • Entitled to issue shares for the purpose of raising capital.
Legal entity status	It has legal entity status from the date of issuance of the Enterprise Registration Certificate ('ERC').[2]	It has legal entity status from the date of issuance of the ERC.[3]
Capital contribution	Members/investors have to make full capital contribution within 90 days after the issuance of the ERC.	Shareholders must pay in full for the shares which they have subscribed within 90 days from the date of issuance of the ERC.
Pre-emptive right	Transfer of equity/Charter capital by a member is subject to the pre-emptive rights of the other members.	Not applicable.
Lock-up period	Not applicable.	Within the first three years of establishment, the founding shareholder(s) can only transfer their shares to a party which is not a founding shareholder if so approved by the General Shareholders' Meeting (the 'GSM').

[2] Article 47.2 of the LOE

[3] Article 110.2 of the LOE

	Multi-Member LLC	JSC
Liability	Liable to debts and other obligations of the company in proportion to the capital contributed or committed to contribute into the LLC.	Liability for debts and other liabilities of the company is limited to the amount of capital contributed.
Structure of organisational management	The Members' Council ('MC') is the highest decision-making body.	• GSM is the highest decision-making body. • The board of management ('BOM') is the management body.
	A General Director (or Director) is obliged to run the day-to-day business operations and is responsible before MC. A board of controllers is required if the LLC has 11 or more members/investors.	A General Director (or Director) manages the day-to-day business operations under the supervision of BOM and is responsible before BOM. A board of controllers is required if the JSC has more than 11 individual shareholders or has institutional shareholders together holding more than 50% of total share capital.[4]
Quorum rules	• An MC meeting is quorate if attendants represent at least 65% of the Charter capital.[5] • If a quorum is not met at the first meeting, the second meeting is quorate if attendants represent at least 50% of the Charter capital. • If the quorum is not met in the second meeting, the third meeting is deemed to be quorate regardless of the attendants.	• A GSM is quorate if attendants represent at least 51% of the total shares.[6] • If a quorum is not met at the first meeting, the second meeting is quorate if attendants represent at least 33% of the total shares.[7] • If the quorum is not met in the second meeting, the third meeting is deemed to be quorate regardless of the attendants.
Approval thresholds	MC decisions shall be approved at a meeting by votes representing at least 65% of the aggregate capital of	• GSM decisions shall be approved by shareholders representing at least 51% of the total voting shares of all attendants or at least

	Multi-Member LLC	JSC
Approval thresholds (cont.)	the attendants or at least 75% if such decisions are related to certain key corporate issues.[8]	65% if such simpledecisions are related to certain key corporate issues.[9] BOM decisions shall be approved by a simple majority of its members.
Voting rights	Vote in proportion to capital share.[10]	One ordinary share will be conferred one vote.
	No voting preference.	• Voting preference shares are given more votes than ordinary shares. • The number of votes given to such shares is specified in the JSC Charter.

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

At law, the timeline for a foreign investor to incorporate a company in Vietnam takes 18–58 business days:

In practice, the timelines below may vary significantly since the licensing authority has wide discretion to decide whether the application documents are sufficient and whether additional information or clarification is needed. Furthermore, the licensing authority may need to obtain 'internal opinions' from specialised authorities before issuing the in-principle approval, which inevitably lengthens the licensing process.

	Procedure	Timeline[11]
(a)	Incorporation of company which does not require in-principle approval	18 business days
(i)	Investment Registration Certificate ('IRC')	15 business days
(ii)	ERC	3 business days

4 Article 134.1(a) of the LOE
5 Article 59.1 of the LOE
6 Article 141.1 of the LOE
7 Article 141.2 of the LOE
8 Article 60.3 of the LOE
9 Article 144 of the LOE
10 Article 50.2 of the LOE
11 Estimated timeline is counted from the date when the licensing authority receives the proper application documents.

	Procedure	Timeline[11]
(b)	Incorporation of company which requires in-principle approval	43–58 business days
(i)	In-principle approval by the National Assembly	No statutory timeline
	In-principle approval by the Prime Minister	50 business days[12]
	In-principle approval by a provincial People's Committee	35 business days
(ii)	IRC	5 business days[13]
(iii)	ERC	3 business days

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

IRC

Before setting up a company, the foreign investor must propose an investment project and apply for an IRC.[14]

In-principle approval

Subject to the scope and nature of the investment project, the foreign investor in some cases must obtain an in-principle approval from a relevant authority before obtaining an IRC. An in-principle approval is one deciding that the relevant project will be licensed.[15]

Investment deposit

For investment projects involving the lease or allocation of land from the government which requires the conversion of the land use purpose, the foreign investor will have to make a deposit. The deposit ranges from 1% to 3% of the project investment capital, depending on the nature and size of the project.[16]

Online registration

Investors are required to register online at the 'National Portal on Foreign Investment' prior to submitting an application for an IRC.

Application dossiers

An application file for the IRC including documents prescribed by laws will be submitted to the relevant provincial Department of Planning and Investment.

ERC

After an IRC has been issued, the foreign investor may proceed to apply for an ERC from the Business Registration Agency. The ERC certifies the incorporation of a company.

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

Reporting obligations

Any post-incorporation amendment to the company's Enterprise Registration Content requires registration with or notification to the Business Registration Agency. The authority has three days to decide whether to accept or reject the request for registration or the notification.[17]

12 Article 33.2 of the LOI
13 Articles 30.6 and 31.8 of Decree 118/2015
14 Article 22 of the LOI
15 Articles 31, 32, 33, 34 and 35 of the LOI
16 Article 42 of the LOI

17 Articles 31 and 32 of the LOE

Company's seal

Newly incorporated companies can design their own seal but must notify the Business Registration Agency of the seal's design where the headquarters is located for public viewing of the National Business Registration Portal.[18]

Company secretary

This is not specifically required by Vietnamese laws.

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

Conditional business sectors

Similar to many countries, Vietnam reserves its sovereign right to restrict investment in certain conditional business sectors. Investment projects in conditional business sectors must satisfy certain conditions for reason of national defence and security, social order and security, social ethics, and public health. These conditions are applicable equally to both foreign investors and local investors alike. In addition, Vietnam also reserves its sovereign right to limit foreign investment in certain sectors by imposing particular conditions, such as:

(a) foreign ownership limitation;

(b) form of investment and requirements for Vietnamese partners;

(c) operational details; and

(d) other conditions stipulated in international treaties to which Vietnam is a party.

Regarding treaty-based conditions which Vietnam imposes, the basic conditions are found in the Schedule of Specific Commitments in Services contained in Vietnam's WTO accession package. Less restrictive conditions for foreign investors are available to investors from ASEAN countries under the ASEAN Economic Community framework.

Minimum capital requirements

A minimum Charter capital (which is the share or equity capital registered in a company's ERC) is required in certain businesses, such as banks and real estate business.

In some types of investment projects, the Charter capital of the project company must reach a certain ratio to the total investment capital of the project, e.g. real estate development projects.

Operation licences

Operation licences will be required after an ERC has been issued and before the company commences its relevant business in Vietnam.

Operation licences are required for businesses having a significant impact on the social and national economic interests, such as education, banking and insurance.

Certificate of satisfaction of business conditions

The certificate is to ensure that the company has already satisfied the compulsory requirements for its products or services. For example, a foreign-invested trading company is required to obtain a trading licence.

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

The business and operational affairs of a company are mostly under the management of either BOM (with respect to JSCs) or MC (with respect to LLCs). In comparison, BOM and MC may have the same functions, powers and authority as those of the board of directors in other jurisdictions, and each member of BOM/MC should be considered as a director thereof. Generally, members of BOM and MC shall be appointed by shareholders and capital-contributing members, respectively.

[18] Article 15.4 of Decree 96/2015

BOM in a JSC shall consist of 3–11 members who are elected by the shareholders of the company[19] for a term of five years with no limit on the number of terms.[20] Members of BOM are entitled to elect a member to be the Chairman of BOM to manage the operation of BOM. In an LLC, MC shall consist of all capital-contributing members.[21] Similar to BOM, all members of MC are entitled to elect a member as the Chairman of MC for managing the operation of MC.

In Vietnam, the Chairman and members of BOM, the Chairman and members of MC and the General Director and other directors are collectively defined as the Managers of a company.[22] They are subject to a number of fiduciary duties to the company:

(a) to perform the given rights and obligations in accordance with the applicable laws and the company's Charter;

(b) to act prudently, truthfully, and in the best manner to protect the maximum interest of the company;

(c) to act in the best interest of the company and shareholders; shall not use the company's information, secrets or business opportunities; or misuse the position, power, or assets of the company for self-seeking purposes or serving the interest of other parties; and

(d) to promptly and accurately notify the company of the companies that they and their related persons own or have controlling stakes or shares in.[23]

[19] Article 143.2(d) of the LOE
[20] Article 150.2 of the LOE
[21] Article 56 of the LOE
[22] Article 18.4 of the LOE
[23] Articles 71.1, 83 and 160 of the LOE

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

Under the LOE, a single-member LLC is founded by one organisation or individual called the owner. A multi-member LLC is founded by at least two, but no more than 50, individuals and/or organisations being members. A JSC requires at least three individuals and/or organisations being its shareholders for incorporation.

A director of a company must be a natural person who actually runs the general operations of the company. All members of BOM in a JSC are elected by shareholders and must be natural persons.[24] For LLCs, organisational members can perform the rights and obligations in MC only through their authorised representatives who must be natural persons.[25]

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

Under the LOE, only JSCs are entitled to issue shares, except where an LCC issues shares in a private placement in order to convert into a JSC.[26] The required conditions on offering shares are based on the form of the share offering and the type of company which offers its shares (i.e. public JSC or non-public JSC). Briefly, the typical requirements for offering shares under Vietnamese laws are set out below.

Private placement

Private placement means a direct placement of shares to professional securities investors or to fewer than 100 non-professional securities

[24] Article 151.1 of the LOE
[25] Article 15.1 of the LOE
[26] Article 3.2 of Decree 58/2012/ND-CP of Government dated 28 July 2012 on guiding a number of articles of the law on securities ('Decree 58')

investors, not through the mass media or Internet.[27]

Requirements for a non-public company or an LCC in the case of converting to a JSC:[28]

(a) for a JSC, an offering plan and a plan on the use of proceeds from offering shares must be approved by the GSM. In case of an LCC converting to a JSC, the above plans must be approved by MC or the owner of the company; and

(b) other conditions prescribed in specialised law(s) must be met if the company operates in conditional business sectors.

Requirements for a public company:[29]

(a) an offering plan and a plan on the use of proceeds from offering shares must be adopted by the GSM;

(b) the share offering under a private placement form shall be restricted to sales of at least one year since the date of completing the offering phase, except in certain cases;

(c) the period between the two phases of offering shares shall not be fewer than six months; and

(d) other conditions prescribed in specialised law(s) must be met if the company operates in conditional business sectors.

Public offering

This is the issuance of shares by one of the following methods: offering through mass media; offering shares to more than 100 investors who are not professional investors; or offering shares to an uncertain number of investors.[30]

Under the public offering of shares, the issuing JSC, whether public or non-public, shall satisfy the following conditions:[31]

(a) the Charter capital contributed at the time of registration of the offering shares is at least VND10 billion calculated in the accounts of the issuing JSC;

(b) its business operation in the year preceding the offering year is profitable and, at the same time, it has not accrued any loss up to the offering year;

(c) its offering plan and plan on the use of proceeds from offering have been approved by the GSM; and

(d) the public company registering the securities offered to the public must commit to sending securities to organised stock markets within one year since the end date of the offering phase passed by GSM.

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

The main laws and regulations on employment in Vietnam are as follows:

(a) the Labour Code of the National Assembly dated 18 June 2012, the Law on Trade Unions of the National Assembly dated 20 June 2012, the Law on Health Insurance of the National Assembly dated 14 December 2008, the Law on Social Insurance of the National Assembly dated 20 November 2014, and their implementing decrees and circulars;

(b) the Supreme People's Court's annual practice summaries and guidelines; and

(c) collective labour agreements and internal employment rules of the company.

27 Article 1.3 of the Law on Amendment of Securities Law of the National Assembly dated 24 November 2010 (the 'Law on Amendment of Securities Law')

28 Articles 4.1 and 4.2 of Decree 58

29 Article 4.3 of Decree 58

30 Article 6.12 of the Law on Securities of the National Assembly dated 29 June 2006 (the 'Law on Securities')

31 Article 12 of the Law on Securities and Article 7 of the Law on Amendment of Securities Law

Generally, Vietnamese labour regulations provide strong protection for employees. The interests and benefits of employees are tendentiously drafted in favour of the employees, particularly on issues relating to unilateral termination or dismissal by the company and the insurance policy. Where the termination or dismissal is for an improper reason or the process is undue, the employer will be obliged to make compensation to the employee and pay penalty to the government.

The labour laws of Vietnam require the compulsory purchase of social, health and unemployment insurances. The obligations to pay those insurance premiums are borne by and split in specific ratios between the employer and the employee. In case of violation, depending on the nature and seriousness of the violation, the government may impose a fine or even criminal liabilities on the company.[32]

If a company recruits foreign employees, it must ensure that work permits are acquired from the labour authority in order for them to work for the company in Vietnam.

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

See question 1 for the corporate structure of a JSC and an LCC. Normally, the GSM and MC are the highest decision-making authorities in a JSC and an LCC, respectively. BOM is obliged to comply with and execute the resolutions of the GSM. However, it also has its own power to make decisions on matters which it is authorised to make under the company's Charter or specifically delegated by the GSM. In addition, the General Director is in charge of the day-to-day business of a company and takes responsibility before the GSM and BOM (in a JSC) or MC (in an LLC).

When applying for incorporation, the corporate governance will be assessed and approved by the relevant government bodies. Normally, when establishing a company, an investor shall submit an application file which includes the corporate governance contents (in the Charter) to the Business Registration Agency. Once in operation, if the company is subsequently converted to a public company, its corporate structure will be subject to further governance by the States Securities Commission of Vietnam.[33] Where a company is a credit institution, its corporate governance shall be under the supervision of the State Bank of Vietnam. Where a company is an insurance company, its corporate governance shall be under the supervision of the Ministry of Finance.[34]

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

Under the Law on Entry, Exit, Transit and Residence of Foreigners in Vietnam, foreign investors are allowed to apply for a DT visa (a DT visa is issued to foreign investors and lawyers operating in Vietnam).[35] When entering Vietnam, the immigration control unit at border checkpoints will grant a temporary residence permit with its seal affixed in the investor's passport or a separate visa. The validity period of a temporary residence permit under a DT visa is 12 months. For a longer residence period, foreign investors must obtain a

32 As drafted under Articles 214 and 216 of the Penal Code of the National Assembly dated 27 November 2015

33 Articles 25 and 26 of the Law on Securities and Article 34 of Decree 58

34 Articles 22, 37 and 51 of the Law on Credit Institutions

35 Article 8.7 of the Law on Entry, Exit, Transit and Residence of Foreigners in Vietnam

temporary residence card which has a validity period of up to five years.[36]

There is no regulation that requires a foreign investor to co-operate with a local citizen or set up a joint venture with a local partner in Vietnam in order to have residence rights in Vietnam. To obtain a DT visa, a foreign investor must be invited or sponsored by an organisation or individual in Vietnam. Upon notification from the inviting or sponsoring entity, the investor shall submit his/her passport, application and photos to the overseas visa-issuing authority of Vietnam to obtain a DT visa within three workings days.[37]

To obtain a temporary residence card, the Vietnamese entity which invites or sponsors the foreign investor shall submit dossiers including a written invitation and the investor's passport and DT visa to the Immigration Authority.

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

Companies set up by foreign investors in Vietnam are treated equally as domestic companies in terms of taxes. Below is a list of the various taxes applicable to both domestic and foreign-invested companies under Vietnamese laws:

(a) Value added tax ('VAT') is a tax imposed on the added value of goods or services arising in the process from production, circulation to consumption. VAT is paid monthly. There are cases where VAT is exempted.[38] Other than that, VAT range from 5% to 10% depending on the type of goods or services.

(b) Corporate income tax ('CIT') is a tax imposed on a company's taxable profit and is paid quarterly. The standard CIT rate was reduced from 25% to 22% in 2014 and then to 20% since 1 January 2016.[39]

(c) Import/export duties which apply to imported/exported goods are normally paid before the relevant goods are cleared and released by the customs office.[40] Under the law, import and export duty rates range from 0% to 40%, depending on whether it is import or export and on specific items of goods.

(d) Personal income tax ('PIT') is the tax imposed on incomes earned by individuals in Vietnam. PIT is paid monthly and is finalised by the end of the calendar year. Under the law on PIT, taxpayers include residents and non-residents. While residents are subject to progressive tax rates (with the maximum rate at 35%) on their worldwide income, non-residents are subject to a flat rate of 20% on their income earned from their employment in Vietnam.[41]

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

The competition law in Vietnam[42] governs the activities of business organisations and individuals that manufacture or supply products or services in Vietnam, in relation to 'restraint to competition' and 'unfair competition'.

Activities of 'restraint to competition' are those that reduce, distort or hinder competition in

36 Article 31.1(a) of the Law on Entry, Exit, Transit and Residence of Foreigners in Vietnam

37 Article 17.2 of the Law on Entry, Exit, Transit and Residence of Foreigners in Vietnam

38 Article 9 of Circular 219 of the Ministry of Finance dated 31 December 2013

39 Article 11 of Circular 78 of the Ministry of Finance dated 18 June 2014

40 Article 9.1 of the Law on Import, Export of the National Assembly dated 6 April 2016

41 Article 26 of the Law on Personal Income Tax dated 21 November 2007 (as amended)

42 Law No. 27/2004/QH11 of the National Assembly dated 3 December 2004 ('Law on Competition')

the market, including agreements on restraint of competition, abuse of dominant market position or monopoly position and economic concentration.[43] Activities of 'unfair competition' are those that, throughout a company's business period, are contrary to business ethics, causing or might cause a detriment to the interests of the State and/or the legitimate rights and interests of other companies or consumers.[44]

Individuals or organisations that are found to have committed those acts described above shall be subject to a warning or fine. Depending on the seriousness, additional penalties may be imposed, e.g. withdrawal of the business registration certificate, revocation of the right to use a licence or practising certificate, or confiscation of the means used to commit the act. In addition, measures may be imposed to remedy the consequences, e.g. restructuring, division and separation of companies or removal of illegal terms or conditions from a contract or business transaction. Compensation may also be payable where such act causes loss to the State, an individual or an organisation.[45]

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

Vietnamese intellectual property law classifies intellectual property rights into three categories: copyright and related rights, industrial property rights, and the right to plant varieties,[46] each of which is administered by a different authority. Companies should take intellectual property rights into account since those rights might have considerable influence on their property.

Copyright is the right of an organisation or individual to works which such organisation or individual has created or owned.[47] Copyright registration is not mandatory in order for the owner to exercise and be entitled to such rights. In other words, the copyright owner shall automatically have legal rights to their creation without having it registered. However, obtaining a Copyright Registration Certificate would exempt the owner from having to prove their right if a dispute arises.[48]

An industrial property right is the right of an organisation or individual to patents, industrial designs, lay-out designs of semi-conductor integrated circuits, trademarks, trade names, geographical indications and trade secrets which they have created or owned. To register an industrial property right in Vietnam, companies holding such right should note the following:

(a) the 'first to file' principle: where two parties apply, the first one who files the application will be awarded the patent;[49]

(b) the priority principle: the applicant shall be able to claim its priority right on the first application for registration the same subject as other applicant provided that fully satisfying specifically legitimate conditions; and

(c) the validity of protected titles applicable to each type of industrial property shall vary.[50]

43 Article 3.3 of the Law on Competition
44 Article 3.4 of the Law on Competition
45 Article 117 of the Law on Competition
46 Article 4.1 of the Law on Intellectual Property 50/2005/QH11 of the National Assembly dated 29 November 2005, as amended by the Law on Intellectual Property 36/2009/QH12 of the National Assembly dated 19 June 2009 ('Law on Intellectual Property').
47 Article 4.2 of the Law on Intellectual Property
48 Article 49 of the Law on Intellectual Property
49 Article 90 of the Law on Intellectual Property
50 Article 93 of the Law on Intellectual Property

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

Data privacy in Vietnam is governed by the Law on Information and Technology 67/2006/QH11 of the National Assembly dated 29 June 2006 and its guiding regulations (the 'Law on Technology'). It protects the right of technology users and developers to secure data privacy and allows them to collect, process and use information only if approval is obtained from the owner of such information, except in exemption cases.[51] Once personal information has been stored in the network environment, an individual or organisation may request to inspect, correct, or delete their information and claim compensation for damage caused by wrongful supply of their personal information.[52]

The unauthorised access to, use, modification, deletion, and/or distribution of personal or organisational information must be prevented by all possible means. Any data privacy violation shall result in administrative consequences.[53] In addition, foreigners who commit such violation may be subject to such additional punishment as deportation.[54]

Despite the obligations to protect the data privacy of network environment users, the publication of certain information of organisations and individuals who conduct business activities in the network environment is necessary in order to protect their clients, including:

(a) name, location, contact information;

(b) operation licences and/or equivalent documents (if applicable);

(c) name of the competent authority managing the provider (if applicable); and

(d) description of goods or services.[55]

51 Articles 21.1, 22.2 and 72 of the Law on Technology

52 Articles 22.1 and 22.3 of the Law on Technology

53 Article 16.3 of the Law on Technology

54 Article 54.5 of Decree 174/2013/ND-CP

55 Article 9.2 of the Law on Technology

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

To attract foreign investors to Vietnam, investment incentives are provided for foreign investment projects in certain business sectors and locations. In particular, investment incentives provided under the investment laws of Vietnam (for both foreign and domestic investors) include:[56]

(a) lower CIT rates for a particular term or for the entire term of the project, exemption and reduction of CIT;

(b) exemption of import duties; and

(c) exemption or reduction of land rent, land use fees and land use tax.

To qualify for the above incentives, companies (set up by either foreign or domestic investors) must meet one of the following requirements:

(a) the investment project is in a preferential investment business line as regulated under Annex I of Decree 118/2015, such as the production of high-tech ancillary products or of new materials, new energy, renewable energy;

(b) the investment project is conducted in one of the designated preferential investment geographical areas, which are regulated under Annex II of Decree 118/2015;

(c) the investment project carries a total investment capital of at least VND 6,000 billion disbursable within three years from the project registration;

(d) the investment project is in a rural area and employs at least 500 employees; or

(e) the company is a high-tech company, scientific and technological company or organisation.

56 Article 15.1 of the LOI

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

In Vietnam, the law on bankruptcy[57] governs the procedures and statutory timing of insolvency of companies, which include credit institutions. A company shall be considered as insolvent if it fails to pay a due debt within three months from its due date.[58] However, an insolvent company shall be regarded as bankrupt only after being declared bankrupt by a competent court, which shall handle such case when it receives a petition for bankruptcy from the insolvent company or its creditor(s) or its employees.

Once a court commences bankruptcy proceedings, any transaction (such as payment of undue debts) made by the insolvent company within six months (or 18 months if transacted with related parties) prior to the date when the court commences bankruptcy proceedings shall be invalid.[59] If no rehabilitation plan is approved by the creditor's meeting, the court shall declare the insolvent entity bankrupt.

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

Recently, the draft Law Amending Business Laws was introduced for public comments in order to amend a number of articles in business law and other relevant laws. Although there is no official announcement on when the draft law may be proposed and passed by the National Assembly, the draft Law Amending Business Laws would significantly change the business law of Vietnam, e.g.:

(a) the draft Law Amending Business Laws shall adjust Articles 13.1 and 13.2 of the LOI regarding the investment incentives to ensure that investors enjoy not only current incentives as prescribed in the original provisions, but also the same granted rights and interests for the remaining time of their investment projects, should there be any new legal instruments promulgated in the future;[60]

(b) the requirement to have an investment project before setting up the corporate vehicle is removed in the amended provisions of Articles 22.1 and 22.2 of the LOI;[61]

(c) supplementing and amending the scope of investment projects subject to the investment policy of the provincial People's Committees;[62]

(d) projects of listed companies or public companies as registered for trading shall no longer be subject to the issuance of IRC;[63]

(e) simplifying the procedure of establishing companies by making the procedure consistent with LOE provisions instead of specialised laws as prescribed in the current regulation;[64] and

(f) relaxing land restrictions on companies by allowing the land user to sublease the land with lump-sum payment.[65]

57 The Law on Bankruptcy No. 51/2014/QH13 of the National Assembly dated 19 June 2016 (the 'Law on Bankruptcy')

58 Article 4.1 of the Law on Bankruptcy

59 Articles 40 and 59 of the Law on Bankruptcy

60 Article 1.3 of the draft Law Amending Business Laws

61 Article 1.6 of the draft Law Amending Business Laws

62 Article 1.10 of the draft Law Amending Business Laws

63 Article 1.14 of the draft Law Amending Business Laws

64 Article 2.1 of the draft Law Amending Business Laws

65 Article 3.8 of the draft Law Amending Business Laws

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

The Vietnamese government has set up a plan to restructure State-owned enterprises ('SOEs') in the period 2016–20 under Decision 58/2016/QD-TTg dated 28 December 2016. Under this plan, the State shall equitise 240 SOEs by selling the State capital therein in whole or in part. Accordingly, investors will have an opportunity to broaden their investment opportunities in Vietnam.

The limit on foreign ownership of trading companies in the securities market appears to have been removed. Recently, a number of trading companies (e.g. Vinamilk[66] and Domesco Medical Import-Export JSC) were allowed to remove the cap on foreign ownership while still maintaining their trading business.[67] This would open floodgates for other publicly traded companies to do the same.

Last but not least, in early 2016, the Ministry of Finance published a draft circular guiding the investment activities of share purchase by foreign investors in Vietnamese companies, in a favourable manner towards foreign investors. Article 7.3.4 in the draft circular proposes that preferential shares of JSCs held by foreign investors shall not be counted in the calculation of the limit on foreign ownership in those JSCs. If adopted, the circular will likely encourage foreign buy-outs of shares in domestic JSCs in Vietnam.

66 http://www.reuters.com/article/us-vinamilk-ownership-idUSKCN0Y716G

67 http://cafef.vn/domesco-chinh-thuc-noi-room-ngoai-len-100-20160902073813465.chn

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